

18-1334

TAX TYPE: INCOME TAX/ REFUND REQUEST

TAX YEAR: 2013

DATE SIGNED: 02/07/2019

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

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. 18-1334</p> <p>Account No. #####</p> <p>Tax Type: Income Tax / Refund Request</p> <p>Tax Year: 2013</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Taxpayer

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, from Taxpayer Services Division
REPRESENTATIVE FOR RESPONDENT-2, from Taxpayer Services Division
REPRESENTATIVE FOR RESPONDENT-3, from Taxpayer Services Division

STATEMENT OF THE CASE

TAXPAYER (“Petitioner” or “taxpayer”) is appealing Taxpayer Services Division’s denial of his request for a refund or credit of 2013 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 December 11, 2018.

On September 15, 2017, the Auditing Division of the Utah State Tax Commission (“Auditing Division”) mailed a letter to the taxpayer, in which it informed the taxpayer that the Tax Commission had no record of his filing a 2013 Utah income tax return.¹ In this letter, Auditing Division also informed the taxpayer

¹ The taxpayer claimed that he never received this letter and explained that the post office sometimes does not deliver his mail. However, this letter was sent to the taxpayer’s correct address, which the taxpayer verified at the Initial Hearing.

that if he did not respond by October 16, 2017, it would “calculate your 2013 income tax liability based on available information.”

The taxpayer did not respond to Auditing Division’s September 15, 2017 letter by October 16, 2017. As a result, on February 6, 2018, Auditing Division issued a Notice of Deficiency and Estimated Income Tax (i.e., a non-filing audit assessment) to the taxpayer, in which it imposed additional tax, penalties, and interest for the 2013 tax year. The taxpayer did not file an appeal to contest Auditing Division’s non-filing audit assessment.²

On April 17, 2018, the Tax Commission issued a Notice of Taxes Due and Intent to Lien to the taxpayer in regards to the non-filing audit assessment that the taxpayer did not appeal. The taxpayer proffers that he received this notice and determined that the tax liability imposed in the assessment was too high. As a result, on April 30, 2018, the taxpayer filed an original 2013 Utah income tax return, on which he reported a lesser tax liability and requested a refund of \$\$\$\$\$. After reviewing the taxpayer’s 2013 Utah tax return, Auditing Division replaced its non-filing audit assessment with the return and forwarded the return to Taxpayer Services Division (“Respondent” or “Division”) to respond to the refund request claimed on it.

On July 10, 2018, 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 2013 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 Division states that the general period for claiming a refund or credit of taxes for the 2013 tax year expired on October 15, 2017, which is three years and six months after the original April 15, 2014 due date for a 2013 income tax return. Because the April 30, 2018 date that the taxpayer filed his 2013 Utah return

² The taxpayer also claims that he never received this Notice of Deficiency and Estimated Income Tax. However, this notice was also sent to the taxpayer’s correct address.

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occurred more than six months after the statute of limitations deadline of October 15, 2017, the Division contends that Utah law precludes the Tax Commission from issuing a refund or credit for the 2013 tax year.

The taxpayer concedes that he did not file a 2013 Utah return on or prior to October 15, 2017. However, he asks the Commission to find the general statute of limitations does not apply to his circumstances because he has been going through litigation with his ex-wife for many years in regards to stock options that the taxpayer was required to exercise in 2013 because of his and his ex-wife's divorce. Specifically, in 2012, a Utah district court awarded his wife 50% of certain stock options that the taxpayer had received from his employer. The taxpayer explained that because his ex-wife has appealed the Utah district court's decision to the Utah Court of Appeals (which has not yet issued a decision), it remains unsettled how much of the income generated by the exercise of the stock options will be attributable to the taxpayer and how much will be attributable to the taxpayer's ex-wife. The taxpayer explained that his accountant advised him not to file 2013 tax returns prior to this litigation being resolved.

The taxpayer proffers that he followed his accountant's advice until he received the April 17, 2018 Notice of Taxes Due and Intent to Lien from the Tax Commission, at which time he decided to file 2013 federal and Utah income tax returns. He explained that he filed these returns to reflect the income that would be attributable to him if the Utah Court of Appeals upholds the Utah district court decision. As a result, the taxpayer asks the Commission to waive or excuse the general statute of limitations deadline (as found in Utah Code Ann. §59-1-1410(8)) to request a refund or credit for the 2013 tax year.

