

retain the petitioners' file while they awaited the information the petitioners had yet to provide. The TDB requested the petitioners provide the information by June 19, 2008. The petitioners did not respond to this letter. If the petitioners' issues could not be resolved in the TDB, their file would be transferred to the Commission's Legal/Tax Policy division for further review.

The Tax Enforcement Specialist (TES) sent the petitioners a letter on September 3, 2008, reminding the petitioners of their request on June 23, 2008, for additional time to file their returns. The TES had given the petitioners until July 31, 2008, but over two months later, the petitioners had not filed the requested tax returns. The TES stated that while the TDB would prefer that the petitioners file their tax returns without having to involve the Commission's legal department, if the returns were not sent to the TES's attention by October 3, 2008, the petitioners' file would be transferred to the legal department with no further extensions.

On November 7, 2008, the tax policy specialist (policy specialist) sent the petitioners a letter to inform them of the alternatives for redetermining a protested NOD.

On December 8, 2008, the policy specialist received a fax that had a signed power of attorney from the petitioners' representative.

On December 26, 2008, the policy specialist received the petitioners' 2002 income tax return from the petitioners' representative.

The policy specialist sent the representative a follow-up letter on July 31, 2009, after the petitioners' returns for taxable years 2004, 2005, and 2006 had not been provided.

On September 11, 2009, the policy specialist received the petitioners' 2004, 2005, and 2006 income tax returns from the petitioners' representative.

The Commission reviewed the petitioners' case after receiving their 2002, 2004, 2005, and 2006 income tax returns. The Tax Commission determined the submitted returns represented the petitioners' taxable income better than the returns prepared by the TDB. The petitioners' returns will be processed and are subject to the normal review process.

The petitioners' returns for 2002, 2004, 2005, and 2006 resulted in refunds.

However, Idaho Code § 63-3072(c) states that a claim for refund or credit of the overpayment of Idaho income taxes withheld or amounts paid as estimated payments shall be made within three (3) years from the due date of the return. Idaho Code § 63-3024A(g) states that a refund claim must be filed within three (3) years of the due date of the return. The petitioners' 2002, 2004, 2005, and 2006 returns had due dates of April 15, 2003, April 15, 2005, April 15, 2006, and April 15, 2007, respectively. Therefore, the petitioners' refund for taxable year 2002 is denied. Since the petitioners' 2004 and 2005 returns were received September 10, 2009, well outside the three (3) year statute of limitations, the Commission would normally deny these refunds. However, since the NOD in this case was issued prior to the expiration of the three (3) year statute of limitations for taxable years 2004 and 2005, the period of limitations is suspended for those years. Idaho Code § 63-3072(i) states:

The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

Therefore, the petitioners' refunds for taxable years 2004 and 2005 will be refunded, as well as their refund for taxable year 2006, which was filed within the three (3) year statute of limitations.

WHEREFORE, the Notice of Deficiency Determination dated March 13, 2008, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners receive the following REFUND of tax:

<u>YEAR</u>	<u>REFUND</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2002	\$ 0	\$0	\$0	\$ 0
2004	1,037	0	0	1,037
2005	586	0	0	586
2006	1,025	0	0	<u>1,025</u>
			TOTAL REFUND	<u>\$2,648</u>

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

DATED this ___ day of _____ 2009.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____ 2009, 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.

[Redacted]
