

08-0527  
INCOME TAX  
TAX YEARS: 1983- 2000, 2001, 2002, 2003, 2004, 2005, 2006  
SIGNED: 11-04-2008  
COMMISSIONERS: P. HENDRICKSON, M. JOHNSON, D. DIXON  
EXCUSED: R. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 &amp; PETITIONER 2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 08-0527</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 1983-2006</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP., Attorney at Law  
PETITIONER 1  
For Respondent: RESPONDENT REP. 1, Assistant Attorney General  
RESPONDENT REP. 2, Director, Director Taxpayer Services Division  
RESPONDENT REP. 3, Assistant Director, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on July 9, 2008. The matter was before the Commission on Petitioners' (the Taxpayers'") request for refund of an additional portion of the \$\$\$\$ that had been seized by the Respondent (the "Division") in 2006 relating to tax years 1983 through 2002. A portion of the amount, \$\$\$\$ was refunded to the Taxpayers in November 2006 along with the application of \$\$\$\$ of the overpayment applied toward amounts owed for tax years 2000 and 2001. An additional portion of the amount was refunded in June 2007, in the amount of \$\$\$\$\$. The Taxpayers request a further refund of approximately \$\$\$\$.

APPLICABLE LAW

Appeal No. 08-0527

Utah imposes income tax on individuals who are residents of the state, in Utah Code § 59-10-104 as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

Utah Code § 59-1-302.1 provides one way for the creation of liens, stating:

(1) If any person liable to pay any tax provided in Title 59, except a tax imposed under Chapter 2, 3, or 4, neglects or refuses to pay that tax after demand, the amount, including any interest, additional amount, additional tax, or assessable penalty, together with any costs that may accrue, is a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to that person.

(2) Unless another date is specifically fixed by law, the lien imposed by this section for unpaid taxes arises at the time the assessment is made and continues until the liability for the assessed amount, or a judgment against the taxpayer arising from that liability, is satisfied or becomes unenforceable because of lapse of time.

Utah Code § 59-10-536 is titled "Limitations on Assessment and Collection." Section 59-10-536(1), provides the time limitations for filed returns, stating:

(1) Except as otherwise provided in this section, the amount of any tax imposed by this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after 10the date prescribed), and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

Utah Code § 59-10-536(3), provides the time limitations when no returns are filed, stating:

(3) The tax may be assessed at any time if:  
(a) no return is filed;  
(b) a false or fraudulent return is filed with intent to evade tax; or  
(c) a return for the taxpayer is prepared by the commission in accordance with Section 59-10-506.

Utah Code § 59-10-528(3)-(4) provides a second way for the creation of liens, stating:

(3) If any person liable under this chapter for the payment of any tax, addition to tax, penalty, or interest neglects or refuses to pay the same within ten days after notice and demand for payment has been given to such person under Subsection (2), the commission may issue a warrant in duplicate under

its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell such person's real and personal property for the payment of the amount assessed, plus the cost of executing the warrant, and to return such warrant to the commission and pay to it the money collected by virtue thereof within 60 days after the receipt of the warrant. If the commission finds that the collection of the tax or other amount is in jeopardy, notice and demand for immediate payment of such tax may be made by the commission and upon failure or refusal to pay such tax or other amount the commission may issue a warrant without regard to the ten-day period provided in this subsection.

(4) Any sheriff who receives a warrant under Subsection (3) shall within five days thereafter file the duplicate copy with the clerk of the district court of the appropriate county. The clerk of such court shall thereupon enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and, in appropriate columns, the tax or other amounts for which the warrant is issued and the date when such copy is filed. Such amount shall thereupon be a binding lien upon the real, personal, and other property of the taxpayer to the same extent as other judgments duly docketed in the office of such clerk.

Utah Code § 78B-2-311 (prior version at Utah Code § 78-12-22 (2006)) provides an eight-year statute of limitations on judgments, stating:

An action may be brought within eight years upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

Utah Code § 59-12-529(13), on overpayments, states:

(13) If an income tax is assessed or collected after the expiration of the applicable period of limitation, that amount is an overpayment.

Utah Code § 78B-2-115, limits actions by states, providing:

Except for the provisions of Section 78B-2-116, the limitations in this chapter apply to actions brought in the name of or for the benefit of the state or other governmental entity the same as to actions by private parties.

The prior version of § 78B-2-115 is Utah Code Ann. § 78-12-33 (2006), which provides:

The limitations in this article apply to actions brought in the name of or for the benefit of the state or other governmental entity, the same as to actions by private parties, except under Section 78-12-33.5.

Utah Code § 78B-2-305(4) (prior version at Utah Code § 78-12-26(4) (2006)) generally limits

actions for liabilities created by statute to three years, providing:

An action may be brought within three years: . . . (4) for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special cases a different limitation is prescribed by the statutes of this state . . .

