

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 0-138-278-912
	)	
Petitioner.	)	DECISION
<hr style="width: 45%; margin-left: 0;"/>	)	

On April 25, 2022, the Revenue Operations Division (Rev Ops) of the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination (Notice) to

(Petitioner) denying his request for a refund or credit of Idaho individual income tax for tax years 2015 through 2017. Because Rev Ops was denying the issuance of the requested refunds or credits, the Notice proposed no additional tax, penalty, or interest and showed a total due of \$0.

On May 6, 2022, Rev Ops issued a revised Notice to reflect the recent legislative changes from HB 715. The revised Notice shows a credit balance of \$1,612 for tax year 2015; tax, penalty and interest totaling \$335.68 for tax year 2016; tax, penalty, and interest of \$1,882.86 for tax year 2017; and a total amount due of \$606.54.

Petitioner filed a timely protest of the refund denial, arguing the recent legislative changes, allow him to “apply overpayments to subsequent tax years as long as he does it within ten years.” Rev Ops acknowledged Petitioner’s protest and referred the matter to the Appeals unit for administrative review.

Petitioner, through his appointed representative, participated in an informal hearing on May 24, 2022. The Tax Commission has reviewed the information contained in the file, along with the verbal testimony from the hearing, and hereby issues its decision upholding the Notice.

## **Facts**

Petitioner did not timely file his Idaho individual income tax returns for tax years 2015 through 2017; the Tax Commission received these returns on December 21, 2021. For tax year 2015, Petitioner's return showed an overpayment of \$1,612 and a refund of \$0. Petitioner requested the \$1,612 overpayment be applied as a credit to his 2016 estimated tax on line 55 of the tax return. Applying the credit from the 2015 return, Petitioner's 2016 return showed an overpayment of \$1,339, and a similar request for the \$1,339 overpayment be applied to his 2017 estimated tax on line 55 of the tax return. Petitioner's 2017 return showed a tax due of \$235, which Petitioner paid in full.

When Petitioner submitted the returns for tax years 2015 through 2017, they were past the three-year statute of limitations to make a claim for a *credit* or *refund* of overpaid taxes pursuant to Idaho Code section 63-3072(b)–(c) (Supp. 2021). Therefore, Rev Ops initially denied the claim for credit or refund. After the passage of HB 715 by the Idaho legislature in 2022, Rev Ops revised the Notice as mentioned above and allowed the credit, albeit not as an estimated payment of tax; therefore, a tax was now due for the 2016 tax year and a larger amount of tax was due for the 2017 tax year. Petitioner objected to the revised notice, citing the recently passed 2022 legislation that extends the statute of limitations to claim a “credit” of overpaid taxes to ten years.

Petitioner is correct. Due to the passage of HB 715, Petitioner is now allowed to claim a “credit” of the overpaid taxes. The disagreement lies in the interpretation of this new legislation and the application of the “credit.”

## **Issue**

The Tax Commission agrees that HB 715 has extended the statute of limitations to make a “claim for credit,” thus allowing Petitioner a “credit” for the overpaid taxes in 2015. The

disagreement lies in the application of the “credit.” The Tax Commission has not yet enacted administrative rules to govern the application of the credit when it is beyond the 3-year statute of limitations for a refund, and the legislation itself is silent on what the credit means or how it must be applied.

This decision will address the following:

1. Is Petitioner allowed to claim his overpayments from 2015 and 2016 as estimated payments towards a subsequent tax year to offset tax, prior to the application of interest and penalties; or
2. Does the overpayment credit simply become a credit to Petitioner’s account that can be used to offset the full assessed amount of any tax, penalty, and/or interest arising from a subsequent tax year?

### **Law and Analysis**

Prior to January 1, 2022, Idaho Code section 63-3072(b) and (c) provided that a claim for credit or refund shall be made within the later of three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed, for the taxable year with respect to which the tax was withheld or paid.

With the passage of HB 715 retroactive to January 1, 2022, Idaho Code section 63-3072(b) and (c), as amended, provides that a claim for credit shall be made within the later of ten (10) years from the due date of the return, without regard to extensions, or ten (10) years from the date the return was filed, for the taxable year in respect to which the tax was withheld or paid. The three-year statute of limitations still applies to a claim for refund.

