

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 21776
[REDACTED],	)	
	)	DECISION
Petitioner.	)	
_____	)	

On March 5, 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 \$150 for the period ending December 31, 2002.

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.

Idaho Code section 63-3033 defines the time to file an Idaho tax return:

**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 fifteenth 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 fifteenth day of the fourth month following the close of the fiscal year.

(b) In the case of a return for any period of less than one (1) year, the return shall be filed on or before the date required in this section, or on or before such date as required for such tax period by the Internal Revenue Code, whichever is later.

(2) Returns made by farmer's cooperatives to the extent the cooperative is taxable under section 63-3025B, Idaho Code, shall be due on or before September 15 following the close of the calendar year or on or before the fifteenth day of the ninth month following the close of the fiscal year. The provisions of section 63-3033, Idaho Code, shall not apply to returns due under this subsection. (Emphasis added.)

The due date for tax returns for the taxable year in question, 2002, was April 15, 2003.

The Commission received the first of many versions of the taxpayers' 2002 Idaho individual

income tax returns on September 8, 2004. The return was processed, and the taxpayers received a refund of \$713.

On September 11, 2005, the Commission received for processing an amended 2002 Idaho individual income tax return from the taxpayers.

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 taxable year 2002, expired on April 15, 2006. The first amended return was received within the three-year statute of limitations, therefore, it was processed, and the taxpayers received an additional refund check in the total amount of \$339.87, \$296 of tax, plus \$43.87 of interest

On January 13, 2009, the Commission received from the taxpayers yet another amended individual income tax return for taxable year 2002. Because the time for claiming the refunds shown in the returns 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 their refund was denied and they had a right to appeal the determination.

The taxpayers appealed the determination to deny them their 2002 refund. The taxpayers, in their many letters to the Commission, repeatedly cite IRS publication 17, Chapter 14, and the extension of the statute of limitations as it pertains to worthless securities. IRC 6511(d)(1) states:

**(d)** Special rules applicable to income taxes

**(1) Seven-year period of limitation with respect to bad debts and worthless securities**

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of -

**(A)** The deductibility by the taxpayer, under section 166 or section 832(c), of a debt as a debt which became worthless, or, under section 165(g), of a loss from worthlessness of a security, or

**(B)** The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an

overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph. (Emphasis added.)

The period of limitation, with respect to claiming a refund or credit of taxes shown in the Idaho income tax return for 2002, expired on April 15, 2006. The Tax Commission did not receive the taxpayers' second amended return for taxable year 2002 until January 13, 2009, well past the three-year statute of limitations. The seven-year statute of limitations is a federal statute; Idaho statute does not make an exception to the general three-year rule to allow an extended period with respect to bad debts and worthless securities.

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 taxable year 2002. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated March 5, 2009, that denies the taxpayers 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 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.

\_\_\_\_\_