

16-1596

TAX TYPE: INCOME TAX /REFUND REQUEST

TAX YEAR: 2004

DATE SIGNED: 3/6/2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 16-1596</p> <p>Account No. #####</p> <p>Tax Type: Income Tax / Refund Request</p> <p>Tax Year: 2004</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer
For Respondent: RESPONDENT-1, from Taxpayer Services Division
RESPONDENT-2, from Taxpayer Services Division

STATEMENT OF THE CASE

TAXPAYER (“Petitioner” or “taxpayer”) is appealing Taxpayer Services Division’s (“Respondent” or “Division”) denial of a request for a refund or credit of 2004 income taxes. This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 8, 2017.

On September 5, 2016, TAXPAYER filed a 2004 Utah individual income tax return, on which he reported a tax due amount of \$\$\$\$\$. This Division explained that because of several payments made or applied to the taxpayer’s 2004 account (including a \$\$\$\$\$ payment in 2009), the taxpayer’s filing of his 2004

return is considered a refund request of \$\$\$\$\$.¹ On September 28, 2016, the Division issued a Notice of Expired Refund or Credit (“Notice”), in which it informed the taxpayer that the time to claim a refund or credit for the 2004 tax year had expired. The Notice informed the taxpayer that “Utah law limits the time allowed to claim a refund or credit to the later of three years from the due date of the return, plus the extension period, or two years from the payment date.”

The taxpayer has appealed the Division’s action and contends that he should be granted a refund of any taxes that are overpaid for the 2004 tax year. Because of the complexity of this case, a chronology of the events concerning the taxpayer’s 2004 Utah income tax account is set forth below.

Chronology

1. On March 11, 2009, the Auditing Division of the Utah State Tax Commission (“Auditing Division”) issued a Notice of Deficiency and Estimated Income Tax (“Non-Filing Notice”) to TAXPAYER, in which it imposed additional tax, a 10% failure to timely file penalty, a 10% failure to timely pay penalty, and interest (calculated as of April 10, 2009) for the 2004 tax year,² as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In the notice, the taxpayer was informed that the “payment due date” was April 10, 2009. He was also informed of his appeal rights, as follows in pertinent part:

....
Appeal Procedures: . . . To protect and pursue your appeal rights, you must file a Petition for Redetermination (form enclosed) by **April 10, 2009**. . . .

....
Auditing Division Conference: . . . The conference may be used to answer your questions about the audit, to clarify, narrow and resolve matters or to reach an agreement on any outstanding issues. You may request a Division Conference at . . . (801) 297-4655.

1 At the hearing, the Division could not explain how it determined that the refund request amount was \$\$\$\$\$.

2 Interest continues to accrue until any tax liability is paid.

A request for a Division Conference does not protect your appeal rights. To preserve your right to appeal, a written Petition for Redetermination must be filed by April 10, 2009. . . .

(emphasis in original).

2. TAXPAYER did not file a Petition for Redetermination to appeal the assessment that Auditing Division imposed for the 2004 tax year. He stated that he instead called the Tax Commission several times about the assessment, but he did not keep a record of these telephone calls.³

3. Tax Commission records show that on March 17, 2009, the Tax Commission left a message for TAXPAYER about his needing to file Utah returns for the 2001 through 2008 tax years.

4. Tax Commission records show that on March 19, 2009, TAXPAYER met in person with Tax Commission employees and spoke about his missing returns for the 2003 through 2006 tax years.⁴ TAXPAYER proffered that at this meeting, he and the Tax Commission employees spoke about Auditing Division's March 11, 2009 non-filing assessment and how it grossly exaggerated his 2004 Utah tax liability. TAXPAYER stated that he and the Tax Commission employees specifically spoke about his 2004 sales of real estate and stocks and how Auditing Division's assessment imposed tax on 100% of the prices at which he sold these items without deducting the items' bases.

5. Tax Commission records show that on March 19, 2009, TAXPAYER filed a 2004 Utah return with the Tax Commission. TAXPAYER stated that he delivered this "first" 2004 Utah return at the March 19, 2009 meeting with Tax Commission employees. Neither party provided a copy of this first 2004 Utah return.