A ten (10) year statute of limitations for a credit of tax does not apply in any other jurisdiction and is a matter of first impression in Idaho with no other state to turn to for guidance.

Nonetheless, the Tax Commission can look to the Internal Revenue Code and Treasury Regulations for guidance on the proper application of this credit. Provisions of the Internal Revenue Code are applicable for Idaho income tax purposes, and interpretations of the Internal Revenue Code are adopted by reference to the extent they do not conflict with and are not inconsistent with Idaho law. *See* Idaho Code § 63-3004; IDAPA 35.01.01.015.

Pursuant to Internal Revenue Code section 6401, when the amount of refundable credit exceeds the tax imposed, the excess is considered an overpayment. The IRS may credit any overpayment against a taxpayer's unpaid tax liability and other liabilities. I.R.C. § 6402. Before crediting other liabilities, the IRS may first credit the overpayment against any outstanding liability for any tax—or for any interest, additional amount, additions to the tax, or assessable penalty—that is owed by the taxpayer who made the overpayment and is not barred by the statute of limitations. Treas. Reg. § 301.6402-1; Treas. Reg § 301.6402-3(a)(6). Courts have generally held that the IRS has discretion as to how to apply the overpayment consistent with its policies. *See Purdue v. U.S.*, 228 Ct. Cl. 789 (1981) (holding no tax refund was due to taxpayer from earlier tax years as all amounts were properly applied to offset income and employment taxes the taxpayer owed to the Government); *Gates v. U.S.*, 409 F.2d 1320 (9<sup>th</sup> Cir. 1969), *aff'g* 21 A.F.T.R.2d 990 (C.D. Cal. 1968) (overpayment applied first to taxes, interest, and penalties legally due; government has the right to apply overpayments consistent with its policies); *Northern States Power Co. v. U.S.*, 73 F.3d 764 (8<sup>th</sup> Cir. 1996), *cert. denied*, 519 U.S. 862 (1996) (IRS has discretion on whether to credit an overpayment to a liability or not; courts must defer to the agency's regulatory interpretations so long as they are reasonable).

The legislative grace concept under tax law holds that any tax relief provided to taxpayers must be the result of specific acts of Congress to be applied and interpreted strictly. *New Colonial*

*Ice Co. v. Helvering*, 292 US. 435, 440, 54 S.Ct. 788, 790 (1934). Courts have consistently held that tax deductions and credits depend on legislative grace and, accordingly, are only allowed when clearly provided by statute. *Id.*; *Potlatch Corp. v. Idaho State Tax Com'n*, 128 Idaho 387, 389, 913 P.2d 1157, 1159 (1996).

“Statutory interpretation begins with the statute’s plain language.” *State v. Dunlap*, 155 Idaho 345, 361, 313 P.3d 1, 17 (2013). The statute is considered as a whole, and words are given “their plain, usual, and ordinary meanings.” *Id.* If the statute’s language is unambiguous, the courts will give effect to the legislature’s clearly expressed intent. *Id.* at 361–62, 313 P.3d at 17–18. Additional statutory construction is required where the statute’s meaning is ambiguous or in conflict with other laws. *Arambarri v. Armstrong*, 152 Idaho 734, 739, 274 P.3d 1249, 1254 (2012). If there is any ambiguity in the law concerning tax deductions, the law is to be construed strongly against the taxpayer. *AIA Services v. Idaho State Tax Commission*, 136 Idaho 184, 187, 30 P.3d 962, 965 (2001); *see also Bennett v. State Dep’t of Assessments and Taxation*, 143 Md.App. 356, 795 A.2d 124, 132 (Md.2001) (“It is a firmly established principle of law that exemptions from taxation are not favored, but are strictly construed in favor of the State.”); *Hermann v. Director of Revenue*, 47 S.W.3d 362, 365 (Mo.2001) (en banc), *reh’g denied*, (June 26, 2001) (“Tax credits and exemptions are construed strictly and narrowly against the taxpayer”).

