

04-0010
Refund Request
Signed 10/26/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioners,)	AND FINAL DECISION
)	
v.)	Appeal No. 04-0010
)	Account No. #####
TAXPAYER SERVICES DIVISION OF)	
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	Tax Year: 1997
)	
Respondent.)	Judge: Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, CPA
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from the Taxpayer Services Division
 RESPONDENT REPRESENTATIVE 3, from the Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 10, 2004. At the conclusion of the hearing, the parties were granted until August 27, 2004 in which to file the briefs. Petitioners' brief was due on or before July 12, 2004, with the response from the Division due on or before August 13, 2004, and a response from the Petitioners due on or before August 27, 2004. No briefs have been received from either party, and the Commission therefore determines to issue this decision without receiving such briefs. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.
2. The year in question is 1997.

3. The Petitioners did not timely file their 1997 Utah Individual Income Tax Return. Instead, Petitioners filed their joint 1997 individual income tax return on April 2, 2002. On the return, they claimed a refund of approximately \$\$\$\$ which resulted from the taxes withheld from their wages during 1997.

4. Respondent denied the refund based upon the return having been filed, and the refund having been requested after the statutory period permitted by law for refund of individual income taxes. Petitioners acknowledge that the return was not timely filed, but Petitioners' representative states, "taxpayer was quite ill and was unable to organize his tax matters until the end of 2000 and into 2001 subsequent to medical treatment."

APPLICABLE LAW

Pursuant to Utah Code Ann. §59-10-514(1)(a), a tax return should be filed with the Commission on or before the 15th day of the fourth month following the last day of the taxpayer's taxable year. Under Utah Code Ann. §59-10-516(1), the Commission shall allow a taxpayer an extension of time for filing returns, that extension not to exceed six months.

Utah Code Ann. §59-10-529(7) addresses the refund or credit of overpayments as follows:

(a) If a refund or credit is due because the amount of tax deducted 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 . . . ; or

(ii) within two years from the date the tax was paid, whichever period is later.

(b) . . . , in other instances where a refund or credit of tax which has not been deducted and withheld from income is due, a credit or refund may not be allowed or made after three years from the time the tax was paid, unless, before the expiration of the period, a claim is filed by the taxpayer or his legal representative.

DISCUSSION

Based upon Utah Code Ann. §59-10-514, Petitioners' Individual Income Tax Return for 1997 was due on or before April 15, 1998. However, pursuant to Utah Code Ann. §59-10-516, Petitioners were

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allowed an additional six months in which to file their return, so they could have timely filed their return on or before October 15, 1998.

Utah Code Ann. §59-10-529(7) permits taxpayers to obtain a refund of taxes previously paid if the refund is requested within three years from the due date. Petitioners did not meet that statutory time period, and in fact, the return was not filed until nearly three and one-half years after the due date.

Based upon the above, the latest date that a refund or credit request could have been submitted was October 15, 2001. Petitioners' representative stated that the "taxpayer was quite ill and unable to organize his tax matters until the end of 2000 and into 2001 subsequent to medical treatment." If the return had been timely prepared at the end of 2000 or in 2001 anytime prior to October 15, 2001, it could have been submitted in time to obtain a refund. That was not done.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Petitioners did not file their 1997 individual income tax return in time to receive a refund of the amounts withheld. The statute prohibits giving them a refund in this circumstance. It is so ordered.

DATED this ____ day of _____, 2004.

G. Blaine Davis
Administrative Law Judge

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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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