

14-1326  
TAX TYPE: INCOME TAX-REFUND REQUEST  
TAX YEAR: 2009  
DATE SIGNED: 12-5-2014  
COMMISSIONERS: J. VALENTINE, D. DIXON, R. PERO  
EXCUSED: M. CRAGUN  
GUIDING DECISION

---

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 14-1326</p> <p>Account No. #####</p> <p>Tax Type: Income Tax / Refund Request</p> <p>Tax Year: 2009</p> <p>Judge: Chapman</p>
--	---

**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, Taxpayer (by telephone)  
For Respondent: RESPONDENT, from Taxpayer Services Division

STATEMENT OF THE CASE

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 November 18, 2014.

On September 19, 2013, the Auditing Division of the Utah State Tax Commission (“Auditing Division”) mailed a letter to TAXPAYER (“Petitioner” or “taxpayer”), in which it informed TAXPAYER that the Tax Commission had no record of his filing a 2009 Utah individual income tax return, that he could still file a 2009 return, and that he should provide certain information if he believed that he was not required to file a 2009 Utah return. In this letter, Auditing Division also informed TAXPAYER that if he did not respond by October 21, 2013, it would “result in a tax assessment based on available information.” It appears that no

sooner than October 18, 2013 but no later than October 21, 2013,<sup>1</sup> TAXPAYER filed a 2009 Utah individual income tax return, on which he claimed a refund of \$\$\$\$\$.

On April 23, 2014, the Taxpayer Services Division of the Utah State Tax Commission (“Respondent” or “Division”) issued a Notice of Expired Refund or Credit (“Notice”), in which it informed TAXPAYER that the time to claim a refund or credit for the 2009 tax year had expired.<sup>2</sup> 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 period for claiming a refund or credit of taxes for the 2009 tax year expired on October 15, 2013, which is three years and six months after the original April 15, 2010 due date for a 2009 income tax return. Because the October 21, 2013 date on which the Tax Commission received and stamped TAXPAYER’S 2009 Utah return occurred six days after the statute of limitations deadline of October 15, 2013, the Division contends that Utah law precludes the Tax Commission from issuing a refund or credit for 2009.

TAXPAYER asked the Commission to grant the refund. He explained that upon his becoming aware of Auditing Division’s September 19, 2013 letter, he immediately mailed a copy of his 2009 Utah return to the

---

1 At the hearing, Taxpayer Services Division explained that Commission records show that on Friday, October 18, 2013, TAXPAYER telephoned the Tax Commission, spoke to a Tax Commission employee, and told the employee that he would send in his 2009 Utah return. Records also show that the Tax Commission received and “stamped” TAXPAYER 2009 Utah return on Monday, October 21, 2013. The Division stated that the Tax Commission does not keep the envelope in which a return is filed or make a copy of the envelope. As a result, the day on which the envelope containing TAXPAYER return may have been postmarked cannot be ascertained. However, given the telephone call of October 18, 2013, it appears that TAXPAYER did not mail the return to the Tax Commission prior to this date.

2 It appears that upon receiving TAXPAYER’S 2009 Utah return, Auditing Division took additional steps to verify the information reported on it before accepting it and deciding that no additional taxes were due for 2009. TAXPAYER stated in his Petition that after he submitted his 2009 Utah return, Auditing Division asked for copies of his W-2 and 1099-R forms, which he submitted. It appears that only after this additional information was provided did Auditing Division accept his 2009 Utah return (which showed a refund amount of \$\$\$\$\$) and that the matter was transferred to Taxpayer Services Division to address the refund claim.

Tax Commission. TAXPAYER stated that he has no record of the date on which he mailed the 2009 Utah return. As a result, he could not dispute Tax Commission records that indicate that he had not yet submitted the return on October 18, 2013, when he telephoned the Tax Commission and told an employee that he would send it in. TAXPAYER emphasized that he mailed his 2009 Utah return in immediately upon becoming aware of Auditing Division's request. However, he admitted that he has a habit of not opening his when it is received and that he may not have opened Auditing Division's September 19, 2013 letter immediately upon receiving it.

In his Petition, TAXPAYER stated that the Tax Commission should have alerted him in a more timely manner that his 2009 Utah return had not been received. He claims that had the Tax Commission done so, he could have submitted a copy of his return before any statutory deadline to claim a refund had expired.