Here, the language of the statute is clear that “a claim for credit shall be made within ten (10) years from the due date of the return . . . for the taxable year with respect to which the tax was withheld or paid” or otherwise within ten (10) years from the date the return was filed. Idaho Code § 63-3072(b)–(c). The plain language provides only that a credit shall be made and—with regard to amounts withheld and amounts paid as estimated payments—that it shall be for the taxable year in which the tax was withheld or paid. The plain language does not specify how the credit shall be

applied. *Id.* Absent further guidance from the legislature, it is up to the Tax Commission to determine how to apply the credit. Consistent with the caselaw, the Tax Commission will construe the credit strictly against the taxpayer.

In the present matter, Petitioner reported his 2015 overpayment (claim for credit) as an estimated payment towards his 2016 tax and his 2016 overpayment (claim for credit) as an estimated payment on his 2017 return. Individuals are not required to make estimated payments under the Idaho Income Tax Code; however, the Tax Commission treats estimated payments as prepayments of an individual's income tax as shown by the application on Form 40 and as provided by Idaho Code section 63-3036A(d) for estimated payments received by a corporation. Estimated payments are payments made directly to the Tax Commission and received prior to the due date of the return. Idaho Code § 63-3036A(a); Internal Revenue Code § 6654(c). Since the "claim for credit" created by HB 715 allows a taxpayer ten (10) years from the filing or due date of the return to claim it, the credit is not the same as a payment received prior to the due date of a subsequent year return, and therefore cannot be an estimated payment to offset other tax prior to the application of interest and penalties. Additionally, if the "claim for credit" is carried into a subsequent year as an estimated payment, it has the potential to reduce or eliminate penalties and interest which are applicable and in fact mandatory pursuant to Idaho Code sections 63-3045 and 63-3046, as the returns were not timely filed. In the absence of further statutory guidance, the Tax Commission has discretion to apply the credit as an account credit to remain in the tax year to which it was created and to be applied towards any otherwise outstanding tax liability, including applicable penalties and interest. Interest ceased accruing on the tax to which the overpayment credit was applied on the date the claim for credit was made—in this case, December 21, 2021. Interest

continues to accrue on the outstanding tax until paid. *See* Idaho Code § 63-3045(7). The adjustments to Petitioner's 2015 through 2017 returns, reflected in the revised Notice, are correct.

### **Conclusion**

In conclusion, the Tax Commission agrees that Idaho Code section 63-3072(b)–(c), as amended by HB 715, allows Petitioner to claim a credit from his 2015 tax return. The amended statute is silent as to how the credit shall be applied. While Petitioner requests that his overpayment credit be applied as an estimated payment to reduce tax in a subsequent tax year prior to the application of applicable interest and penalties, the Tax Commission declines to construe the statute in the manner requested by Petitioner. It is a firmly established principle of law that when there is any ambiguity in that law concerning tax deductions or credits, the law is to be construed strongly in favor of the State and against the taxpayer. *AIA Services v. Idaho State Tax Commission*, 136 Idaho 184, 187, 30 P.3d 962, 965 (2001). Consistent with such principles of law, the Tax Commission will apply Petitioner's \$1,612 credit from his 2015 return as a credit to the account rather than as an estimated payment. The credit will offset \$1,612 of the full assessed 2016 and 2017 liabilities, which includes the full amount of tax, interest, and penalties, for each of those years, calculated before applying the credit. Interest ceased accruing on the tax to which the overpayment credit was applied in compliance with Idaho Code section 63-3045(7). The unpaid tax will continue to accrue interest until paid. *Id.*

THEREFORE, the Notice of Deficiency Determination dated May 6, 2022, is hereby APPROVED, AND MADE FINAL.

IT IS ORDERED that Petitioner pay the following income tax, penalty, and interest, after receiving an “overpayment credit.” (Interest is calculated to November 3, 2022.)

<u>YEAR</u>	<u>OVERPAYMENT</u> <u>CREDIT</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2015	-\$1,612	0	\$0	\$ 0	-\$1,612
2016		273	14	54	341
2017		1,575	79	258	1,912
				TOTAL DUE	<u>\$ 641</u>

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

An explanation of Petitioner’s right to appeal this decision is enclosed.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

IDAHO STATE TAX COMMISSION



**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022,  
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:

Receipt No.

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