

19-40

TAX TYPE: INCOME TAX

TAX YEAR: 2014

DATE SIGNED: 07/30/2019

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

EXCUSED: J. VALENTINE

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 19-40 Account No. ##### Tax Type: Income Tax / Refund Request Tax Year: 2014 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioners: REPRESENTATIVE FOR TAXPAYER, Representative
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 (“Respondent” or “Division”) denial of his request for a refund or credit of 2014 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 July 15, 2019.

Chronology of Events. Because the instant 2014 appeal also concerns matters that occurred in regards to the 2013 tax year, it may be helpful to provide a chronology of events for both years, as follows:

1. On or before April 15, 2014, the Commission received \$\$\$\$ of withholding that the taxpayer’s employer had withheld from the taxpayer’s 2013 wages for 2013 tax purposes.

2. On or before April 15, 2015, the Commission received \$\$\$\$ of withholding that the taxpayer's employer had withheld from the taxpayer's 2014 wages for 2014 tax purposes (the 2013 and 2014 withholding amounts are the same).

3. The taxpayer did not file 2013 and 2014 Utah income tax returns when each was originally due.

4. On October 15, 2017, the taxpayer submitted an original 2013 Utah income tax return to the Tax Commission. On line 43 of this return, the taxpayer reported that he was due a 2013 refund of \$\$\$\$ (which is the sum of \$\$\$\$ in 2013 withholding that he claimed on line 33 and a \$\$\$\$ credit for "Utah income taxes prepaid from TC-546 and 2012 refund applied to 2013" that he claimed on line 34). On line 44 of his 2013 Utah return, the taxpayer asked for the \$\$\$\$ refund to be applied to his 2014 taxes.

5. The Division concedes that the taxpayer's 2013 Utah return was submitted before the statute of limitations to claim a refund or credit of 2013 taxes had expired. However, the Division did not apply the entire refund amount of \$\$\$\$ that the taxpayer had claimed on his 2013 return to the taxpayer's 2014 account. Instead, the Division "rolled over" to the taxpayer's 2014 account only \$\$\$\$ of the taxpayer's 2013 refund request of \$. The Division explained that it only applied \$\$\$\$ of the 2013 refund request to the taxpayer's 2014 account because it changed the taxpayer's 2013 return to reflect a \$0 credit on line 34 for "Utah income taxes prepaid from TC-546 and 2012 refund applied to 2013" (instead of the \$\$\$\$ credit the taxpayer had claimed). The Division stated that it reduced the \$\$\$\$ credit reported on line 34 of the 2013 return to \$0 because Tax Commission records did not show that the taxpayer had prepaid any 2013 taxes or had asked for a 2012 refund to be applied to the 2013 tax year.

6. The Division stated that when it made this change to the taxpayer's 2013 return in October 2017, it should have issued a notice to the taxpayer informing him of the change. The Division, however,

admits that Tax Commission records do not show such a notice being issued to the taxpayer at the time of the change.

7. For reasons to be explained in more detail later in the decision, the amount of the 2013 refund that the taxpayer requested to be applied to his 2014 account is relevant to the 2014 refund request that has given rise to the instant appeal. At the hearing, the taxpayer stated that because he thought the parties would only be discussing his 2014 Utah return, he had not prepared any information about the \$\$\$\$ credit for “Utah income taxes prepaid from TC-546 and 2012 refund applied to 2013” that he claimed on line 34 of his 2013 Utah return and that the Division had disallowed. The taxpayer, however, has the burden of proof in this matter. Because the taxpayer has provided no information to show that he was entitled to claim a \$\$\$\$ credit for “Utah income taxes prepaid from TC-546 and 2012 refund applied to 2013” on his 2013 Utah return, the Commission finds, at least in this Initial Hearing Order, that the 2013 refund to which the taxpayer was entitled and which should have been applied to his 2014 account is only \$\$\$\$ (which is the amount of his 2013 withholding only).¹

8. The Division proffers that on July 11, 2018, it issued to the taxpayer a “Payment Without Matching Tax Refund” letter for the 2014 tax year. The Division further proffers that in this letter, it: 1) informed the taxpayer that Tax Commission records showed that the taxpayer had made a prepayment of Utah individual income taxes for the 2014 tax year, but had not filed a 2014 Utah return; and 2) requested that the taxpayer file a 2014 Utah return before October 15, 2018 when the statute of limitations to claim a refund or credit of 2014 taxes would expire.

