

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18898
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On July 12, 2005, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for refund of Idaho individual income tax in the amount of \$225 for the period ending December 31, 1999, \$612 for the period ending December 31, 2000, and \$491 for the period ending December 31, 2001.

The taxpayers filed a timely protest and petition for redetermination of the refund denials. A telephone conference was held on November 28, 2005. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On January 27, 2005, the Tax Commission received the taxpayer's 1999 Idaho individual income tax return. Their 2000 and 2001 returns were received on May 2, 2005. Because the time for claiming the refunds reflected in each of the three returns had expired, a letter was sent to the taxpayers informing them of the adjustment to deny the refunds. The taxpayers objected to the intended action, and a certified notice was sent to allow them the opportunity for administrative review. Their file containing all three returns was transferred to the Legal/Tax Policy Division for the Commission's review.

In their letter of protest, the taxpayers said:

We would like to know where the fairness and equity are in that our refunds are not applicable after the set three year period, but the state is allowed to assess in the same situation. If we still owe taxes for 1997, then the returns due to us for 1999-2001 should still apply.

Idaho Code provides for a limit on the time taxpayers have to claim credits or refunds as

follows:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) 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. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

Idaho Code § 63-3035(e) states:

(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 chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, 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 chapter, 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 law provides for a credit or refund of any overpayment; however, the claim for the credit or refund must be made within a certain timeframe. The Tax Commission did not get the taxpayers' claim for credit or refund until the taxpayers' returns were received on January 27, 2005, and May 2, 2005. Unfortunately, the time allowed for claiming the 1999 refund expired on April 15, 2003, the 2000 refund expired on April 15, 2004, and the 2001 refund expired on April 15, 2005.

The taxpayers question the fairness of the Tax Commission denying their credit or refund requests after three years but collecting tax due for other years that were filed beyond three years from the due dates of the returns.

Idaho Code provides for a limit on the time the Tax Commission has to notify a taxpayer of a determination of tax due as follows:

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. (a) Except as otherwise provided in this section, **a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.**

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of six (6) years from the date of assessment of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) **In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such**

tax may be begun without assessment, at any time. (Emphasis added.)

A three-year time restriction is placed on the Tax Commission for the notification of an under payment of tax just as a three-year time restriction is placed on a taxpayer for claiming a credit or refund of any overpayment of tax. When a taxpayer does not file a return as required by law, no time restriction for determining and collecting tax due is placed on the Tax Commission.

During the telephone conference, Mr. [Redacted] spoke of a U.S. District Court case Robert Boretti and Judith Boretti v. United States of America, 93-1 USTC. He indicated he was aware the case addressed refunds denied by the Internal Revenue Service rather than the State of Idaho. However, he suggested the Tax Commission might consider the similarities.

The District Court case Mr. [Redacted] referred to involved taxpayers who requested a refund of remittances paid as estimated payments more than two years before they made a claim for refund. Federal statutes, 26, U.S.C. §§6511 and 7422 limits the time to claim refund of remittances to three years from the filing of the return or two years from the date of payment. The State of Idaho statutes are not the same as federal statutes. In addition, the facts of the [Redacted] case were not on point.

Idaho Code §§ 63-3072 and 63-3035 are clear and unequivocal. The language in these sections “shall be made. . .” is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayers’ credit or refund claims for tax years 1999, 2000, and 2001. No credits or refunds can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated July 12, 2005, that denies the taxpayers credit or 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 _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2005, 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.