Should the Commission find that the general statute of limitations deadline cannot be waived or excused, the taxpayer asks the Commission to find that he is entitled to receive a refund or credit of the taxes at issue under the alternative statute of limitations found in Utah Code Ann. §§59-10-529 and 59-10-536 because the Utah Court of Appeals has not yet issued a decision concerning the 2013 income that is attributable to him. For these reasons, the taxpayer asks the Commission to grant a refund of the 2013 taxes at issue.

The Division contends that the general statute of limitations found in Subsection 59-1-1410(8) cannot be waived or excused because of the taxpayer's circumstances. The Division stated that where questions exist concerning the amount of a taxpayer's taxable income, Utah law provides that a taxpayer can enter into a written agreement to extend the statute of limitations, pursuant to Subsection 59-1-1410(8)(b). The taxpayer concedes that he did not enter into a written agreement for the 2013 general statute of limitations to be extended, but asks the Commission to consider that his accountant never told him that he could ask for an extension. The Division, however, contends that the Subsection 59-1-1410(8) statute of limitations cannot now be extended or waived due to the advice the taxpayer received from his accountant or because of the litigation currently pending before the Utah Court of Appeals.³

In addition, the Division contends that the alternative statute of limitations provided in Sections 59-10-529 and 59-10-536 is not applicable to the taxpayer's circumstances. The Division contends that the *original* 2013 Utah return that the taxpayer filed is not an *amended* return that was required to be filed under Subsection 59-10-536(2) and that the taxpayer did not file his original 2013 Utah return to report a change or correction in income. As a result, the Division contends that the taxpayer's circumstances are not ones that would give rise to the alternative statute of limitations set forth in Subsections 59-10-529(12) and 59-10-536(2). The Division further explains that these subsections typically deal with changes or corrections in income that are made by the federal government and that the IRS's decision that the federal statute of limitations had expired before the taxpayer made his claim for a refund of 2013 federal taxes does not constitute a change or correction to income. For these reasons, the Division asks the Commission to find that

³ The Division further stated that its position concerning the general statute of limitations appears to be consistent with actions of the Internal Revenue Service ("IRS"), which also denied to grant a refund or credit of the 2013 federal taxes that the taxpayer claimed on the 2013 federal return that he also filed on or around April 30, 2018.

Utah law precludes the taxpayer from receiving his request for a refund or credit of 2013 Utah taxes and to sustain its decision to deny the request.

APPLICABLE LAW

UCA §59-10-514 provided for the filing of a 2013 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.
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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.
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- (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.

.....

Under certain circumstances, UCA §59-10-529 provided an alternative timeframe within which a taxpayer can request a refund or credit of Utah taxes, as follows in pertinent part:

.....

(12)(a) A taxpayer may file a claim for a credit or refund of an overpayment within two years after the day on which a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:

(i) report a change or correction in income reported on the taxpayer's federal income tax return;

(ii) report a change or correction that is treated in the same manner as if the change or correction were an overpayment for federal income tax purposes; or

(iii) file an amended return with the commission.

.....

(d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the amount or the time within which a claim for credit or refund may be filed.

.....

UCA §59-10-536 provides the timeframe within which a taxpayer must make certain tax filings, as follows in pertinent part:

.....

(2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because of an action by the federal government, the taxpayer shall file with the commission within 90 days after the date there is a final determination of the action:

(A) a copy of the taxpayer's amended federal income tax return; and

(B) an amended state income tax return that conforms with the changes made in

the taxpayer's amended federal income tax return.

(ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because the taxpayer files an amended federal income tax return, the taxpayer shall file with the commission within 90 days after the date the taxpayer files the amended federal income tax return:

(A) a copy of the taxpayer's amended federal income tax return; and

(B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.

(iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if a change in the taxpayer's federal income tax return does not increase state tax liability.

....

For the instant matter, UCA §59-1-1417 provides guidance concerning burden of proof and statutory construction, 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.

(2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:

(a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and

(b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

DISCUSSION

Burden of Proof. Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter.

