

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22195
[Redacted]	)	
Petitioners.	)	DECISION
	)	
	)	
_____	)	

[Redacted] (petitioners) protest the Notice of Deficiency Determination issued by the auditor for the Idaho State Tax Commission (Commission) dated September 2, 2009. The Notice of Deficiency Determination denied a refund of Idaho income tax in the amount of \$548 plus applicable interest for 2004.

The petitioners were residents of Idaho at all times relevant to this matter. The petitioners filed their 2004 Idaho income tax return in March of 2005. The petitioners' 2004 income tax return was audited by the [Redacted]. The result of the audit was a reduction of their taxable income in the amount of \$8,451. The federal audit appears to have been concluded in December of 2006. In April of 2009, the petitioners filed an amended Idaho income tax return to reflect the reduction in their taxable income as determined by [Redacted].

The staff of the Commission denied the petitioners' claimed refund from their amended 2004 Idaho income tax return. Idaho Code § 63-3072 sets out the statutes of limitation related to credits or refunds. It states, in part:

- Credits and refunds. (a) Subject to the provisions of subsections (b), (c) and (h) 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) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, 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.

\* \* \*

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later [sic] of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (b) and (h) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments. (Emphasis added.)

Subsection (b) of Idaho Code § 63-3072 requires that a claim be filed. Subsection (d) modifies the time period for the filing of such a claim if the claim for credit or refund relates to a "final federal determination." The petitioners contend that the refund here in question should have been made without the filing of a claim for the refund.

The Commission finds that it was necessary that the petitioners file a claim for the refund here in question, that it must have been made by the time prescribed in Idaho Code § 63-3072(d), and that it was not filed within the time prescribed.

WHEREFORE, the Notice of Deficiency Determination dated September 2, 2009, is hereby APPROVED, AFFIRMED, AND MADE FINAL.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

IDAHO STATE TAX COMMISSION

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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.