TAXPAYER also asked the Commission to consider that he attempted to file both his 2009 federal and Utah returns through TurboTax in April 2010, when they were originally due. Because the Internal Revenue Service ("IRS") rejected the electronic filing, he stated that he had to mail a hard copy of his 2009 federal return to the IRS in 2010. He stated that he assumed that he would have mailed a hard copy of his 2009 Utah return to the Tax Commission at the same time. But, he admitted that he could not recall doing so and has no records to show that he did. TAXPAYER also stated that he never thought to call in and find out why the \$\$\$\$ refund amount claimed on his 2009 Utah return had never been refunded to him.

The Division explained that when a taxpayer files both federal and state returns electronically through TurboTax, the information is first sent to the IRS. If the IRS accepts the electronic filing, the IRS "pulls" the federal information it needs and forwards the electronic filing to the state agency. However, if the IRS rejects the electronic filing, as it did in TAXPAYER'S case, the IRS does not forward any information to the state agency. As a result, the Division explained that the Tax Commission never received any information that TAXPAYER filed electronically in April 2010.

The Division also states that there are no records to show that TAXPAYER mailed a hard copy of his 2009 Utah return to the Tax Commission in 2010. Because there is no evidence to show that TAXPAYER filed a claim for refund with the Tax Commission until October 21, 2013, the Division contends that the claim was submitted after the statute of limitations period expired on October 15, 2013. For these reasons, the Division contends that the Tax Commission is precluded by Utah law from granting a refund or credit in this case and asks the Commission to sustain its action denying the taxpayer's claim.

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(8) provides the timeframes within which a taxpayer can generally request a refund or credit of 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:
  - (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.

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

Section 59-1-1410(8)(a) provides that 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) or within two years from the date the tax was paid. For the 2009 tax year at issue in this case, all taxes were paid on or before April 15, 2010. Two years from this date would be April 15, 2012. The due date of a 2009 income tax return, with extensions, is October 15, 2010. Sections 59-10-514 and 59-10-516(1). Three years from this date is October 15, 2013. As a result, a request for a refund or credit of 2009 taxes must be claimed by October 15, 2013, to satisfy the statute of limitations period found in Section 59-1-1410(8)(a).

Pursuant to Section 59-1-1417, the taxpayer has the burden of proof in this matter. TAXPAYER has not shown that he submitted his request for a refund or credit of 2009 taxes on or before the October 15, 2013

deadline. He attempted to file his 2009 federal and state tax returns electronically in April 2010, but the attempt failed, and the Tax Commission did not receive his return at this time. He received notice of the failed attempt and mailed a hard copy of his federal return to the IRS in 2010. However, there is no evidence to show that he mailed a hard copy of his Utah return to the Tax Commission at the same time. The Commission is unaware of any law or precedent that provides that a state agency is considered to have received a return filed electronically where that electronic filing fails and the state agency does not receive the filing under the circumstances described in this paragraph.

In response to a letter dated September 19, 2013, TAXPAYER mailed a copy of his 2009 Utah return to the Tax Commission, which was received on October 21, 2013. However, his telephone call to the Tax Commission on October 18, 2013 indicates that he had not mailed a copy of the return prior to this date. For these reasons, the evidence is insufficient to show that TAXPAYER filed his 2009 return and claimed a refund or credit for 2009 within the statute of limitations deadline found in Section 59-1-1410(8)(a).

In his Petition, TAXPAYER contends that that he would have been able to claim a refund for 2009 before the statutory deadline of October 15, 2013, had the Tax Commission notified him sooner of his missing return. The Commission, however, is also unaware of any requirement for the Tax Commission to determine which taxpayers have not filed returns and to notify them of the missing return before any statute of limitations to claim a refund has expired.<sup>3</sup> The Commission has determined that statutes of limitations must be strictly construed. *See USTC Appeal No. 05-1414* (Order Feb. 13, 2006).<sup>4</sup>

---

3 It appears that Auditing Division sent its September 19, 2013 letter to the taxpayer not because of any requirement to notify him of an upcoming deadline to claim a refund, but to determine if he owed taxes for 2009 that had not been paid. Utah Code Ann. 59-1-1410(3) provides that the Tax Commission can issue an audit and assess a tax at any time if a taxpayer has not filed a return.

4 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>.

Appeal No. 14-1326

For these reasons, the taxpayer's request for a refund of taxes for the 2009 tax year should be denied.

---

Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action to deny the taxpayer's request for a refund or credit of taxes for the 2009 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 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 \_\_\_\_\_, 2014.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner