

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 22565
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

[Redacted] (taxpayer) protested the Notice of Deficiency Determination dated January 30, 2010, issued by the Revenue Operation Division of the Idaho State Tax Commission denying a request for refund in the total amount of \$360. The taxpayer disagreed that his claim for filing a refund was untimely due to his circumstances. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

The taxpayer filed a 2005 individual income tax return requesting a refund of his excess withholdings. The Tax Commission received the taxpayer’s 2005 return on December 11, 2009. During processing, the taxpayer’s return was identified as a return that had a potential error. The Taxpayer Accounting Section (Taxpayer Accounting) reviewed the taxpayer’s return and found the taxpayer’s claim for refund was past the statute of limitations for issuing or crediting a refund. Taxpayer Accounting sent the taxpayer a correction letter stating his refund was denied because his claim for refund was past the statute of limitations.

The taxpayer protested Taxpayer Accounting’s correction stating his filing was late because it was sent to the wrong address and because he was incarcerated and unable to chase it down. The taxpayer stated that in September 2009, he was told a check was waiting for him at his tax preparer’s office. But when he was able to get someone to pick it up for him he found out that it was his 2005 income tax return. It was after he found out that what was waiting for him

was his 2005 return that he filed his return. Taxpayer Accounting reviewed the taxpayer's protest, sent the taxpayer a Notice of Deficiency Determination, and referred the matter for administrative review.

The Tax Commission sent the taxpayer a letter giving him the opportunity to provide additional information that the Tax Commission could use in redetermining the Notice of Deficiency Determination. The taxpayer stated that since he was in prison, he could not attend a hearing and he did not know what additional information he could provide. The taxpayer stated his late filing started when his W-2s were sent to the wrong address and him not being able to retrieve them until December 2009. He stated he was unsure what to do since he will be in prison until September 10, 2013.

The Tax Commission decided with some additional information it could decide the matter, so a letter was sent to the taxpayer asking for details surrounding the filing of his 2005 Idaho income tax return. The taxpayer responded that he was incarcerated from October 2002 through December 19, 2006. During that time he was at a community work center. He stated he was not able to file his income tax returns until he was released. On March 24, 2007, the taxpayer took his return information to his tax preparer. A few days later, his tax preparer finished what the taxpayer thought were his 2005 and 2006 returns.

The taxpayer stated he was arrested again in March 2008 and sent to prison. While he was in prison, the taxpayer received information that something was waiting for him at his tax preparer. It was not until September 2009 that the taxpayer was able to get someone trustworthy to pick up the item. When the item was picked up, the taxpayer found out that it was his 2005 income tax return. It was not until December 11, 2009, that the Tax Commission received the taxpayer's 2005 Idaho income tax return.

## LAW AND ANALYSIS

Idaho Code section 63-3072(c) states that a claim for credit or refund of amounts withheld must be made within three (3) years of the due date of the income tax return required to be filed, without regard to extensions, for the taxable year with respect to which the tax was withheld or paid. The taxpayer's 2005 return had a due date of April 17, 2006. The Tax Commission did not receive the taxpayer's 2005 income tax return until December 11, 2009, well after the three-year statutory period for filing a claim.

The taxpayer initially stated his W-2s were sent to the wrong address, and because he was in prison, he was unable to track them down. He stated that in September 2009, he was informed by his tax preparer that there was a check waiting for him at the tax preparer's office. However, when he finally was able to get someone trustworthy to retrieve the check, it turned out to be his 2005 income tax return. The taxpayer stated he filled it out and sent it in.

When the Tax Commission asked for additional information, the taxpayer's story changed. He stated he was not able to file his 2005 and 2006 returns because he was in prison. He stated he took his return information to his preparer on March 24, 2007, and within a few days he went back to pick up what he thought was his [refund] for 2005 and 2006. A year later, the taxpayer was in prison again when he was notified that he still had his 2005 return sitting at his tax preparer's office. He stated it was not until September 2009 when he found someone trustworthy to pick up his W2s from his preparer.

The taxpayer's 2006 return was received electronically by the Tax Commission on February 3, 2007. Other information available to the Tax Commission shows the taxpayer was employed during the last two quarters of 2005 and for the full year of 2006. Although, it is doubtful the taxpayer's employers were community work center related as the taxpayer stated

was his prison term. Nevertheless, the taxpayer's arrest record shows the taxpayer was in and out of jail from October 2002 to June 2008 with an extended prison term beginning in June 2009.

### **CONCLUSION**

Regardless of the conflicting information, statements, and documentation, the Idaho statute is clear when it states a claim for refund or credit must be filed within three years from the due date of the return. Whether or not the taxpayer had extraordinary circumstances that caused a delay in the filing of his 2005 Idaho income tax return, the Idaho Code makes no provision for extenuating circumstances. Therefore, the Tax Commission must uphold the denial of the taxpayer's request for refund.

THEREFORE, the Notice of Deficiency Determination dated January 30, 2010, and directed to [Redacted] is hereby AFFIRMED.

Since the Notice of Deficiency Determination denied the requested refund, no ORDER and DEMAND for payment is needed or necessary.

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

IDAHO STATE TAX COMMISSION

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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.

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