

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

In the Matter of the Protest of )  
 ) DOCKET NO. 19262  
[REDACTED], )  
 ) DECISION  
Petitioners. )  
\_\_\_\_\_ )

On January 31, 2006, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayers) for a refund of Idaho individual income tax in the amount of \$14,901 for the period ending December 31, 2000.

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.

The Tax Commission received an amended 2000 Idaho individual income tax return from the taxpayers on August 31, 2005. Because the time for claiming the refund reflected in that return had expired, a letter was sent to the taxpayers informing them of the adjustment to deny the refund. The taxpayers objected to the intended action, and a certified notice was sent to allow them the opportunity for administrative review. The file was transferred to the Legal/Tax Policy Division for the Commission's review.

In the taxpayers' letter of protest, [Redacted] asked to have the refund shown in the return issued because of the size of the refund that was the result of an error on the part of his former accountant. He said his Canadian accountant discovered that his Idaho accountant had failed to include his 2000 K-1 partnership tax losses when his Idaho accountant prepared the taxpayers' first amended 2000 Idaho income tax return.

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 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 a refund until the taxpayers' second amended return was received August 31, 2005. The first amended Idaho income tax return had been filed in August, 2002. Unfortunately, the time allowed for claiming the 2000 refund expired on April 15, 2004.

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' refund or credit claim for tax year 2000. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated January 31, 2006, that denies the taxpayers a refund is APPROVED, AFFIRMED, and MADE FINAL.

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

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]  
[REDACTED]

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