6. Tax Commission records show that on April 6, 2009, the Tax Commission received a check in

³ Initially, TAXPAYER indicated that he did not recall receiving Auditing Division's non-filing assessment for the 2004 tax year. However, the Non-Filing Notice, as well as all other Tax Commission mailings that will be discussed, were sent to TAXPAYER correct address (which is still his address).

⁴ Auditing Division's Non-Filing Notice clearly notified TAXPAYER that a meeting with the Division would not constitute an appeal of the non-filing assessment.

the amount of \$\$\$\$ from a COUNTY-1 sheriff's sale of property owned by TAXPAYER.⁵ The Division stated that the proceeds from the sheriff's sale were applied to TAXPAYER's delinquent income tax accounts for the 2001, 2002, 2004, and 2006 tax years, as follows:⁶

2001.....	\$\$\$\$
2002.....	\$\$\$\$
2004.....	\$\$\$\$ ⁷
2006.....	\$\$\$\$

7. On December 2, 2009, Auditing Division issued a "Utah Return Not Accepted" letter to TAXPAYER, in which it informed TAXPAYER that:

The Utah State Tax Commission has received your **2004** Utah Individual Income tax return submitted March 19, 2009. The 2004 Utah Income tax return cannot be accepted for the following reason(s): Utah tax returns are based on information reported on the Federal return. A federal transcript of your account shows a federal return has not been posted at this time . . . (emphasis in original).

8. The Division proffered that on February 12, 2010, the Tax Commission placed a lien upon the taxpayer because of a 2004 tax delinquency.⁸

9. Subsequent to TAXPAYER's telephone calls and meeting with Tax Commission employees

5 It is unknown when the sheriff's sale occurred, but Tax Commission records indicate the Utah Attorney General's office forwarded a check from the sale to the Tax Commission on April 6, 2010. TAXPAYER does not recall the sheriff selling a property that he owned and stated that he had been told by prior tax advisors that the Tax Commission had taken an IRA he had owned to satisfy his accounts. The Division indicated that it is unaware of any collection efforts involving an IRA owned by TAXPAYER.

6 The Division proffered that the Tax Commission would not have sent the taxpayer a letter or other notification informing him how the sheriff's sale proceeds were applied to the various tax years.

7 When asked, the Division did not know why a portion of the sheriff's sale proceeds was applied to the taxpayer's 2004 account on April 6, 2009, which is prior to the April 10, 2009 date on which Auditing Division's non-filing assessment was due. The Division also did not know why a portion of the sheriff's sale proceeds was applied to the taxpayer's 2006 account on April 6, 2009, where the \$\$\$\$ amount applied to the taxpayer's 2004 account did not satisfy the entire \$\$\$\$ amount that Auditing Division had assessed for the 2004 tax year. (The Division proffered that payments are applied to taxes, penalties, and interest due for earlier years before being applied to taxes, penalties, and interest due for later years.)

8 No explanation was provided as to why a lien was placed on the taxpayer in February 2010 because of a 2004 deficiency, nor was information provided about the lien amount. Perhaps a lien was placed on the taxpayer because the \$\$\$\$ amount applied to the taxpayer's 2004 account on April 6, 2009 did not fully

in March 2009, as previously discussed, it does not appear that TAXPAYER contacted the Tax Commission again about his 2004 account until 2016, when he submitted his “second” 2004 Utah return on September 5, 2016. TAXPAYER stated that he filed the second 2004 Utah return after receiving a Tax Commission “notice” about taxes he owed for the 2004 tax year.

10. At the hearing, the Division indicated that it has been contacting TAXPAYER about his 2004 delinquency on a yearly basis and proffered three Statements of Account for Delinquent Taxes (“Statements”) that it sent to TAXPAYER on May 15, 2014, July 15, 2015, and July 15, 2016. Each statement indicates that it “is a summary of your Individual Income Tax (IIT) account for the filing period(s) with a balance due” and that it does not include filing periods that are in an active payment agreement, in the appeals process, or in bankruptcy. The three statements show delinquent taxes due for the 2004 and 2006 tax year, as follows:

May 15, 2014 Statement

2004.....	\$\$\$\$\$
2006.....	<u>\$\$\$\$\$</u>
Total.....	\$\$\$\$\$

July 15, 2015 Statement

2004.....	\$\$\$\$\$ ⁹
2006.....	<u>\$\$\$\$\$</u>
Total.....	\$\$\$\$\$

July 15, 2016 Statement

2004.....	\$\$\$\$\$ ¹⁰
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satisfy the \$\$\$\$\$ assessment that Auditing Division imposed on March 11, 2009.

