

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
) DOCKET NO. 20204
[Redacted],)
) DECISION
)
Petitioner.)
)
_____)

On May 14, 2007, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for refund of individual income tax in the amount of \$423 for the period ending December 31, 2002. The taxpayer 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 March 2, 2007, the taxpayer submitted a 2002 Idaho individual income tax return to the Tax Commission for processing. Because the time for claiming the \$423 refund shown in the return had expired, a letter was mailed to the taxpayer indicating the Tax Commission was denying the refund. The taxpayer objected and a Notice of Deficiency Determination was issued to provide the taxpayer with the opportunity for administrative review.

The taxpayer's letter explained her objection to being denied the refund:

This letter is in response to your request for information; letter ID L1120319232; reference 00219293801. In this letter, you requested a response if I did not agree with your adjustment. I strongly disagree with your decision. I believe that I am owed a refund on the 2002 income tax year. If our situations were reversed, the State of Idaho would require me to pay any funds owed as well as charging me for penalties and interest. I am not asking for additional funds, only for the legitimate funds I am entitled to. Please reconsider your decision.

The taxpayer's statement about the Tax Commission not having a time limit for reviewing taxes is in error. Idaho Code § 63-3068 states in pertinent part:

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. (Emphasis added.)

The Tax Commission is allowed three years in which to notify a taxpayer of additional Idaho income tax unless an original return has not been filed. There is no time limitation if a return has not been filed.

Idaho Code § 63-3032 defines the due date of Idaho income tax returns:

63-3032. Time for filing income tax returns. (1) Except as provided in section 63-3033, Idaho Code:
(a) Returns made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed in the office of the Idaho state tax commission on or before the 15th day of the fourth month following the close of the fiscal year.

The taxpayer's 2002 Idaho individual income tax return was required to be filed on or before April 15, 2003. The Tax Commission did not receive that return claiming a refund until March 2, 2007.

Idaho law provides for a credit against taxes. However, the claim for credit must be made within a certain timeframe 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 Code provides a taxpayer the same number of years to claim a refund or credit as allowed for the Tax Commission to claim a tax deficiency. The taxpayer made her claim for a credit when she filed her return on March 2, 2007; the time allowed for claiming the refund expired on April 15, 2006.

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

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated May 14, 2007, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this ____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2007, 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.
