

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 19261 & 19369
[Redacted],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On January 6, 2006, the Revenue Operations Division of the Idaho State Tax Commission (RevOp) denied a request by [Redacted] (taxpayer) for a refund of Idaho individual income tax in the amount of \$5,005 for the period ending December 31, 2000; and, on April 14, 2006, RevOp denied a request for a refund of Idaho individual income tax in the amount of \$11,484 for the period ending December 31, 2001.

The taxpayer filed a timely protest and petition for redetermination of the refund denials. On June 21, 2006, an informal conference was held at the Tax Commission. The file has been reviewed, and all information submitted at the conference has been considered. The Tax Commission hereby issues its decision.

The Tax Commission received the taxpayer's 2000 and 2001 Idaho individual income tax returns on October 14, 2005. Because the time for claiming the refunds reflected in the returns had expired, a letter was sent to the taxpayer informing him of the adjustment to deny the refunds. The taxpayer objected to the intended action, and certified notices were sent to allow him the opportunity for administrative review. The files were transferred to the Legal/Tax Policy Division for the Commission's review.

In his letter of protest, the taxpayer's accountant explained the taxpayer was "fully occupied running his family's closely held business" during tax years 2000, 2001, and 2002. The taxpayer understood from his former accountant that his refunds or credits would not be jeopardized if no tax was due. The taxpayer's current accountant said the taxpayer and his former accountant began the process of preparing all delinquent returns for filing when the accountant died suddenly on October 6, 2004. By the time the taxpayer hired the new accounting firm and the records were sorted out, another year had passed. He asked for consideration for the taxpayer because of circumstances beyond the taxpayer's control.

The taxpayer reiterated much of the same information during the informal conference. He explained that he is an Idaho resident land owner and businessman. He said a number of circumstances delayed the filing of his individual income tax returns. He said he works 90 to 100 hours a week keeping up with extensive responsibilities running businesses located in several states and [Redacted], dealing with his dad's estate, and overseeing his daughter's business interests.

The taxpayer said he kept all business returns timely filed and it seemed "the only thing that could be put on the back burner" was his federal and state individual income tax returns. He admitted the information needed to prepare the returns eventually got stale causing a further delay in filing. He confirmed that his federal and state returns for 2003, 2004, and 2005 have not yet been filed.

Idaho Code provides for a limit on the time taxpayers have to claim a credit or refund 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 receive the taxpayer's claim for a refund until the taxpayer's two returns were received October 15, 2005. The time allowed for claiming the 2000 refund or credit expired on April 15, 2004. The time allowed for claiming the 2001 refund or credit expired on April 15, 2005.

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 taxpayer's refund or credit claimed for tax years 2000 and 2001.

Idaho Code § 63-3048 allows the State Tax Commission or its delegate to enter into an agreement to adjust or compromise a case. The grounds for a compromise are defined in Tax Commission Administration and Enforcement Rules, Rule No. 500. Adjusted or Compromised Cases:

- 01. Grounds for Compromise.** The Tax Commission may compromise the tax liability, penalties, or both, of a case if one (1) or more of the following circumstances exist:
- a.** Doubt as to liability;
  - b.** Doubt as to collectibility; or
  - c.** Extreme hardship of the taxpayer.

There being no liability or collectibility issues to this request for refund, the only circumstance that would allow the Tax Commission to compromise the clear language of the law is the extreme hardship of the taxpayer.

The taxpayer has provided nothing to suggest the denial of the refunds or credits shown in his 2000 and 2001 delinquently filed returns would result in an extreme hardship to him. The taxpayer's requests for refund of the taxes shown in his 2000 and 2001 Idaho individual income tax returns are denied.

WHEREFORE, the Notices of Deficiency Determination directed to [Redacted], dated January 6, 2006, and April 14, 2006, that deny the taxpayer refunds are APPROVED, AFFIRMED, and MADE FINAL.

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

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

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2006, 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]

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