9 Sometime after May 15, 2014 but before July 15, 2015, the taxpayer’s delinquency for the 2004 tax year decreased by \$\$\$\$\$ (from \$\$\$\$\$ to \$\$\$\$\$). In a February 9, 2017 Order, the Division was asked to provide post-hearing information to explain when this \$\$\$\$\$ payment occurred and why it should or should not be refunded. On February 22, 2017, the Division responded to the Commission’s order, but did not provide any information about the \$\$\$\$\$ payment. Accordingly, the Commission finds that a 2004 payment of \$\$\$\$\$ was made or applied to the 2004 account sometime between May 15, 2014 and July 15, 2015.

10 Sometime after July 15, 2015 but before July 15, 2016, the taxpayer’s delinquency for the 2004 tax year decreased by \$\$\$\$\$ (from \$\$\$\$\$ to \$\$\$\$\$). In the February 9, 2017 Order, the Division was also asked

2006.....\$\$\$\$\$
Total.....\$\$\$\$\$

11. On September 5, 2016, TAXPAYER filed his second 2004 Utah income tax return showing an amount due of \$\$\$\$\$.¹¹ The Division explained that because this return was accepted, it “replaced” Auditing Division’s March 11, 2009 non-filing assessment and that the \$\$\$\$\$ payment applied to TAXPAYER’s 2004 account on April 6, 2009 *now* became a credit, which resulted in an overpayment of \$\$\$\$\$ of 2004 taxes. The Division considers the filing of the 2004 Utah return on September 5, 2016 to be a request for a refund of the taxes that were only now considered to be overpaid.

12. On September 28, 2016, the Division issued its Notice of Expired Refund or Credit, in which it denied the taxpayer’s request for a refund of the overpaid 2004 taxes.

13. The Division indicates that the taxpayer’s Internal Revenue Service (“IRS”) transcript for the 2004 tax year shows that the IRS first received a 2004 federal return from TAXPAYER on October 17, 2016.¹²

Parties’ Arguments and Positions

The Division explained that Utah Code Ann. §59-1-1410(8)(a) provides the statute of limitations period within which a taxpayer may request a refund or credit of an overpayment. Subsection 59-1-1410(8)(a)

to provide post-hearing information to explain when this \$\$\$\$\$ payment occurred and why it should or should not be refunded. On February 22, 2017, the Division provided information to show that two TOP credits (from federal refunds) that totaled \$\$\$\$\$ were applied to the taxpayer’s 2004 account after July 15, 2015 but before July 15, 2016. The Division also stated that because the \$\$\$\$\$ amount was eligible for refund, it applied the \$\$\$\$\$ to the taxpayer’s delinquent 2006 account.

11 No evidence was proffered to suggest that TAXPAYER included a payment of \$\$\$\$\$ when the second 2004 Utah return was filed on September 5, 2016.

12 TAXPAYER filed his second 2004 Utah return on September 5, 2016. It appears that the Tax Commission accepted his second 2004 Utah return on or prior to September 28, 2016, the date the Division issued its Notice of Expired Refund or Credit. Otherwise, there would have been no credit or overpayment for the Division to deny.

No explanation was given as to why the Tax Commission accepted the second 2004 Utah return that TAXPAYER filed on September 5, 2016, and used it to replace Auditing Division’s 2004 non-filing assessment before TAXPAYER filed his 2004 federal return on October 17, 2016. In comparison, the Tax Commission rejected the first 2004 Utah return that TAXPAYER filed on March 19, 2009 because he had not yet filed a 2004 federal return.

provides that a taxpayer can request a refund or credit within the later of two periods, specifically: 1) three years from the due date of the return, including any extension period; and 2) two years from the date the tax was paid.

