

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 22353
[Redacted])	
)	DECISION
Petitioner.)	
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)	

On October 2, 2009, the Revenue Operations Division of the Idaho State Tax Commission (Commission) denied a request [Redacted](petitioner) for refund of Idaho individual income tax in the total amount of \$331 for taxable year 2005.

The petitioner filed a timely protest and petition for redetermination of the refund denial in a letter dated August 9, 2009. The petitioner did not request a hearing. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The petitioner filed her 2005 Idaho individual income tax returns on June 15, 2009. The return reflected a refund due to the petitioner. A letter was mailed to the petitioner advising her that her refund was denied because the time to claim the refund had expired. In the petitioner's protest letter of the denial of her refund claim she stated:

I am very unhappy with your decision to deny the refund for my 2005 State Tax Return.

You do not understand what I have gone through these past 5 years. You cannot possibly understand, and neither can anyone else who has not suffered from severe depression. I was emotionally and mentally not able to concentrate long enough [sic] do my taxes, and also did not know that there was a time limit to get my money back when I knew that the state owed me. You certainly would not hesitate to charge me fines and interest and demand that my money be paid if the situation was reversed and I owed YOU money. This is money that I earned, and I deserve to have it back.

I should not have to give my money to someone or something else. That money belongs to me. This is completely unfair and wrong. I want to talk to someone about this.

A deficiency notice was mailed to the petitioner to allow her an opportunity to appeal the Commission's decision to deny the refund. The petitioner's file was transferred to the Legal/Tax Policy Division for administrative review.

The petitioner's return resulted in a refund. However, Idaho Code sections 63-3035 and 63-3072 prohibit refunding or crediting the overpayment of tax if a claim for credit or refund is not filed within three (3) years of the due date of the return.

The petitioner questioned the fairness of the Commission denying her credit or refund request after three years but collecting tax due for years that are filed beyond three years from the due date of the return.

Idaho Code provides for a limit on the time the Commission has to notify a taxpayer of a determination of tax due as follows:

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. (a) Except as otherwise provided in this section, **a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.**

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of six (6) years from the date of assessment of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) **In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.** (Emphasis added.)

A three-year time restriction is placed on the Commission for the notification of an underpayment of tax just as a three-year time restriction is placed on a taxpayer for claiming a credit

or refund of any overpayment of tax. When a taxpayer does not file a return as required by law, no time restriction for determining and collecting tax due is placed on the Tax Commission.

The Commission did not receive the petitioner's 2005 Idaho income tax return until June 15, 2009, and the return was due on April 15, 2006. The period of limitation with respect to claiming a refund or credit of taxes for that return expired on April 15, 2009.

The Commission finds Idaho Code sections 63-3072(c) and 63-3024A(g), cited above, are controlling. The clear statutory language prohibits credit or refund of taxes if the claim is not made within a certain timeframe. No credit or refund will be issued.

WHEREFORE, the Notice of Deficiency Determination directed to the petitioner, dated October 2, 2009, that denied the petitioner a refund is APPROVED, AFFIRMED, and MADE FINAL.

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

DATED this ____ day of _____ 2011.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____ 2011, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]
