

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17612
)	
[REDACTED],)	DECISION
)	
Petitioners.)	
_____)	

On September 24, 2003, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of Idaho individual income tax of \$351 for the period ending December 31, 1999.

[Redacted] filed a timely protest and petition for redetermination of the refund denial. The taxpayers did not submit additional information or request a hearing. The Tax Commission has reviewed the file, is advised of its contents and hereby issues its decision.

The Tax Commission's Collections Journal (a permanent computer record) shows the taxpayers were contacted at least as early as August 2, 2001, regarding the taxpayers' 1999 Idaho return. The collector's notes on that date indicate [Redacted] telephoned the Tax Commission regarding a seizure of his wages for payment of the taxpayers' 1995 and 1996 Idaho income tax. According to the notes regarding the ensuing conversation, [Redacted] was told his 1999 and 2000 Idaho returns had not been received. He was asked to file those returns to avoid further collection action. [Redacted] said he had mailed those returns in mid July 2001.

Collection notes for September 24, 2001 indicate [Redacted] was asked again about the 1999 and 2000 returns and he again said both returns had been sent. After that contact, no collection notes were made until January 8, 2003. The note on that date indicates the collections department sent the taxpayers a letter regarding delinquent income taxes for other years and their 1999 and 2000 Idaho

returns that the Tax Commission's computer records did not show as received. Two weeks later, [Redacted] telephoned to say he had filed his 1999, 2000, and 2001 Idaho returns. When he was told no records of the filings could be found, he said he would send copies.

Nothing further was heard from the taxpayers until [Redacted]'s wages were again seized for payment of other tax liabilities. [Redacted] hand delivered the taxpayers' 1999 Idaho return to one of the Tax Commission's field offices on July 14, 2003.

The taxpayers' 1999 Idaho return was submitted for filing and a computer generated letter denying the refund shown in the return was sent to the taxpayers. [Redacted] objected and a deficiency notice was mailed to the taxpayers to allow them an opportunity to appeal the refund denial. The taxpayers' file was transferred to the Legal/Tax Policy Division for administrative review.

Idaho Code § 63-3035(e) limits the time for an employee to claim a credit or refund of monies that have been deducted from wages as follows:

Idaho Code § 63-3035 . . .(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. No credit or refund shall be made to an employee who fails to file his return, as required under this act, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be

made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)

Idaho Code § 63-3072(c) provides for a limit on the time to claim a refund of overpaid income taxes:

Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. (Emphasis added.)

The period of limitation with respect to claiming the refund or credit of tax shown in the taxpayers' Idaho income tax return for 1999 expired on April 15, 2003. The taxpayers did not file a claim for the refund until they filed their return on July 14, 2003.

In his letter appealing the refund denial, [Redacted] said he had mailed the taxpayers' 1999 Idaho return several times yet the Tax Commission denied receiving it. He stated that he sent the first 1999 return on February 23, 2000 and mailed it again twice in 2001, once in 2002 and twice in 2003. He wrote: "I have not figured out why the forms never get there. But it seems every time I send something to the state it comes up lost or missing." He said he feels like he is being punished for something that is not in his control.

Interestingly, the return the taxpayers filed on July 14, 2003, appeared to be an original return although the date next to the taxpayers' signatures was "Feb. 21, 2000." The two W-2s attached to the return were not photocopies – they were the copies provided by the employers for attaching to returns. Both W-2s stated, "copy 2. To be filed with Employee's State, City, or Local Income Tax Return."

Idaho Code § 63-3072 is clear and unequivocal. The language in this section "shall be made. . ." is not discretionary; but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(c) and § 63-3035(e), cited above, are controlling with respect to the taxpayer's refund claim for tax year 1999. The withholding is allowed to offset the tax due for 1999. However, no credit or refund is allowed.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated September 24, 2003, that denies the taxpayers a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of taxpayers' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this _____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted] _____