The first statute of limitations is found in Subsection 59-1-1410(8)(a)(i) and provides that an individual may request a refund or credit within three years from the due date of the return, including any extension period. At the hearing, this was the only statute of limitations period to which the Division initially referred. The Division stated that the period for claiming a refund or credit of taxes for the 2004 tax year under this subsection expired on October 15, 2008, which is three years and six months after the April 15, 2005 due date for a 2004 return. Because the September 5, 2016 date on which the taxpayer filed his second 2004 Utah return occurred more than seven years after this October 15, 2008 deadline, the Division contends that TAXPAYER's September 5, 2016 refund request is untimely.

The second statute of limitations is found in Subsection 59-1-1410(8)(a)(ii) and provides that an individual may request a refund or credit within two years from the date the tax was paid. Initially, the Division did not mention the statute of limitations provided by this subsection until the presiding officer asked how it applied to payments made to the taxpayer's 2004 account. In response, the Division proffered that this statute of limitations was also not applicable because the taxpayer's September 5, 2016 refund request occurred more than two years after the sheriff's sale proceeds were applied to the taxpayer's 2004 account on April 6, 2009. As a result, at the hearing, the Division indicated that the taxpayer's refund request was too late to warrant a refund or credit of any overpaid 2004 taxes.¹³

13 After the hearing, the presiding officer asked the Division to address the payments that appeared to have occurred between May 15, 2014 and July 15, 2016. As already discussed, the Division provided post-hearing information, in which it indicated that \$\$\$\$ of payments were applied to the taxpayer's 2004 account between July 15, 2015 and July 16, 2016, and that the taxpayer's September 5, 2016 refund or credit request was timely in regards to these payments. As a result, the Division stated that it had already allowed the

TAXPAYER asks the Commission to grant a refund of the taxes that he overpaid for 2004 for a number of reasons. First, he asks the Commission to consider that Auditing Division's non-filing assessment of more than \$\$\$\$\$ in taxes, penalties, and interest for the 2004 tax year was grossly incorrect because he only owed \$\$\$\$\$ for this tax year, as shown on his second 2004 Utah return that the Tax Commission accepted. TAXPAYER contends that Auditing Division should never had assessed him on 100% of the price at which he sold real estate and stocks because such an action ignores his bases in these items.

Second, TAXPAYER asks the Commission to consider that the date to request a refund or credit for the 2004 tax year under Subsection 59-1-1410(8)(a)(i) (i.e., the statute of limitations based on the return due date) had already expired before any payment was applied to his 2004 account. Specifically, TAXPAYER questions how he could be expected to ask for a refund if the statute of limitations period set forth in this subsection expired on October 15, 2008, which is prior to the April 6, 2009 date that the \$\$\$\$\$ payment occurred.

Third, TAXPAYER asks the Commission to consider that he was occupied with a divorce when Auditing Division issued its non-filing assessment for the 2004 tax year.

Fourth, TAXPAYER contends that the Tax Commission should not have applied a portion of the sheriff's sale proceeds to his 2004 account on April 6, 2009, which was four days prior to the April 10, 2009 date that Auditing Division's non-filing assessment was even due.

Fifth, because the Tax Commission sent him annual statements in 2014, 2015, and 2016 that showed delinquent amounts for the 2004 tax year, TAXPAYER contends that his 2004 tax liability was not "settled" at the time he submitted his second 2004 Utah return on September 5, 2016. Until his 2004 tax liability was settled by the filing of his second 2004 Utah return on September 5, 2016, TAXPAYER contends that the amount of his overpayment was not known. As a result, TAXPAYER contends that the Commission should

taxpayer a credit of \$\$\$\$\$ and that it had applied the credit to the taxpayer's 2006 delinquency.

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refund any overpayment that resulted once his 2004 tax liability was finally settled in 2016. For these various reasons, TAXPAYER asks the Commission to refund all taxes that have been overpaid for the 2004 tax year.

