

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21713
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On February 5, 2009, the Revenue Operations Division of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for a refund of Idaho individual income tax in the amount of \$548 for the period ending December 31, 2004. The taxpayer filed a timely protest and petition for redetermination of the refund denial.

The taxpayer requested an informal hearing which was held, by phone, on April 9, 2009. Prior to the hearing, the taxpayer provided the Tax Commission with additional documentation for consideration. The Tax Commission has reviewed the additional information, along with the file, is advised of its contents, and hereby issues its decision.

On December 3, 2008, the taxpayer submitted her 2004 Idaho individual income tax return to the Tax Commission for processing. Because the time for claiming the refund shown in the return had expired, a letter was mailed to the taxpayer advising her of the Tax Commission's intent to deny the refund. The taxpayer objected, and a Notice of Deficiency Determination was issued wherein the taxpayer was advised the refund was denied and she had a right to appeal the determination.

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

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.

As a resident of Idaho with taxable income, the taxpayer was required to file Idaho individual income tax returns. The return was made on the basis of the calendar year; therefore, the returns were required to be filed on or before April 15 following the close of the calendar year.

In her letter of protest, the taxpayer asked the Tax Commission to reconsider the decision to deny her refund. However, Idaho Code § 63-3072(c) defines the time allowed to claim refunds:

Credits and refunds. . . .

(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) provides:

(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.)

The period of limitation, with respect to claiming a refund or credit of taxes shown in the Idaho income tax return for 2004, expired on April 15, 2008. The Tax Commission did not receive the taxpayer's return until December 3, 2008.

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 claim for tax year 2004. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated February 5, 2009, that denies the taxpayer 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 _____, 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.
