

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 19177
[Redacted],	)	
	)	DECISION
Petitioners.	)	
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On November 28, 2005, 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 \$777 for the period ending December 31, 2001.

The taxpayers filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents and hereby issues its decision.

On September 13, 2005, RevOp received the taxpayers' 2001 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 allowed for claiming a credit or refund had expired.

The taxpayers objected to the denial of their refund. 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 tax shown in the taxpayers' 2001 Idaho income tax return expired on April 15, 2005. The taxpayers did not file a claim for credit or refund until September 13, 2005, when they filed their return.

In his appeal letter, [Redacted] said he was not aware of a requirement to claim a refund within three years of the due date of the return. Secondly, he said he has been in direct contact with personnel in the [Redacted] and has "shown in good faith my intention to satisfy my current tax debt to the State of Idaho." He asked for a one-time adjustment to allow him to make one final payment of taxes owed to satisfy his debt. He added that, without the adjustment, he will have to revise his payment schedule.

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 or credit claim for tax year 2001. The withholding is allowed to offset the tax due; however, the overpayment cannot be credited or refunded.

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

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2006, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.  
  
\_\_\_\_\_