APPLICABLE LAW

UCA §59-10-514 provides for the filing of a Utah individual income tax return, as follows in pertinent part:

- (1)
 - (a) an individual income tax return filed for a tax imposed in accordance with Part 1, Determination and Reporting of Tax Liability and Information, shall be filed with the commission:
 - (i) except as provided in Subsection (1)(a)(ii), on or before the 15th day of the fourth month following the last day of the taxpayer's taxable year;

UCA §59-10-516(1) provides that the Commission shall allow an extension of time for filing an individual income tax return, as follows in pertinent part:

- (1) (a) The commission shall allow a taxpayer an extension of time for filing a return.
 - (b) (i) For a return filed by a taxpayer except for a partnership, the extension under Subsection (1)(a) may not exceed six months.
-

UCA §59-1-1410 addresses the timeframes within which the Commission can issue an audit deficiency and within which a taxpayer can request a refund or credit of overpaid taxes, as follows in pertinent part:

- (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114, 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within three years after the day on which a person files a return.
 - (b) Except as provided in Subsections (3) through (7), if the commission does not assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax, fee, or charge.
-
- (3) The commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee, or charge at any time if:
 - (a) a person:

....
(ii) fails to file a return; or

-
- (8) (a) Except as provided in Subsection (8)(b) or Section 19-12-203, 59-7-522, 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files a claim with the commission within the later of:
- (i) three years from the due date of the return, including the period of any extension of time provided in statute for filing the return; or
 - (ii) two years from the date the tax was paid.
- (b) The commission shall extend the time period for a person to file a claim under Subsection (8)(a) if:
- (i) the time period described in Subsection (8)(a) has not expired; and
 - (ii) the commission and the person sign a written agreement:
 - (A) authorizing the extension; and
 - (B) providing for the length of the extension.
-

For the instant matter, UCA §59-1-1417(1) provides guidance on which party has the burden of proof, with limited exceptions as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
- (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
 - (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), TAXPAYER has the burden of proof in this matter. Subsection 59-1-1410(8)(a) provides that a taxpayer may file a claim for a refund or credit of overpaid taxes within three years from the due date of the return (including any statutory extension) or within two years from the date the tax was paid. In regards to his 2004 income tax account, TAXPAYER has only submitted two documents that

could be considered a claim for a refund or credit of overpaid 2004 taxes, specifically: 1) the first 2004 Utah return that he filed on March 19, 2009; and 2) the second 2004 Utah return that he filed on September 5, 2016.

I. First 2004 Utah Return.

TAXPAYER has the burden of proof, but he has not provided a copy of his first 2004 Utah return to show that he claimed a refund or credit on this return. However, it seems unlikely that TAXPAYER would have claimed a refund or credit on his first 2004 Utah return because this return was filed on March 19, 2009, which is prior to any payment being made or applied to his 2004 account.¹⁴ Furthermore, because the first 2004 Utah return was filed before any payment was made or applied to the 2004 account, it also seems unlikely that this return contained sufficient grounds upon which a refund can be claimed or that the facts presented in his first 2004 Utah return apprised the Commission of the basis of the refund claim, as required by the Utah Supreme Court in *Matrix Funding Corp. v. Utah State Tax Comm'n*, 2002 UT 85, 52 P.3d 1282 (Utah 2002).

In *Matrix*, the Court considered whether Matrix had timely submitted a claim for a refund of sales and use taxes that it had paid in 1995. In November 1996, Matrix submitted a letter in which it timely claimed a refund of taxes that it had paid in 1991 through 1994 (“1996 letter”). In the 1996 letter, Matrix also stated, “[i]n addition, we will be filing additional claims for periods after 1994.” On the basis of the 1996 letter, the Division processed the refund claims for the payments made in 1991 through 1994.

In 1999, Matrix submitted a subsequent letter in which it requested a refund for taxes paid in 1995 through 1999 (“1999 letter”). The Division viewed the 1999 letter as the “initial” claim for refund of taxes paid in 1995 through 1999 and found this claim to be timely in regards to the taxes paid in 1996 through 1999,

¹⁴ The first payment made or applied to TAXPAYER 2004 account occurred on April 6, 2009, when a portion of the sheriff’s sale proceeds was applied to his 2004 account. This payment did not occur until 18 days after the taxpayer filed his first 2004 Utah return.

but not 1995. Matrix argued, however, that the Division incorrectly determined that its 1999 letter was its initial claim for refund of 1995 taxes. Matrix argued that its initial claim for refund of these taxes was its 1996 letter in which it alerted the Division to a forthcoming claim for subsequent periods, which would include 1995. As a result, Matrix argued that the statute of limitations should be tolled. The Division admitted that the 1996 letter signaled Matrix's intention to file subsequent claims for periods after 1994, but argued that the letter itself did not constitute a claim for 1995 or subsequent years.

