

05-0116
Refund Request
Signed 06/23/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0116
)		
v.	)	Account No:	#####
)		
TAXPAYER SERVICES	)	Tax Type:	Individual Income Tax
DIVISION OF THE UTAH)		
STATE TAX COMMISSION,	)	Tax Year:	1998
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: No one appeared

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Taxpayer Services
Division
RESPONDENT REPRESENTATIVE 3, 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 June 7, 2005. The Petitioner did not appear, but had requested, on her Petition for Redetermination, that a decision be made on the written record.

At issue is the Petitioner's Utah individual income tax liability for the 1998 tax year. Although the Petitioner earned Utah taxable income in 1998, she did not file a 1998 Utah income tax return until December 10, 2004. This return showed that the amount of Utah income

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tax withheld by the Petitioner's employer exceeded her Utah tax liability for the year at issue. Pursuant to the return, the Division notified the Petitioner that she no longer owed 1998 Utah income tax. However, the Division also informed the Petitioner that it would not refund the overpaid tax because the refund request (i.e., the filing of the return) was beyond the statute of limitations permitting such refunds. The Petitioner filed an appeal requesting the Commission to overturn the Division's decision to deny the refund.

APPLICABLE LAW

Utah law provides that an individual income tax return "shall 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[.]" UCA §59-10-514(1). State law also provides that the Commission shall allow an extension of time for filing returns, but that the extension may not exceed six months. UCA §59-10-516(1).

UCA §59-10-529(7)(a) provides that a taxpayer has a limited period to request a refund of excess tax withheld and remitted by a taxpayer's employer, 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 . . . ; 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

The Petitioner's employer withheld and paid the Petitioner's 1998 Utah individual income tax during the 1998 calendar year. The amount of tax paid exceeded the Petitioner's 1998 income tax liability, as shown on her 1998 Utah tax return filed on December 10, 2004. Under such circumstances, Section 59-10-529(7)(a) entitles the Petitioner to a refund of the excess tax if the refund request (i.e., return) is submitted within three years from the due date of the return or within two years from the date the tax was paid.

Pursuant to Sections 59-10-514(1) and 59-10-516(1), a 1998 Utah individual income tax return was due at the end of six months after April 15th, 1999, which results in a due date of October 15, 1999. Section 59-10-529(7)(a)(i) provides that a refund may be issued pursuant to a return if it is filed within three years of its due date. For the 1998 tax year, a return and refund request would have to be filed by October 15, 2002, three years after the October 15, 1999 due date, for Utah law to permit the refund. The Petitioner's filing of her return on December 10, 2004 was outside the period for which she could claim the refund. Nor was the Petitioner's December 10, 2004 refund request within two years of the date that the tax was withheld and paid in 1998, in which case a refund may have been paid pursuant to subsection 529(7)(a)(ii). As a result, neither condition exists under which the Commission may refund the 1998 taxes overpaid by the Petitioner. Accordingly, the Petitioner's refund request is denied.

DECISION AND ORDER

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Based upon the foregoing, the Commission denies the Petitioner's appeal and sustains the Division's denial of the Petitioner's refund request concerning the 1998 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 _____, 2005.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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