BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NOS. 22444 & 22443
[Redacted],	)	
	)	
Petitioners.	)	DECISION
	)	

On October 6, 2010, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (Docket No. 22443) and an NODD to [Redacted] (Docket No. 22444). Each NODD proposed income tax, penalty, and interest for taxable years 2005 and 2006 in the total amount of $1,376.

The [Redacted] (taxpayers) protested the deficiency determinations. They did not request a hearing or submit additional information. The Commission, having reviewed the file, hereby issues its decision combining the dockets and modifying the NODDs.

Information available to the Commission indicated the taxpayers were Idaho residents who met the individual income tax filing requirements. The Bureau attempted to contact the taxpayers for an explanation of why their 2005 and 2006 Idaho individual income tax returns had not been filed, but they did not respond to the inquiries.

The taxpayers' [Redacted] income records were made available to the Commission pursuant to Internal Revenue Code § 6103(d) and Idaho Code § 63-3077.

Because the Commission's files did not include the taxpayers' Idaho individual income tax returns for taxable years 2005 and 2006, the Bureau prepared the returns on the taxpayers' behalf and issued an NODD to each using a community property split and a filing status of married, filing separate.

The taxpayers protested the Bureau's determinations. In the protest letter sent by the taxpayers, they requested additional time in which to obtain W-2s from their employers for a clearer understanding of their finances. The taxpayers were allowed additional time. When the taxpayers did not deliver the returns to the Commission after the allowed time, their files were transferred to the Legal/Tax Policy Division for administrative review.

The taxpayers responded to a letter from the Tax Policy Specialist that outlined their appeal rights and again asked for additional time in which to prepare actual returns. An extension was granted but, to date, no returns have been received. A follow-up letter was sent to the taxpayers but the Tax Policy Specialist received no response.

The Idaho resident individual income tax returns the Bureau prepared on behalf of the taxpayers were based on income information gleaned from the taxpayers' [Redacted] income records and the records retained by the Commission. The Bureau calculated the taxpayers' Idaho tax for taxable years 2005 and 2006 using a filing status of Married, Filing Separate, with no dependent exemptions. However, the Commission has located [Redacted] records that show the taxpayers submitted Married, Filing joint tax returns with four dependent exemptions for taxable years 2004 and 2007. Therefore, the Commission has modified the NODD's prepared by the Bureau to reflect a filing status of Married, Filing Joint for both taxable years 2005 and 2006 and has allowed four dependent exemptions for both years. For taxable year 2005, this modification would result in a refund due to the taxpayers in the amount of $149. 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 2005 expired on April 15, 2009. The taxpayers did not submit a tax return for taxable year 2005 and, therefore, made no claim for refund.

Idaho Code §§ 63-3072 and 63-3035 are clear and unequivocal. The language in these sections "shall be made. . ." is not discretionary, but rather, is mandatory. No credit or refund can be given for taxable year 2005.

Interest and penalty were added pursuant to Idaho Code §§ 63-3045 and 63-3046. The Commission reviewed those additions and found them proper and in accordance with Idaho Code.

WHEREFORE, the Notices of Deficiency Determination dated October 6, 2010, are hereby MODIFIED, and as modified, APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

YEAR	TAX	PENALTY	INTEREST	TOTAL
2006	$37	$10	$9	$56

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 _____ 2011.

IDAHO STATE TAX COMMISSION

_____

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2011, 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.

_____