1 Because the Division did not inform the taxpayer of the change it made to his 2013 return, the Commission would consider in a subsequent hearing for the instant appeal evidence concerning the \$\$\$\$ credit for “Utah income taxes prepaid from TC-546 and 2012 refund applied to 2013” that the taxpayer claimed on line 34 of his 2013 return.

9. The taxpayer did not submit a 2014 Utah return or any other request for a refund or credit of 2014 taxes on or before October 15, 2018. On November 21, 2018, however, the taxpayer filed an original 2014 Utah return, on which he claimed a 2014 refund of \$\$\$\$\$ on line 43 of the return. This refund amount was based on the taxpayer's claiming on line 33 of the 2014 return a credit of \$\$\$\$\$ for withholding that the taxpayer's employer had paid for the 2014 tax year and on line 34 a credit of \$\$\$\$\$ for "Utah income taxes prepaid from TC-546 and 2013 refund applied to 2014." The taxpayer explained that the \$\$\$\$\$ credit he claimed on line 34 of the return was the sum of: 1) a \$\$\$\$\$ pre-payment that he made to his 2014 account on or before April 15, 2015; and 2) the \$\$\$\$\$ refund from his 2013 return that he asked to be applied to his 2014 account on October 15, 2017.

10. Upon receiving the taxpayer's 2014 return, however, the Division made a change to this return, as well. Specifically, the Division changed the \$\$\$\$\$ of "Utah income taxes prepaid from TC-546 and 2013 refund applied to 2014" that the taxpayer had claimed on line 34 of the 2014 return to \$\$\$\$\$.² This had the effect of reducing the \$\$\$\$\$ refund that the taxpayer had claimed on line 43 of his 2014 return to \$\$\$\$\$.

11. The Division indicated that it made the line 34 change to the taxpayer's 2014 return because Tax Commission records only showed \$\$\$\$\$ of "Utah income taxes prepaid from TC-546 and 2013 refund applied to 2014" (instead of the \$\$\$\$\$ that the taxpayer had claimed). It appears that the \$\$\$\$\$ credit for "Utah income taxes prepaid from TC-546 and 2013 refund applied to 2014" allowed is the sum of: 1) the \$\$\$\$\$ pre-payment that the taxpayer made on or before April 15, 2015 (as described by the taxpayer earlier); 2) another pre-payment in the amount of \$\$\$\$\$ that the taxpayer made on April 11, 2015 (which the taxpayer did not describe); and 3) the \$\$\$\$\$ refund from the 2013 tax year that the Division applied to the taxpayer's 2014 account (as discussed earlier in regards to the 2013 return).

2 See Division's Response to Petition for Redetermination (footnote 1).

12. Even though the Division's change to line 34 of the taxpayer's 2014 return resulted in a line 43 refund or overpayment of \$\$\$\$\$, the Division determined that the taxpayer was not entitled to claim a refund or credit of any of this overpayment for the 2014 tax year. As a result, on December 7, 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 2014 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."

Parties' Arguments. The Division states that under Utah Code Ann. §59-1-1410(8)(a)(i) (2014), the period for claiming a refund or credit of taxes for the 2014 tax year expired on October 15, 2018, which is three years and six months after the original April 15, 2015 due date for a 2014 income tax return. Because the November 21, 2018 date on which the taxpayer filed his original 2014 Utah return occurred more than one month after the statute of limitations deadline of October 15, 2018, the Division contends that Utah law precludes the Tax Commission from issuing a refund or credit for the 2014 tax year under this subsection.

The Division also stated that another statute of limitations is provided in Subsection 59-1-1410(8)(a)(ii), which provides that a person may request a refund or credit within "two years from the date the tax was paid." The Division contends that all of the taxes remitted or applied to the taxpayer's 2014 account were paid at least three years prior to the taxpayer's 2014 refund request on November 21, 2018. First, the Division indicated that all \$\$\$\$\$ of 2014 withholding that the taxpayer's employer withheld from the taxpayer's 2014 wages was paid on or before April 15, 2015, which is more than three years before November 21, 2018. Second, the Division indicated that the \$\$\$\$\$ and \$\$\$\$\$ payments that the taxpayer made to his 2014 account on or before April 15, 2015 occurred more than three years before November 21, 2018.