The Court found that Matrix's 1996 letter did not constitute a claim for refund of taxes paid in 1995 because "the language in this letter does not contain sufficient grounds upon which a refund can be claimed and the facts presented in the letter did not apprise the Commission of the basis of the refund claim." Similarly, TAXPAYER has not shown that his first 2004 Utah return contained sufficient grounds upon which a refund can be claimed or that the facts presented in his first 2004 Utah return apprised the Commission of the basis of the refund claim. For this reason and because the first 2004 Utah return was filed before any payment had even been made or applied to the taxpayer's 2004 account, the Commission does not consider the first 2004 Utah return to be TAXPAYER's initial request for a refund or credit of 2004 taxes.

Furthermore, on December 2, 2009, the Commission alerted TAXPAYER that it had rejected his first 2004 Utah return, and TAXPAYER did not inquire about or take any additional action concerning his rejected return until 2016. The fact that the Division may still have been reviewing the first 2004 Utah return when the April 6, 2009 payment occurred does not transform a return that was submitted prior to any payment and is later *rejected* into the initial request for a refund or credit of overpaid taxes.¹⁵ As a result, the Commission considers TAXPAYER's *second* 2004 Utah return to be his "initial" claim for a refund or credit of 2004 taxes.

¹⁵ Had the Tax Commission *accepted* the first 2004 Utah return, this return would have replaced Auditing Division's non-filing assessment and may have been considered a timely request for a refund or credit of the payment that occurred on April 6, 2009. However, where the first 2004 Utah return was rejected, it never replaced Auditing Division's non-filing assessment. As a result, the first 2004 Utah return did not result

II. Second 2004 Utah Return.

Once the Tax Commission accepted TAXPAYER's second 2004 Utah return, this return replaced Auditing Division's non-filing assessment (in effect, abating the assessment that had been issued for the 2004 tax year). Once the non-filing assessment was abated, the Division was able to determine that the taxpayer had overpaid his 2004 taxes and to consider the second 2004 Utah return as a claim for refund or credit of overpaid taxes. As a result, the Commission will now address whether the September 5, 2016 filing of the second 2004 Utah return satisfies either of the statutes of limitations found in Subsection 59-1-1410(8)(a).

Subsection 59-1-1410(8)(a)(i). This subsection provides that an individual may request a refund or credit within three years from the due date of the return, including any extension period. Pursuant to Section 59-10-514 and Subsection 59-10-516(1), the due date of a 2004 income tax return, with extensions, is October 15, 2005. Three years from this date is October 15, 2008. As a result, a request for a refund or credit of 2004 taxes must be claimed by October 15, 2008 to satisfy the statute of limitations period found in Subsection 59-1-1410(8)(a)(i). TAXPAYER filed his second 2004 Utah return on September 5, 2016, which is more than seven years after this particular statute of limitations deadline. Accordingly, the taxpayer is not entitled to receive a refund of 2004 taxes under this subsection.

Subsection 59-1-1410(8)(a)(ii). This subsection provides that an individual may request a refund or credit within two years from the date that the tax was paid. TAXPAYER made his refund request by filing his second 2004 Utah return on September 5, 2016. As a result, any payment that occurred within two years prior to September 5, 2016 (i.e., on or after September 5, 2014) may be refunded under this subsection.

To determine whether the filing of the second 2004 Utah return satisfies this particular statute of limitations, the Commission must determine the date or dates on which payments were made or applied to the

in an overpayment of 2004 taxes and is not considered a refund claim.

taxpayer's 2004 Utah income tax account.¹⁶ Based on the information that has been provided, it appears that four payments have been made or applied to the taxpayer's 2004 income tax account, as follows:

- 1) on April 6, 2009, a payment of \$\$\$\$ from the sheriff's sale proceeds was applied to the taxpayer's 2004 account;
- 2) between May 15, 2014 and July 15, 2015, a payment of \$\$\$\$ appears to have been made or applied to the taxpayer's 2004 account; and
- 3) between July 15, 2015 and July 15, 2016, two payments totaling \$\$\$\$ were applied to the taxpayer's 2004 account.