General Statute of Limitations Deadlines. Subsection 59-1-1410(8)(a) provides that a taxpayer is entitled to receive a refund or credit of overpaid taxes within the later of three years from the due date of the return (including any statutory extension) or two years from the date the tax was paid. For the 2013 tax year at issue in this case, all taxes were paid on or before April 15, 2014. Two years from this date would be April 15, 2016. Pursuant to Section 59-10-514 and Subsection 59-10-516(1), the due date of a 2013 income tax return, with extensions, is October 15, 2014. Three years from this date is October 15, 2017. As a result, a request for a refund or credit of 2013 taxes must be claimed by the later of these dates (i.e., October 15, 2017) to satisfy the general statute of limitations period found in Subsection 59-1-1410(8)(a). Because the Tax Commission did not receive the refund request at issue until April 30, 2018, the request was not made within the general statute of limitations deadlines found in Subsection 59-1-1410(8)(a).

Alternative Utah Deadline to Claim a Refund or Credit. Subsection 59-10-529(12) provides that a taxpayer may file a claim for a refund or credit of Utah taxes within two years after the day on which a notice of change, notice of correction, or amended return is required to be filed with the Tax Commission if the taxpayer is required to report the change or correction or file an amended return with the Tax Commission. The original 2013 Utah return that the taxpayer filed is not an amended return. In addition, as of the hearing date, there has been no change or correction of the taxpayer's 2013 income for which a notice of change or a notice of correction was required to be filed with the Tax Commission.⁴

Furthermore, neither Subsection 59-10-529(12) nor 59-10-536(2) indicates that the alternative statute of limitations provided in these statutes applies to an original Utah return that is filed to replace a non-filing

⁴ Admittedly, the taxpayer filed his 2013 Utah return to show a decrease in the Utah tax liability that Auditing Division assessed in its non-filing audit. However, the taxpayer's filing of an original 2013 Utah return is not considered a notice of change or notice of correction that the taxpayer was required to file, especially where Subsection 59-10-536(2)(a)(iii) provides that "[a] taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if a change in the taxpayer's federal income tax return does not increase state tax liability."

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audit assessment issued by the Tax Commission or an original Utah return that is filed late because of state court litigation that concerns the amount of income that is attributable to a taxpayer for a particular year. As a result, it appears clear that the circumstances described in Subsections 59-10-529(12) and/or 59-10-536(2) are not present in this case.⁵ For these reasons, the alternative statute of limitations found in Subsections 59-10-529(12) and 59-10-536(2) does not apply to the taxpayer's April 30, 2018 refund request. Accordingly, the general statute of limitations, as set forth in Subsection 59-1-1410(8), is applicable to this case.

Although the taxpayer did not file his request for a refund or credit of 2013 taxes within the statute of limitations applicable to this case, he asks the Commission to consider that he was unaware of the statute of limitations to claim a refund or credit and that his accountant had advised him not to submit a 2013 Utah return until a final court decision concerning the amount of his 2013 income had been issued. Historically, however, 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."⁶ There is no evidence in the instant case to suggest that the Tax Commission was responsible for the taxpayer filing his 2013 refund claim after the statutory deadline.

5 Furthermore, even if Subsections 59-10-529(12) and 59-10-536(2) were unclear, any ambiguity in these refund statutes would be construed strictly against the taxpayer, pursuant to Subsection 59-1-1417(2). See also *Ivory Homes, Ltd. v. Utah State Tax Comm'n*, 2011 UT 54, 266 P.3d 751 (Utah 2011), in which the Utah Supreme Court, when addressing the statutory construction of a different refund statute, ruled that "any ambiguity in the Refund Statute must be narrowly construed against the taxpayer. Operation of the Refund Statute creates a tax credit and is a matter of legislative grace. When a statute that provides a tax concession is unclear, the ambiguity is construed against the taxpayer until the legislature indicates a contrary intention" (emphasis in original).

6 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). Redacted copies of these and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

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 time.⁷ The taxpayer did not sign a written agreement to extend the applicable statute of limitations. In addition, 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 period at issue in this case and sustain the Division's action to deny the taxpayer's refund request.

Kerry R. Chapman
Administrative Law Judge

⁷ See Subsection 59-1-1410(8)(b).

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action and denies the taxpayer's request for a refund or credit of taxes for the 2013 tax year. 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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner