

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 25487
[Redacted],	)	
	)	
Petitioner.	)	DECISION
	)	
_____	)	

[Redacted] and [Redacted] (Petitioners) protested the Notice of Deficiency Determination dated January 9, 2013, issued by the Revenue Operations Division of the Idaho State Tax Commission denying a request for refund in the total amount of \$2,055. Petitioners believe their refund should be allowed since their original 2007 return was mailed well within the statute of limitations, and they had no control of their return after placing it in the care of the U.S. Postal Service. The Tax Commission, having reviewed the file, hereby issues its decision.

**BACKGROUND**

On February 15, 2012, the Tax Commission received Petitioners 2007 individual income tax return requesting a refund of their excess withholdings. During processing, Petitioners' return was identified as a return with an error; Petitioners did not include a copy of their W-2 Wage and Tax Statements. The Taxpayer Accounting Section (Taxpayer Accounting) requested copies of Petitioners' W-2s. Petitioners' initially responded with a copy of Mr. [Redacted] W-2 from [Redacted] [Redacted] and a copy of a January 5, 2008, pay stub for Mr. [Redacted], from [Redacted].

Taxpayer Accounting reviewed the information, corrected Petitioners' return, and sent Petitioners a letter stating that their return was corrected to account for the withholdings shown on the W-2 from [Redacted]. Taxpayer Accounting also stated the information Petitioners provided for Mr. [Redacted] wages was not for taxable year 2007. Petitioners were told if they

provided a pay stub from [Redacted] for the last pay period of 2007, Taxpayer Accounting would correct Petitioners' 2007 return further.

Petitioners did provide the correct pay stub from [Redacted], which changed their 2007 return from a corrected tax due return, to their original return requesting a refund. However, because Petitioners' claim for refund was past the statute of limitations for issuing or crediting a refund, Taxpayer Accounting sent Petitioners a Notice of Deficiency Determination denying their claim for refund.

Petitioners protested Taxpayer Accounting's denial of their refund. Petitioners stated they could understand Taxpayer Accounting's denial if this was the first filing of their 2007 Idaho income tax return, rather than the third filing. Petitioners stated the first filing was mailed to the Tax Commission from the [Redacted] Post Office on September 6, 2009. The second filing was mailed from the same post office on April 14, 2011.

Petitioners stated they were having the same problem with their 2007 [Redacted] income tax return. Petitioners stated it was when they did not receive either of their [Redacted] or state refunds that they sent the second and third copies. Petitioners stated they originally tried to file their returns electronically, but due to the size of their return, the TurboTax software would not allow the electronic filing and Petitioners had to file paper returns. This was Petitioners' first filing of their 2007 income tax returns.

Petitioners stated with all the issues they were having with the [Redacted] ([Redacted]) regarding their 2007 income tax filing, they forgot about the fact that they had not received their refund from the Tax Commission. Petitioners stated they are still fighting with the [Redacted] for the refund on their original 2007 [Redacted] income tax return, even after resubmitting the return with evidence of mailing and original signature dates.

Taxpayer Accounting reviewed Petitioners' protest and referred the matter for administrative review. The Tax Commission sent Petitioners a letter asking them to provide the same proof of mailing they provided the [Redacted] or to provide a list of dates they would be available for a hearing, if a hearing was desired. Petitioners did not respond. Therefore, the Tax Commission decided the matter based upon the information available.

### **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. Petitioners' 2007 return had a due date of April 15, 2008. The Tax Commission received Petitioners' 2007 income tax return on February 15, 2012; after the three year statutory period for filing a refund claim.

Petitioners argued the 2007 Idaho income tax return the Tax Commission received was their third mailing of the return to the Tax Commission. Petitioners stated the first and second mailings were well within the statute of limitations. Petitioners stated they had the same problem with filing their 2007 [Redacted] income tax return. Petitioners stated they provided the [Redacted] with evidence of mailing to document their filing. The Tax Commission asked Petitioners to provide it with the same evidence of mailing. Petitioners did not provide the information.

Petitioners stated the first filing of their 2007 Idaho income tax return occurred on September 6, 2009. Petitioners followed up that filing with a second on April 14, 2011, when they discovered they were having issues getting their [Redacted] return filed. Both these dates are within the statute of limitations; however, Petitioners have not provided anything to support

their statements. Assuming Petitioners' statements are true, one would also assume after the first mailing failed to arrive, Petitioners would have sent the second mailing registered or certified mail, giving them evidence or proof of mailing.

The Tax Commission has no record of receiving Petitioners' 2007 Idaho individual income tax return prior to February 15, 2012. Petitioners have provided nothing to show they mailed their 2007 Idaho individual income tax return prior to February 15, 2012. Because the Tax Commission has no evidence to support a mailing date before the statute of limitations expired for refunding excess withholdings on a 2007 Idaho income tax return, the Tax Commission must follow the statute and deny Petitioners' claim for refund. State Tax Commission v. Stang, 135 Idaho 800, 25 P.3d 113, (2001).

### **CONCLUSION**

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. Petitioners had the responsibility to see that their income tax return was filed and to take the necessary steps to be able to prove, if necessary, their return was filed or at least mailed. Petitioners provided no information other than their uncorroborated statements. Therefore, absent any evidence or proof that Petitioners mailed their 2007 Idaho individual income tax return prior to the expiration of the statute of limitations, the Tax Commission upholds the denial of Petitioners' claim for refund.

THEREFORE, the Notice of Deficiency Determination dated January 9, 2013, and directed to [Redacted] and [Redacted] is hereby AFFIRMED.

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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2014, 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.  
  
\_\_\_\_\_