

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21752
[REDACTED],)	
)	DECISION
Petitioners.)	
)	
)	
)	
)	

On February 25, 2009, the Revenue Operations Division of the Idaho State Tax Commission (Commission) denied a request by [Redacted] (taxpayers) for a refund of Idaho individual income tax in the amount of \$1,276 for the period ending December 31, 2004. The taxpayers filed a timely protest and petition for redetermination of the refund denial. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On December 15, 2008, the taxpayers submitted their 2004 Idaho individual income tax return to the Commission for processing. Because the time for claiming the refund shown in the return had expired, a letter was mailed to the taxpayers advising them of the Commission’s intent to deny the refund. The taxpayers objected, and a Notice of Deficiency Determination was issued, wherein the taxpayers were advised the refund was denied and they 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 residents of Idaho with taxable income, the taxpayers were required to file an Idaho individual income tax return. The return was made on the basis of the calendar year, therefore, it was required to be filed on or before April 15 following the close of the calendar year.

In their letter of protest, the taxpayers asked the Commission to reconsider the decision to deny their refund due to medical hardship. 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(c) 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 Commission did not receive the taxpayers' return until December 15, 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 Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayers' refund or credit claim for taxable year 2004. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated February 25, 2009, that denies the taxpayers a refund, is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the taxpayers' 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.
