



have any income and he was asked to vacate his current home. Petitioner stated he was counting on his refunds to enable him to get into a new home.

Taxpayer Accounting reviewed Petitioner's protest, sent Petitioner a Notice of Deficiency Determination, and referred the matter for administrative review.

The Tax Commission sent Petitioner a letter that discussed the methods available for redetermining a protested Notice of Deficiency Determination. Petitioner replied, requesting a telephone hearing, but he failed to provide his available dates or a telephone number. Before the Tax Commission attempted further contact, Petitioner called the Tax Commission and a hearing was scheduled.

During the telephone hearing, Petitioner restated his position that he thought his deceased wife had filed all their income tax returns. Petitioner stated when he discovered his wife had prepared the returns but not filed them, he took the returns to a tax preparer to verify their correctness and then filed the returns. Petitioner stated it was two or three months after he discovered the returns that they were filed with the Tax Commission. Petitioner stated that since he did not get all his refunds, he became homeless and had to live in his car. Petitioner stated because the refunds were denied, he now has outstanding debt that he is struggling to pay.

#### 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. Petitioner's 2006 return had a due date of April 15, 2007. Petitioner's 2007 return had a due date of April 15, 2008. Petitioner's 2008 return had a due date of April 15, 2009. And, Petitioner's 2009 return had a due date of April 15, 2010. The Tax Commission

received Petitioner's 2006, 2007, 2008, and 2009 income tax returns on July 26, 2013; after the three-year statutory period for filing a claim for taxable year 2009.

Petitioner stated the denial of his refund created a hardship for him and his new wife. The Tax Commission is empathetic to Petitioner's situation; nevertheless, the statute makes no exception in regards to the requirement that a claim for refund of excess withholdings be made within three years of the due date of the return.

### 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. Whether or not Petitioner knew of the statute requirements, or that his returns were not filed is not a valid defense. See Powers v. Canyon County, 108 Idaho 967, 970, 703 P. 2d 1342, 1345 (1985).

Additionally, the Idaho Code has no provision for the circumstances Petitioner found himself in. The Tax Commission cannot change the law to suit the circumstances; it must enforce the law as it is written. State Tax Commission v. Stang, 135 Idaho 800, 25 P.3d 113, (2001). Since Petitioner filed his 2006, 2007, 2008, and 2009 income tax returns well after the statute of limitations ended for each of those years, the Tax Commission is obligated to deny Petitioner's requests for refund.

THEREFORE, the Notice of Deficiency Determination dated September 11, 2013, and directed to [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 Petitioner's right to appeal this decision is enclosed.

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

IDAHO STATE TAX COMMISSION

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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.