Third, as to the 2013 tax year overpayment of \$\$\$\$\$ that the taxpayer timely claimed and requested to be applied to his 2014 taxes, the Division claims that this "roll over" amount was paid on or before April 15,

2014 (i.e., paid when the taxpayer's employer, for 2013 tax purposes, had remitted the \$\$\$\$ of withholding that it had withheld from the taxpayer's 2013 wages). Because the 2013 withholding amount of \$\$\$\$ was paid into the taxpayer's 2013 account more than four years before the taxpayer submitted his 2014 refund request on November 21, 2018, the Division contends that the 2013 overpayment it applied to the taxpayer's 2014 account also cannot be refunded to the taxpayer under Subsection 59-1-1410(8)(a)(ii).

The Division acknowledges that the October 15, 2017 date on which the taxpayer qualified to receive a refund of the 2013 overpayment of \$\$\$\$ and opted to apply it to his 2014 account occurred within two years of his 2014 refund request of November 21, 2018. The Division contends, however, that the October 15, 2017 date on which the taxpayer was entitled to receive the 2013 overpayment of \$\$\$\$ and opted to apply it to his 2014 account is not considered "the date the tax was paid" for 2014 tax purposes. Instead, the Division's position is that the date or dates that the 2013 withholding tax was paid for 2013 tax purposes are also "rolled over" to the taxpayer's 2014 account when the 2013 overpayment that arose from the 2013 withholding taxes is "rolled over" to the 2014 account.

The taxpayer admits that he did not file his 2014 Utah return on or prior to October 15, 2018. The taxpayer, however, asks the Commission to consider that several years ago, he started experiencing difficulty in having his prior accountant complete his tax returns, which led to his not filing his 2013 and subsequent years' tax returns when they were due. In addition, he explains that when he hired REPRESENTATIVE FOR TAXPAYER, his current accountant, to prepare his delinquent tax returns, they had difficulty in obtaining the taxpayer's tax information from the prior accountant. The taxpayer also contends that he should receive as a 2014 refund the entire amount of the 2013 overpayment that he had claimed on his 2013 return and had asked to be applied to his 2014 account. For these reasons, the taxpayer asks the Commission to grant the entire refund request of \$\$\$\$ that he claimed on this 2014 return.

The Division, however, contends that a statute of limitations for claiming a refund or credit cannot be waived or extended because of the actions of the taxpayer's prior accountant. In addition, for reasons previously discussed, the Division contends that the taxpayer's 2014 refund request is untimely because the taxpayer submitted his 2014 return more than three and one-half years after it was initially due and more than two years after any tax was paid for 2014 tax purposes. As a result, the Division asks the Commission to sustain its action denying the entirety of the taxpayer's 2014 refund claim.

APPLICABLE LAW³

UCA §59-10-514 provided for the filing of a 2014 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(8) provides the general timeframes within which a taxpayer can request a refund or credit of Utah taxes, as follows in pertinent part:

- (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:

3 The law cited specifically applies to a request for refund or credit of 2014 taxes. For reasons explained earlier, the taxpayer's 2013 refund request is intertwined with the taxpayer's 2014 refund request. As a result, the cited law also applies to a request for refund or credit of 2013 taxes, unless otherwise indicated.

- (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.

Utah Code Ann. §59-10-529 provides for refunds of overpayments of individual income taxes, as follows in pertinent part:

- (1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:
 - (a) against an income tax due from a taxpayer;
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- (2) If a balance remains after an overpayment is credited in accordance with Subsection (1), the balance shall be refunded to the taxpayer.
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UCA §59-1-1417(1) provides that the burden of proof is generally upon the petitioner in proceedings before the Commission, 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), the taxpayer has the burden of proof in this matter. Under Subsection 59-1-1410(8)(a)(i), a taxpayer is entitled to receive a refund or credit of overpaid taxes within three

years from the due date of the return (including any statutory extension). Pursuant to Section 59-10-514 and Subsection 59-10-516(1), the due date of a 2014 income tax return, with extensions, is October 15, 2015. Three years from this date is October 15, 2018. As a result, a request for a refund or credit of 2014 taxes must be claimed by October 15, 2018 to satisfy the statute of limitations period provided under Subsection 59-1-1410(8)(a)(i). The taxpayer did not file his 2014 Utah return until November 21, 2018. Accordingly, the taxpayer did not file his 2014 Utah return and claim a refund or credit of any 2014 tax within the statute of limitations deadline found in Subsection 59-1-1410(8)(a)(i).

