

04-1401  
Refund Request  
Signed 03/07/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)		
	)	<b>ORDER</b>	
Petitioners,	)	Appeal No.	04-1401
	)		
v.	)	Account No.	#####
	)		
TAXPAYER SERVICES DIVISION	)	Tax Type:	Income Tax
OF THE UTAH STATE TAX	)		
COMMISSION,	)	Tax Year:	1999
	)		
Respondent.	)	Judge:	Davis

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**Presiding:**

G. Blaine Davis, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1

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 an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 2, 2005.

Petitioners filed a 1999 Utah Income Tax Return on or about April 15, 2000. Payment of the tax due on the return was received September 14, 2001.

On June 10, 2002, the Internal Revenue Service made an additional assessment against Petitioners for their 1999 income tax return. Petitioners were required to "notify the

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Commission within 90 days after the final determination of such change" pursuant to Utah Code Ann. §59-10-536(5), by filing an amended return on or before September 8, 2002.

Petitioners filed an amended return for 1999 on October 1, 2004. On that return, the amount of tax was reduced to \$\$\$\$\$, and Petitioners requested a refund of previous tax paid in the amount of \$\$\$\$\$. Petitioners amended return claimed a deduction on retirement income paid by the ( X ) which had not been previously been claimed on the original return. Federal adjusted gross income, itemized deductions, and federal tax was also changed from the amount shown on the original return.

On November 2, 2004, a letter was sent to Petitioners by Respondent in which it denied the refund claimed on the amended return. The basis for that denial was the Statute of Limitations for claiming a refund set forth in Utah Code Ann. §59-10-529(14) which would have required a request by September 8, 2004, or Utah Code Ann. §59-10-529(7)(b), which would have required an amended return or a claim for refund on or before September 14, 2004. The amended return filed on October 1, 2004 was therefore at least two weeks beyond the statutory time period.

Utah Code Ann. §59-10-529(14) also limits the amount of the credit or refund to the amount attributable to reduction in tax based on the federal change, correction, or items amended on the taxpayer's amended federal income tax return. The deduction for amounts paid by the ( X ) is a Utah specific deduction, and was not affected by the federal change.

Petitioner acknowledges that the amended tax return, or claim for refund, was not timely filed. However, Petitioner requests that the Commission waive the Statute of Limitations because of extraordinary circumstances, including:

- (a) their daughter died in February of 2002, and it was necessary for them to spend substantial time and effort caring for her while she was ill.
- (b) it was necessary for them to take on the additional burdens of caring for a grandson after the death of their daughter.
- (c) they feel they have paid an amount which they did not need to pay, and they did so voluntarily.

#### APPLICABLE LAW

The relevant portions of Utah Code Ann. §59-10-529 provide as follows:

(7)(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, 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 period is later.

(b) Except as provided in Subsection (7)(d), 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.

(c) Beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (7)(a)(i) if:

- (i) the time period for filing a claim under Subsection (7)(a) has not expired; and
- (ii) the commission and the taxpayer sign a written agreement:
  - (A) authorizing the extension; and
  - (B) providing for the length of the extension.

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(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.

#### DISCUSSION

In this matter, Petitioner has acknowledged that the amended income tax return was not filed within the time period set forth in the statute, but he has requested that those time periods be waived because of extraordinary circumstances. However, those time periods have been set by the Legislature, and the Tax Commission does not have discretion to ignore the legislative mandate. Accordingly, the time periods set forth in the statute are binding on the Commission as well as upon Petitioner.

In addition, the death of their daughter was four months prior to the IRS assessment, and more than two and one-half years before the expiration of the Statute of Limitations. Therefore, they still had more than adequate time after the death of their daughter to take the required actions to pursue their refund.

#### DECISION AND ORDER

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Based upon the foregoing, the Commission sustains the denial of the refund made by Respondent, and denies the Petition for Redetermination filed by Petitioner. The statute does not permit the Commission to grant the requested refund. 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 \_\_\_\_\_, 2005.

\_\_\_\_\_  
G. Blaine Davis  
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 \_\_\_\_\_, 2005.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

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Palmer DePaulis  
Commissioner

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Marc B. Johnson  
Commissioner