

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 18199
[Redacted],	)	
	)	DECISION
Petitioners.	)	
_____	)	

On August 4, 2004, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of Idaho individual income taxes in the amount of \$176 for the period ending December 31, 1999.

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

The Tax Discovery Bureau contacted the taxpayers in April 2004 because the Tax Commission did not have a record of receiving the taxpayers' 1999 Idaho income tax return. [Redacted] immediately responded by fax to explain the circumstances that resulted in his 1999 Idaho return not being filed. He said in pertinent part:

In checking my records, I see that I filed electronically on April 8, 2000 both my Federal and State tax return. I also noted that my electronic filing for my Federal return had a problem in transmission. I did not have a social security number for my infant daughter which was the root of the problem. In any event, I retransmitted my return in August, 2000 (once I received a social security number for my daughter). I completely forgot to check on the status of my State return.

On May 14, 2004, RevOp received the taxpayers' 1999 Idaho Individual Income Tax Return. The return was submitted for processing and a computer-generated letter was mailed to the

taxpayers. The letter advised the taxpayers that the refund shown in the return was being denied because the time to claim the refund had expired.

The taxpayers objected to the denial of their refund in a letter received via fax from [Redacted] on July 30, 2004. He asked for consideration because he was unaware his 1999 return had not been received at the Tax Commission until he was contacted by the Tax Discovery Bureau. He said he re-filed the return as soon as he was notified.

A deficiency notice was mailed to the taxpayers to allow them an opportunity to appeal the Tax Commission's decision to withhold the refund. 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 a refund or credit of the taxes shown in the taxpayers' 1999 Idaho income tax return expired on April 15, 2003. The taxpayer did not file a claim for credit or refund until May 13, 2004, the postmark date on the envelope used to mail the 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 taxpayers' refund claim for tax year 1999. The withholding is allowed to offset the tax due for 1999; however, the overpayment cannot be credited or refunded.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated August 4, 2004, 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 \_\_\_\_\_, 2004.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, 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]  
[Redacted]  
[Redacted]

Receipt No.

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