

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

In the Matter of the Protest of	)	
	)	DOCKET NO. 14953
	)	
[REDACTED]	)	DECISION
	)	
Petitioner(s).	)	
_____	)	

On July 28, 2000, the Revenue Operations Division (Division) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for refund of individual income taxes of \$497 for 1989, \$1,130 for 1991, and \$745 for 1993.

A timely protest and petition for redetermination of the refund denial was filed by the taxpayer. An informal conference was held on November 17, 2000. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

After being contacted by the Tax Discovery Bureau of the Idaho State Tax Commission, the taxpayer submitted her 1989, 1991, and 1993 Idaho income tax returns. Because the time for claiming a refund of overpaid taxes had expired before the returns were filed, correction notices were sent to the taxpayer to advise her of the Tax Commission's intent to deny the refunds shown in the returns.

In response to the correction notices, the taxpayer wrote a letter wherein she protested the changes and asked for a re-consideration. The Division issued a Notice of Deficiency Determination and transferred the taxpayer's file to the Legal/Tax Policy Division for administrative review. The taxpayer requested and was granted an informal conference at which time the taxpayer presented her reasons for the untimely filing of her returns.

The petitioner stated she moved to Idaho Falls, Idaho and began teaching school with the Bonneville Joint School District in 1982. She said around that same time she spoke with an Internal Revenue agent who told her that she did not have to file a tax return if the result would be a refund to her. Therefore, because she was sure she was getting a refund each year she just, "let the government use my money." She said she filed extensions each year before April 15<sup>th</sup> but did not get around to filing the returns. She said she had no idea the extensions moved the due date of the return only six months. She stated that she thought the extension waived any time limit. She became aware of the need to file when the Internal Revenue Service (IRS) and the Tax Commission contacted her.

Idaho Code § 63-3032 provides a time limit for filing individual income tax returns:

**63-3032. Time for filing income tax returns.**— ... (a) Returns made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed in the office of the Idaho state tax commission on or before the 15th day of the fourth month following the close of the fiscal year.

(b) In the case of a return for any period of less than one (1) year, the return shall be filed on or before the date required in this section, or on or before such date as required for such tax period by the internal revenue code, whichever is later.

Idaho law establishing the time for filing Idaho income tax returns does not differentiate between a return reflecting a tax due and a return showing a refund to the taxpayer. A six-month extension of the time to file a return is allowed in the law. However, only the time to file is extended for six months not the time to pay or the time to receive a refund.

A limit of the time to claim a refund or credit of over paid taxes is provided in Idaho Code § 63-3072(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(e) explains the time limitation regarding employee withholding:

(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 taxable income as computed under the provisions of this act, as the same has been or may hereafter be amended, or where his income is not taxable under this act, the state tax commission shall, after examining the annual return filed by the employee in accordance with this act, 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 act, 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. (Emphasis added.)

The period of limitation with respect to claiming a refund or credit of taxes shown in the Idaho income tax return for 1989 expired on April 15, 1993. The period of limitation with respect to claiming a refund or credit of taxes shown in the Idaho income tax return for 1991 expired on April 15, 1995. The period for claiming a refund or credit of taxes shown in the Idaho income tax return for 1993 expired on April 15, 1997. The taxpayer did not file any of her returns until April 5, 2000.

During the conference, the taxpayer explained that she was diagnosed with hepatitis C in 1999. She submitted a letter from her doctor wherein it was stated that she has had hepatitis C since the winter of 1999. The letter stated that the taxpayer could have had symptoms of the disease long before it was diagnosed. These symptoms include extreme fatigue, confusion, lack of motivation and joint/muscle aches and pains.

While the Tax Commission is very sympathetic to the taxpayer's illness, it is unlikely the disease played an important part in the taxpayer's filing of her Idaho income tax returns for the years at issue. The taxpayer has continued to teach school and further her knowledge with continuing education courses during all of the years at issue and after her illness was diagnosed.

The Tax Commission does not dismiss the difficulties the taxpayer experienced when she began preparing the many delinquent returns while suffering with the symptoms of hepatitis C. No doubt the taxpayer's illness played a part in the stress the taxpayer experienced when she began preparing several years of delinquent income tax returns. Perhaps the taxpayer's illness contributed to some delay in the filing. However, the taxpayer's own statements indicated she chose not to file her return each year because she thought it was unnecessary as long as she did not owe additional tax. The time allowed for claiming refund or credit of taxes for the three years at issue had expired long before the taxpayer began the task of preparing the returns.

Where a statute is clear and unambiguous, the expressed intent of the legislature must be given effect. State Department of Law Enforcement v. One 1995 Willys Jeep, 100 Idaho 150 (1979).

The Tax Commission finds Idaho Code §§ 63-3072(c) and 63-3035(e), cited above, are

controlling with respect to the taxpayer's refund claim for tax years 1989, 1991, and 1993.

WHEREFORE, Notice of Deficiency Determination denying the refund dated July 28, 2000, directed to [Redacted], is APPROVED, AFFIRMED AND MADE FINAL.

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this \_\_\_\_ day of \_\_\_\_\_, 2001, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

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