Nevertheless, under Subsection 59-1-1410(8)(a)(ii), a taxpayer is also entitled to receive a refund or credit of overpaid taxes within two years from “the date the tax was paid.” It is clear that the taxpayer’s November 21, 2018 refund request was not made within two years of the dates that: 1) the taxpayer’s employer remitted the taxes it withheld from the taxpayer’s 2014 wages and remitted for 2014 tax purposes (which were remitted on or before April 15, 2015); 2) the \$\$\$\$ payment that the taxpayer made to his 2014 account (which occurred on or before April 15, 2015); and the \$\$\$\$ payment that the taxpayer made to his 2014 account (which occurred on April 11, 2015). Accordingly, these payments on the taxpayer’s 2014 account do not qualify for refund.

Still at issue, however, is whether the taxpayer’s November 21, 2018 refund request for 2014 was made within two years of the “date the tax was paid” regarding the 2013 overpayment of \$\$\$\$ that was applied to the taxpayer’s 2014 account.⁴ Specifically at issue is whether the application of the taxpayer’s 2013 overpayment to his 2014 account is considered to have been paid, for 2014 tax purposes, on the October 15, 2017 date on which he claimed the 2013 overpayment and requested for it to be applied to his 2014 account; or

⁴ For reasons explained earlier, insufficient evidence was proffered at the Initial Hearing to show that the 2013 overpayment to which the taxpayer was entitled to receive and have applied to his 2014 account was an amount other than \$\$\$\$.

on the date or dates that the 2013 withholding that gave rise to the 2013 overpayment was originally paid for 2013 tax purposes (which occurred in 2013 and 2014).

The Commission finds that the 2013 overpayment of \$\$\$\$\$ that was applied to the taxpayer's 2014 account is considered to have been paid, for 2014 tax purposes, on the October 15, 2017 date that the taxpayer timely claimed the 2013 overpayment and, instead of having the overpayment refunded to him, had it applied to his 2014 account. Where a taxpayer requests a refund of an overpayment and where none of the overpayment must be credited in accordance with Subsection 59-10-529(1), Subsection 59-10-529(2) provides for the overpayment to be refunded to a taxpayer. Neither party indicated that any portion of the taxpayer's 2013 overpayment of \$\$\$\$\$ was required to be credited in accordance with Subsection 59-10-529(1). Accordingly, Subsection 59-10-529(2) required the Commission to refund the 2013 overpayment of \$\$\$\$\$ to the taxpayer. For these reasons, on October 15, 2017, the taxpayer was entitled to receive the 2013 overpayment of \$\$\$\$\$ as a refund, and he could choose whether he wanted the Tax Commission to send him his money or whether he wanted his money paid to his 2014 account.

Where the taxpayer allowed the Tax Commission to apply the 2013 overpayment of \$\$\$\$\$ to his 2014 account instead of receiving a refund of it, the taxpayer is considered to have paid this \$\$\$\$\$ to his 2014 account on the October 15, 2017 date he claimed the 2013 overpayment and had it applied to his 2014 taxes (regardless of the date or dates of payment of the taxes that occurred for the 2013 tax year that gave rise to the 2013 overpayment). Because the taxpayer's 2014 refund request of November 21, 2018 is within two years of the October 15, 2017 date on which the taxpayer had his 2013 overpayment of \$\$\$\$\$ applied to his 2014 account (thus paying this \$\$\$\$\$ on his 2014 account), the taxpayer is entitled to a 2014 refund of the \$\$\$\$\$ under Subsection 59-1-1410(8)(a)(ii).⁵ Based on the foregoing, while the taxpayer has not met his burden of

⁵ Not only does such a conclusion appear to be supported by Utah law, but to find otherwise would penalize many taxpayers who have opted to have their overpayment applied to their next year's taxes instead of

proof to show that he is entitled to receive the entirety of the 2014 refund he requested on his 2014 return, he has shown that he is entitled to receive a refund or credit of 2014 taxes in the amount of \$\$\$\$\$.

The taxpayer asked for the Commission to grant the entirety of his 2014 refund request of \$\$\$\$\$, in part, because his prior accountant contributed to the late filing of his 2014. 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’s filing his 2014 refund claim when he did.

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 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. Accordingly, the Commission should grant a refund or credit of \$\$\$\$\$ of the taxpayer’s 2014 refund request and deny the remainder of his 2014 refund request.

the less efficient option of having the Tax Commission send them refunds of their overpayments and then having the taxpayers remit the refunds back to the Tax Commission to apply to their next year’s taxes.

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>.

⁷ See Subsection 59-1-1410(8)(b).

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission grants the taxpayer a refund or credit of 2014 taxes in the amount of \$\$\$\$\$. The Commission, however, denies the remainder of the refund request that the taxpayer claimed on his 2014 return. 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