The first payment of \$\$\$\$ occurred on April 6, 2009, which is more than two years prior to the September 5, 2016 date on which the taxpayer filed his refund request. Accordingly, TAXPAYER has not satisfied the Subsection 59-1-1410(8)(a)(ii) statute of limitations to receive a refund or credit of the \$\$\$\$ payment that was applied to his 2004 account on April 6, 2009.

The second payment of \$\$\$\$ occurred sometime after May 15, 2014 but before July 15, 2015. If this payment occurred between September 5, 2014 and July 15, 2015, it occurred within two years of the September 5, 2016 date on which the taxpayer filed his refund request and may be refunded under Subsection 59-1-1410(8)(a)(ii). However, if this payment occurred between May 15, 2014 and September 4, 2014, it did not occur within two years of the September 5, 2016 date on which the taxpayer filed his refund request and, thus, may not be refunded. As mentioned earlier, TAXPAYER has the burden of proof in this matter. Because TAXPAYER has not shown that this second payment occurred between September 5, 2014 and July

¹⁶ In *USTC Appeal No. 10-0050* (Initial Hearing Order Aug. 19, 2010), which is another refund case, the Division's position was that payment occurred when funds were deposited with the State of Utah. The Commission concluded that "[t]he only reasonable interpretation of when tax is 'paid' is when it is received by the state." The Commission will rely on this ruling when determining when payments were made or applied to TAXPAYER 2004 account. Redacted copies of this and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

15, 2015 (i.e, within two years of the September 5, 2016 date on which he submitted his second 2004 Utah return), he has not satisfied the Subsection 59-1-1410(8)(a)(ii) statute of limitations in regards to the \$\$\$\$ payment.¹⁷

The last two payments totaling \$\$\$\$ occurred between July 15, 2015 and July 15, 2016. These payments occurred within two years of the September 5, 2016 date on which the taxpayer filed his refund request. As a result, in regards to these two payments, the taxpayer's refund request satisfies the statute of limitations period found in Subsection 59-1-1410(8)(a)(ii). Accordingly, TAXPAYER is entitled to receive a refund or credit of these two payments that total \$723.77.

III. Taxpayer's Other Arguments.

Based on the foregoing, TAXPAYER has shown that he is entitled to a refund or credit in the amount of \$\$\$\$ under Subsection 59-1-1410(8)(a). TAXPAYER, however, asks the Commission to consider refunding all taxes that were overpaid for 2004 because he neglected his tax responsibilities, in part, because of a divorce he was going through in 2009 (when Auditing Division issued its non-filing assessment for 2004). Historically, the Commission has strictly honored the statute of limitations period to claim a refund and has not waived or extended the period except where the Tax Commission itself was somehow responsible for a taxpayer filing his or her claim late. In fact, the Commission has consistently ruled in refund cases that it "does not have discretion to extend limitations periods."¹⁸

17 As mentioned earlier, the Commission issued an order in which it asked the Division to provide information, including the date of payment, about this \$\$\$\$ payment. The Division, however, did not address this payment in its post-hearing response. Nevertheless, the Division does not have the burden of proof in this matter, and the Commission declines to shift the burden of proof in regards to the date of the \$\$\$\$ payment because of the Division's failure to fully respond to the Commission's order.

18 See *USTC Appeal No. 13-835* (Findings of Fact, Conclusions of Law, and Final Decision Oct. 27, 2014). See also *USTC Appeal No. 05-1414* (Order Feb. 13, 2006).

TAXPAYER suggests that the Tax Commission is at least partially at fault for his refund request being late in regards to most of the 2004 overpayment. First, TAXPAYER contends that the Tax Commission precluded him from submitting a timely refund request because the Subsection 59-1-1410(8)(a)(i) statute of limitations period (that is based on the due date of the return) expired on October 15, 2008, which is before the March 11, 2009 date on which Auditing Division issued its non-filing assessment. However, where a return has not been filed, Subsection 59-1-1410(3)(a)(ii) authorizes the Tax Commission to issue an audit assessment “at any time,” even after the expiration of the statute of limitations provided in Subsection 59-1-1410(8)(a)(i). Furthermore, under Subsection 59-1-1410(8)(a)(ii), the taxpayer was afforded a two-year statute of limitations period to request a refund of all payments made or applied to his 2004 account, including the \$\$\$\$ payment that occurred on April 6, 2009. That TAXPAYER failed to submit a refund request that was timely in regards to all payments made to or applied to his 2004 account is not the fault of the Tax Commission.

