

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)
[Redacted],) DOCKET NO. 24763
)
)
Petitioner.) DECISION
)
_____)

On January 3, 2012, 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 \$141 for the period ending December 31, 2006, and \$115 for the period ending December 31, 2007.

The taxpayer filed a timely protest and petition for redetermination of the refund denial. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On October 5, 2011, the Commission received for processing, amended Idaho individual income tax returns from the taxpayer for taxable years 2006 and 2007. Because the time for claiming the refund reflected in the returns had expired, a letter was sent to the taxpayer informing him of the adjustment to deny the refunds. The taxpayer objected to the intended action, and a certified notice was sent to allow him the opportunity for administrative review. The file was transferred to the Legal/Tax Policy Division for the Commission’s review.

The taxpayer’s letter of protest stated the taxpayer was unable to submit the returns before October 5, 2011, because he did not have his daughter’s social security number. The appeal letter further stated that the taxpayer was allowed the dependency exemption for his daughter per his Decree of Custody, but had to seek enforcement of the Decree through the courts, and that process prevented him from submitting the amended returns in a timely manner.

On March 8, 2012, the taxpayer was sent a letter by the tax policy specialist outlining the alternatives available for redetermining a protested deficiency determination. A request for an informal hearing along with a fully executed power of attorney was received by fax on April 5, 2012. An informal hearing was held telephonically with the taxpayer's appointed representative on April 26, 2012.

Idaho Code provides for a limit on the time taxpayers have to claim a credit or refund as follows:

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.

(b) Except in 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 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.

Idaho law provides for a credit or refund of any overpayment; however, the claim for the credit or refund must be made within a certain timeframe. The period of limitation with respect to claiming a refund or credit of taxes shown in the Idaho income tax return for taxable year 2006 expired on June 15, 2010, three years from the day the return was received. The period of limitation with respect for claiming a refund or credit of taxes shown in the Idaho income tax

return for 2007 expired on April 15, 2011, three years from the due date of the return. The Commission did not receive the taxpayer's amended returns for taxable years 2006 and 2007 until October 5, 2011.

Idaho Code §§ 63-3072 and 63-3035 are clear and unequivocal. The language in these sections "shall be made. . ." is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(b), cited above, is controlling with respect to the taxpayer's refund or credit claim for taxable years 2006 and 2007. No credit or refund can be given.

THEREFORE, the Notice of Deficiency Determination directed to [Redacted] dated January 3, 2012, that denies the taxpayer a refund is AFFIRMED and MADE FINAL.

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

DATED this _____ day of _____ 2012.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2012, 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] _____