

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 23863
[Redacted],	)	
	)	
Petitioner.	)	DECISION
_____	)	

On February 26, 2009, the Revenue Operations Division of the Idaho State Tax Commission (Commission) denied a request by [Redacted] (taxpayer) for a refund of Idaho individual income tax in the amount of \$739 for the period ending December 31, 2004; \$493 for the period ending December 31, 2005; and \$937 for the period ending December 31, 2006. The taxpayer filed a timely protest and petition for redetermination of the refund denials. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On November 5, 2010, the Commission received for processing Idaho individual income tax returns from the taxpayer for taxable years 2004, 2005, and 2006. Because the time for claiming the refunds shown in the returns had expired, a letter was mailed to the taxpayer advising her of the Commission’s intent to deny the refunds. The taxpayer objected, and a Notice of Deficiency Determination was issued wherein the taxpayer was advised the refund was denied and she had a right to appeal the determination.

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.

The period of limitation with respect to claiming a refund or credit of taxes shown in the Idaho income tax return expired for taxable year 2004 on April 15, 2008; for taxable year 2005 on April 15, 2009; and for taxable year 2006 on April 15, 2010. The Commission did not receive the taxpayer's returns for taxable years 2004 through 2006 until November 5, 2010.

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. The Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayer's refund or credit claim for taxable years 2004 through 2006. No credit or refund can be given.

THEREFORE, the Notice of Deficiency Determination dated March 11, 2011, and directed to [Redacted] that denies the taxpayer a refund is AFFIRMED.

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.

\_\_\_\_\_