Second, TAXPAYER indicates that the Tax Commission was partially responsible for his late refund request because Auditing Division’s non-filing assessment for 2004 was grossly incorrect. However, the taxpayer had an opportunity to appeal the non-filing assessment, but failed to do so. In addition, the taxpayer neglected the December 2, 2009 notice in which Auditing Division informed him that his first 2004 Utah return had been rejected. The Commission is aware of no law or court precedent that extends the statute of limitations period to claim a refund where the taxpayer eventually shows that a non-filing assessment that was not appealed is incorrect.

Third, TAXPAYER contends that the Tax Commission committed error when it applied \$\$\$\$ of the sheriff’s sale proceeds to his 2004 account on April 6, 2009, four days prior to the April 10, 2009 date on which Auditing Division’s non-filing assessment was due. However, even if the Commission improperly applied a portion of the sheriff’s sale proceeds to TAXPAYER’s 2004 account before the non-filing assessment was due, it does not appear that this action contributed to the taxpayer’s late refund request. If the

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\$\$\$\$ payment that was applied to TAXPAYER's 2004 account on April 6, 2009 was considered to be paid on April 10, 2009 (i.e., when Auditing Division's non-filing assessment was due), TAXPAYER still filed the second 2004 Utah return more than seven years after this latter date. Accordingly, TAXPAYER's refund request would have been untimely in regards to most of the 2004 overpayment, regardless of whether the \$\$\$\$ was applied to his 2004 account on April 6, 2009 or on April 10, 2009.

Fourth, TAXPAYER contends that he should be granted a refund of all taxes overpaid for 2004 because the Tax Commission sent him periodic notices of delinquency for the 2004 tax year. Because of the Division's July 15, 2016 notice showing a delinquency for 2004, TAXPAYER contends that the Tax Commission's own notice showed that his 2004 tax liability was not "settled" when he submitted his second 2004 Utah return on September 5, 2016. TAXPAYER's argument is not persuasive. Because TAXPAYER did not file an appeal of Auditing Division's non-filing assessment, the assessment became final. Furthermore, in late 2009, TAXPAYER received notice that the Tax Commission had rejected his first 2004 Utah return, and he took no action to file a return that could replace Auditing Division's non-filing assessment until September 5, 2016. As a result, the amounts shown in the Division's periodic delinquency notices appeared to be correct *when the notices were mailed*, and the notices did not extend or waive the statutes of limitations to claim a refund or credit of overpaid taxes.

Lastly, the Commission is also not aware of any Utah court ever finding that the limitations period to claim a tax refund can be waived or extended. The taxpayer has not provided any court decision or other precedent to suggest otherwise. Finally, the Legislature has provided that the limitations period to claim a refund may be extended under a single circumstance, specifically where the Tax Commission and a taxpayer sign a written agreement to extend the limitations period before it has expired and by a specific amount of

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time.¹⁹ The Legislature has not provided that the statute of limitations to claim a refund can be waived or extended for the circumstances present in this case. For these reasons, the Commission should strictly honor the statute of limitations periods at issue in this case and find that the taxpayer is only entitled to a refund or credit of \$\$\$\$ for the 2004 tax year. Because the Division has already allowed a 2004 credit of \$\$\$\$ to be applied against TAXPAYER's 2006 delinquency, the Commission should deny the remainder of his refund request.

Kerry R. Chapman
Administrative Law Judge

19 *See* Subsection 59-1-1410(8)(b).

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DECISION AND ORDER

Based upon the foregoing, the Commission finds that the taxpayer is entitled to a credit of \$\$\$\$ for the 2004 tax year, which has already been applied to his 2006 delinquency. The remainder of the taxpayer's refund request is denied. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner