

03-1111
Refund Request
Signed 02/27/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 03-1111
)	
TAXPAYER SERVICES DIVISION,)	Tax Year: 1997
UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding: Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Assistant Director Taxpayer
Services

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 4, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing the denial of an individual income tax refund for the tax year 1997. The Statutory Notice denying the refund was issued on July 10, 2003. Petitioner filed the appeal in this matter timely, on July 19, 2003.

2. Petitioner timely filed state and federal individual income tax returns for tax year 1997.

3. Subsequently, it was determined that a 1099 pertaining to an IRA distribution was incorrect and the Internal Revenue Service made a change to Petitioner's federal taxable income and federal tax amount. Petitioner filed an amended Utah Individual Income Tax return in September 1999, based on revised federal taxable income. The amended return indicated an additional amount of income tax due and owing for that year and Petitioner paid the additional tax amount with the return.

4. Then, on October 23, 2000, the IRS issued to Petitioner a correction notice and refunded to Petitioner a portion of the 1997 income tax that she had paid. This indicated another change whereby the IRS reduced Petitioner's federal taxable income.

5. Petitioner did not file an amended Utah return based on the revised numbers from the IRS. She indicates she thought the IRS would forward the change in federal taxable income to the Utah Tax Commission and that the state would just process the change and issued a refund to her based on the revision. Petitioner also indicates that she was unaware of that there was a statute of limitations. In addition, she indicates that she had been seriously ill, having been diagnosed with cancer in 1999, and so she waited for the state to issue a refund to her.

6. Finally, after not receiving a refund from the state, Petitioner filed on May 15, 2003, a second amended Utah individual income tax return for tax year 1997, which indicated a refund due to Petitioner in an amount over \$\$\$\$\$.

7. Respondent denied the refund to Petitioner based on the fact that the second amended return had been filed after the applicable statutes of limitations.

APPLICABLE LAW

1. Utah Code Ann. §59-10-529(7) and (14) provide in relevant part as follows:

"(7)(1) If a refund or credit is due because the amount of tax deduction and withheld from wages exceeds the actual tax due, a refund or credit may not be made or allowed unless the taxpayer or his legal representative files with the commission a tax return claiming the refund or credit:

- (i) within three years from the due date of the return, plus the period of any extension of time for filing the return provided for in Subsection (7)(c); or
- (ii) within two years from the date the tax was paid, whichever is later."

* * * *

(14)(a) If a taxpayer is required to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the commission, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the date the notice of the change, correction, or amended return was required to be filed with the commission.

(b) If the report or amended return is not filed within 90 days, interest on any resulting refund or credit ceases to accrue after the 90-day period.

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.

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

2. Utah Code Ann. §59-10-536(5)(a) provides in relevant part as follows:

"(5)(a) If a change is made in a taxpayer's net income or his or her federal income tax return, either because the taxpayer has filed an amended return or because of an action by the federal government, the taxpayer must notify the commission within 90 days after the final determination of such change. The taxpayer shall file a copy of the amended federal return and an amended state return that conforms to the changes on the federal return. No notification is

required of changes in the taxpayer's federal income tax return which do not affect state tax liability."

CONCLUSIONS OF LAW

1. Utah Code Ann. §59-10-529(7) permits a refund within three years from the due date of the return plus the period of any extension, or within two years from the date the tax was paid, whichever is later. The claim for refund was filed with the second amended state return, which was May 15, 2003. However, three years from the due date of the return plus the exemption would have been October 15, 2001. The refund could also have been granted within two years from the date the tax was paid, which was September 1999. That time period had also clearly expired prior to the filing of the second amended return.

2. Utah Code Ann. §59-10-529(14) provides for a refund when an amended return is filed within two years from the date the notice of a change, correction, or amendment made by the Internal Revenue Service to the federal taxable income that affects Petitioner's state taxable income. In this case the IRS made its adjustment on October 23, 2000. Pursuant to Utah Code Ann. §59-10-536(5)(a), an amended return should have been filed with the Commission on or before 90 days after the change by the Internal Revenue Service, which would have been January 21, 2001. Petitioner, therefore, had two years after January 21, 2001 in which to file an amended return. However, the amended return was not filed until nearly four months thereafter.

3. The statute of limitations is a jurisdictional requirement and is strictly construed against the taxpayer. It is irrelevant whether or not the taxpayer is aware of the applicable statute of limitations and the Commission does not find a basis for its waiver in this matter.

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DECISION AND ORDER

Based upon the foregoing, Petitioner's Petition for Redetermination is denied. It is so ordered.

DATED this ____ day of _____, 2004.

Jane Pham, 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 _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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