

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 23549
[Redacted],)	
)	
Petitioner.)	DECISION
_____)	

On November 15, 2010, the Revenue Operations Division of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) that denied a request for a refund of Idaho individual income tax in the amount of \$5,986 for the period ending December 31, 2006; \$5,986 for the period ending December 31, 2007; and proposed additional tax, penalty, and interest in the total amount of \$5,656.21 for the period ending December 31, 2008. The taxpayer filed a timely protest and petition for redetermination of the refund denials and the additional tax due. The taxpayer has also submitted for processing two amended returns for taxable year 2008 subsequent to the issuance of the NODD. The Commission has reviewed the file, along with the amended returns, and hereby issues its decision modifying the NODD.

On April 17, 2007, the Commission received a check from the taxpayer in the amount of \$8,580 with the words “2006 estm tax” written on the memo line. On October 1, 2010, the Commission received for processing Idaho individual income tax returns from the taxpayer for taxable years 2006, 2007, and 2008. The taxpayer included the estimated payment of \$8,580 on her 2006 return and used it as a credit against the tax due reported on her return. The result was a refund in the amount of \$5,986, which the taxpayer elected to carryforward as an estimated payment for taxable year 2007. The taxpayer’s 2007 return did not show any tax due, therefore,

the \$5,986 estimated payment was not reduced, and the taxpayer once again elected to carry the refund amount forward as an estimated payment to taxable year 2008.

However, because the time for claiming the refund shown in the return for taxable year 2006 had expired, a letter was mailed to the taxpayer advising her of the Commission's intent to deny the 2006 refund, the 2007 refund, and the 2008 refund. The taxpayer objected, and a Notice of Deficiency Determination was issued wherein the taxpayer was advised the 2006, 2007, and 2008 refunds were denied and she had a right to appeal the determination.

Idaho Code § 63-3072, in part, defines the time allowed to claim refunds:

63-3072 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.

(c) With 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 shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid.

Income Tax Administrative Rule 880 states in relevant part:

880. CREDITS AND REFUNDS (RULE 880)
Section 63-3072, Idaho Code.

01. Overpayment. The term overpayment includes:

a. A voluntary and unrequested payment greater than an actual tax liability.

b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code.

03. Timely Claim Required for Refund

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period.

Idaho Code § 63-3072 and Income Tax Administrative Rule 880 are clear and unequivocal. The language in these sections “shall be made. . .” is not discretionary, but rather, is mandatory. The Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayer’s refund or credit claim for taxable year 2006. No credit or refund can be given. And since the 2006 refund is denied, the taxpayer has no estimated payments available in taxable years 2007 and 2008.

The tax, penalty, and interest for taxable year 2008 shown in the NODD dated November 15, 2010, are based on the taxpayer’s original return received October 1, 2010. The taxpayer has subsequently submitted amended returns to reflect two separate Net Operating Losses that reduced her tax due. The Commission has taken the amended returns into consideration and modifies the NODD as it pertains to the amount of tax due. The interest and penalty added by the Revenue Operations Division pursuant to Idaho Code §§ 63-3045 and 63-3046 was reviewed and found to be proper and in accordance with Idaho Code.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated November 15, 2010, is MODIFIED and AS MODIFIED, is APPROVED, AFFIRMED, and MADE FINAL.

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

<u>YEAR</u>	<u>REFUND CLAIMED</u>	<u>REFUND ALLOWED</u>	<u>TAX DUE</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL DUE</u>
2006	\$5,986	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
2007	5,996	10	0	0	0	0
2008			85	1,069	472	<u>1,626</u>
					TOTAL DUE	<u>\$1,626</u>

Interest is calculated through August 15, 2011.

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

An explanation of the taxpayer's 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.