Utah Code § 78B-2-307 (prior version at § 78-12-25 (20066)) for a four-year statute of limitations provides:

An action may be brought within four years: . . . (3) for relief not otherwise provided for by law.

#### DISCUSSION

The facts as presented by the parties were not in dispute. The Taxpayers had not timely filed Utah resident individual income tax returns as they became due for the years 1983 through 2002. In fact the returns were not filed until 2006. Respondent (the “Division”) eventually assessed tax deficiencies based on audit estimates for each of the years at issue. Then in 1992 tax liens were filed in the Third District Court for the years 1983 through 1989. Tax liens for 1990 through 1993 were assessed later during 1993 through 1994.

In March 2006 the Division seized approximately \$\$\$\$ in funds for payment of Utah individual income taxes. After these funds were seized, the Taxpayers began to file individual income tax returns for the years at issue. As the returns were filed, reviewed, and posted over the estimates, they indicated for some of the years an overpayment based on the amount of the funds seized in 2006. For those years where an overpayment was indicated, the Division refunded the overpayment to the Taxpayers. Two refund payments were issued; the first in November 2006 and the second in June 2007. The refunds totaled approximately \$\$\$\$.

In addition to the refunds that had been issued based on the Division’s determination after the returns were filed that there had been an overpayment of taxes for some of the periods, the Taxpayers request an additional refund of approximately \$\$\$\$ of the \$\$\$\$ that had been seized. It was the Taxpayers’ position

that they were entitled to this additional refund because the statute of limitations for collection of the tax would have expired prior to 2006 when the Tax Commission had seized the funds.

The Taxpayers argue that more than ten years had passed from when the liens were filed in the Third District Court, which occurred from 1992 to 1994, to when the Tax Commission seized the \$\$\$\$\$, which occurred in 2006. It was the Taxpayers' position that once a judgment is entered there is a statute of limitations on collection. The Taxpayers' representative indicated that the Internal Revenue Service had ten years to collect after an assessment had been made. He thought that at one point there had been a ten-year limitations period on collection for the State Tax Commission, but acknowledged that the provision no longer existed in the code. He argued that in the absence of any other statutes, general judgment limitations should apply. He points out that Utah Code § 78-12-33 provides an eight-year limitations period for judgments. There is a four year general limitation period at Utah Code § 78-12-33. Therefore, it was the Taxpayers' position that the Commission had no basis to retain the funds it had seized in 2006 for the years 1983 through 1993, because it was more than ten years from when the liens had been filed in the District Court.

It was the Division's position that there were two separate and independent processes through which it could establish a lien and collect on unpaid taxes; a statutory lien and a judgment lien. The Division argued that it could establish a statutory lien under Utah Code § 59-1-302.1. Once a statutory lien has been established under this section, it was the Division's position that the statutory lien would exist until the lien was satisfied. Furthermore, a lien under this section was established when a taxpayer neglects or refuses to pay the tax after a demand has been made. There was no dispute that the taxpayer neglected to pay and that demand had been made.

The Division indicated it had a separate enforcement power. In addition to the statutory lien, it could file in the District Court and obtain a judgment under Utah Code § 59-10-528. The Division acknowledges that a District Court judgment lien would be limited by an 8-year period for collection. However, it was the

Division's position that in this case there had been a statutory lien, which provided an alternative basis for collection.

Upon review of the parties arguments made in this matter and the applicable statutes, the Commission concludes that liens created under Utah Code § 59-1-302.1 are separate from the optional liens created under Utah Code § 59-10-528. These liens, created under the two different statutes, occur after different events and are limited by different time periods.

The liens under Utah Code § 59-1-302.1(1) occur when "any person liable to pay any tax provided in Title 59, except a tax imposed under Chapter 2, 3, or 4, neglects or refuses to pay that tax after demand." Whenever a person is liable, the tax is demanded, and the person neglects or refuses to pay the tax, then a lien is created equal to "the amount, including any interest, additional amount, additional tax, or assessable penalty, together with any costs that may accrue." *Id.* Under Utah Code § 59-1-302.1(2), the lien "arises at the time the assessment is made and continues until the liability for the assessed amount, or a judgment against the taxpayer arising from that liability, is satisfied or becomes unenforceable because of lapse of time."

For individual income tax, time limits are imposed by Utah code § 59-10-536, titled "Limitations on Assessment and Collection." Under § 59-10-536(1), if a return was filed, then most assessment activities may only occur within the three-year time period that started when the return was filed. Under § 59-10-526(3), if a return was not filed, then there are no time limitations. Section 59-10-536(3) states: "The tax may be assessed at any time if: (a) no return is filed; (b) a false or fraudulent return is filed with intent to evade tax; or (c) a return for the taxpayer is prepared by the commission in accordance with Section 59-10-506."

Unlike liens under Utah Code § 59-1-302.1, liens under Utah Code § 59-10-528 are optional; they occur if the Division chooses to issue a warrant to a sheriff according to § 59-10-528(3) ("the commission may issue a warrant . . .") and the sheriff and clerk of the district court complete the actions required by § 59-10-528(4). Also, a lien under § 59-10-528 is binding "to the same extent as other judgments . . ." § 59-10-528(4).

Under § 78B-2-311 (prior version at § 78-12-22 (1996)), judgments have an eight-year statute of limitations.

In *United States v. Utah State Tax Commission*, the U.S. District Court likewise found that the liens created under §§ 59-1-302.1 and 59-10-528 are different. 642 F.Supp. 8 at 10 (D. Utah 1983). The U.S. District Court interpreted the language of prior statutes §§ 59-10-22(2)-(3) (1983) (current version at § 59-1-302.1(1)-(2)) and 59-14A-79(c)-(d)(1983) (current version at § 59-10-528(3)-(4)) and found that the warrant procedures of § 59-14A-79 were not required for § 59-10-22. *Id.* The court stated, “The language of [§ 59-14A-79], on its face, . . . merely empowers the tax commission with warrant authority and provides that they ‘may’ use it if necessary. It is not a directive or a limitation on their powers.” *Id.* The court found that the timing associated with liens created under § 59-14A-79 did not apply to the liens created under § 59-10-22. *Id.* The court stated, “Given the permissive language of section 59-14A-79 granting warrant authority to the tax commission, this court concludes the warrant procedure of section 59-14A-79 is not ‘another date specifically fixed by law’ so as to designate another time for the lien [under section 59-10-22] to arise.” *Id.*

In the current appeal before the Commission, enforceable liens occurred under Utah Code § 59-1-302.1. Under that section liens occurred each time the Division demanded payment and the Taxpayers neglected or refused to pay the tax. Under §§ 59-1-302.1(2) and 59-10-536, those liens had no time limit until the Taxpayers filed their returns. In this case, the Taxpayers had yet to file when the taxes were collected. Section 59-10-536(3) clearly states that “[t]he tax may be assessed *at any time* if: (a) no return is filed” (emphasis added). Because the Taxpayers failed to file their returns, the three-year limitations of § 59-10-536(1) could not apply. Rather, the assessments could be made under § 59-10-536(3). Section 59-10-536 in effect provides that taxpayers, such as Petitioners, cannot receive the benefits of proper filing, when they fail to file. Because the Taxpayers failed to file proper, timely returns before the collection of the tax, they lost the benefit of the three-year limitation period provided by § 59-10-536(1) and instead they were subject to the “any time” non-limitation of § 59-10-536(3).

Because valid statutory liens existed under Utah Code § 59-1-302.1, the fact that there may also have been judgment liens at one time under Utah Code § 59-10-528 does not mean that the collection is limited to an eight-year period. As discussed previously, the liens under § 59-1-302.1 differ from those under § 59-10-528; the limitations of § 59-10-528 do not apply to § 59-1-302.1.

Also counter to the Taxpayers' arguments, the various statutes of limitations currently found in Utah Code Title 78B do not apply to limit liens created under Utah Code § 59-1-302.1. Under Utah Code § 78B-2-115 (prior version at § 78-12-33 (2006)), the limitations of Title 78B generally apply to limit actions brought by the state. Under § 78B-2-305(4) (prior version at § 78-12-26(4) (2006)), actions for liabilities created by statute are generally limited to three years, "except where in special cases a different limitation is prescribed by the statutes of this state . . ." Individual income tax liabilities are created by statute in Title 59, Chapters 1 and 10. Liens created under § 59-1-302.1 are special cases. A different limitation is prescribed by statute in § 59-10-536, as discussed previously. Therefore, § 59-10-536, titled "Limitations on Assessment and Collection" applies in this case rather than the more general statutes of limitation currently found in title 78B.

The Commission also notes although Utah Code § 59-1-302.1(2) indicates that once the lien is imposed, it continues until the liability "is satisfied or becomes unenforceable because of lapse of time" this does not imply that there would be a specified limitations period that would prevent collection in this matter. There are situations when a Taxpayer has filed a return, where the Tax Commission may be limited to a three-year period to issue an additional audit deficiency, which then may become a final assessment. If the assessment is of the type that would be limited by the three-year limitation but the assessment is not made within the three-year period, the assessment may be unenforceable because of lapse of time. In this situation, because the Taxpayers failed to file returns as they became due, there is no limitations period on the Division issuing the assessment.

DECISION AND ORDER

Based upon the foregoing, the Commission denies Petitioners' appeal in this matter. 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 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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Jane Phan, Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice:** Unless a party requests a Formal Hearing, the balance of tax and interest resulting from this decision must be paid within thirty days from the date this decision is issued or an additional late payment penalty may be assessed.

Appeal No.