

05-0276  
Refund Request  
Signed 09/11/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER, PERSONAL	)		
REPRESENTATIVE FOR DECEASED,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	05-0276
	)		
v.	)	Account No:	#####
	)	Tax Type:	Individual Income Tax
TAXPAYER SERVICES	)		
DIVISION OF THE UTAH	)	Tax Years:	1986 through 1990 &
STATE TAX COMMISSION,	)		1992 through 2002
	)		
Respondent.	)	Judge:	Chapman

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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, 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 August 1, 2006.

DECEASED, who worked and lived in Utah, died on September 13, 2003, having not filed his Utah individual income tax returns for most of the past 20 years. On October 24, 2003, the Fourth District Court of Utah County appointed his brother, PETITIONER (“Petitioner”), as the personal representative of DECEASED’S estate. On behalf of his brother, the Petitioner filed Utah income tax returns for the 1999, 2000, 2001 and 2002 tax years on December 31, 2003. In January 2004, the Petitioner met with employees of Taxpayer Services Division (“Division”) in CITY, Utah, who told him that he would need to submit returns for the remainder of the years for which returns had not been filed. Subsequently, the Petitioner filed 12 additional returns on March 18, 2004, for tax years 1986 through 1990 and 1992 through 1998.

For many of the years at issue, the Division had issued non-filing tax assessments to DECEASED, in which it had estimated his Utah taxable income and Utah income tax liability, based on information received from the Internal Revenue Service (“IRS”).<sup>1</sup> In estimating and assessing DECEASED’S Utah income tax liability, the Division did not apply any credit for Utah taxes withheld from an employer, as such information was not provided by the IRS. In addition, DECEASED did not appeal the assessments or provide any information to show that they were incorrect. For these reasons, the assessments that the Division imposed for these various years became final and the amounts of taxes shown on the assessments became due and payable. In 1997, the Division took collection actions and began to garnish the income that DECEASED earned from his employment at COMPANY to pay the delinquent taxes for tax years as far back as 1986. The Commission continued garnishing DECEASED’S wages through 2001, applying the amounts received to his most delinquent tax liabilities.

The Petitioner obtained information showing the amounts of Utah income tax that DECEASED’S employer withheld for the various years at issue. When the Petitioner prepared his brother’s Utah tax returns, he applied these amounts as credits. The Utah returns filed by the Petitioner showed that for every year in which the Commission had issued an assessment, DECEASED’S tax liability was less than the amount that the Commission had estimated and imposed through its assessments. In addition, the returns showed that had DECEASED filed his returns for the years at issue in a timely manner, he would have been due a refund in every year but 1996 and 2002.

Petitioner’s March 19, 2004 and Other Letters. Because the returns the Petitioner filed showed that his brother had “overpaid” his tax liability for all years but 1996 and 2002, he wrote a letter to the

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<sup>1</sup> The Division indicates that in past years, it had imposed non-filing, estimated assessments for tax years 1986, 1987, 1988, 1990, 1992, 1993, and 1994. It also indicated that it had imposed an audit change assessment for the 1989 tax year.

Commission on March 19, 2004, in which he requested specific action. First, for tax years 1986 through 1998, the Petitioner stated that the returns show his brother had “overpaid” his taxes for the 1986 through 1995, 1997, and 1998 tax years by \$\$\$\$\$, the difference between the total amount of his brother’s tax liability for these years and the amounts withheld by his brother’s employer. He also stated that the 1996 return showed that \$\$\$\$\$<sup>2</sup> in taxes was due, plus penalties and interest. The Petitioner acknowledged that Utah’s statutes of limitations might bar a refund of the “overpaid” amounts for these particular tax years. However, under the doctrine of equitable recoupment, the Petitioner asked the Commission to offset the amount due for the 1996 tax year by the thousands of dollars the Commission had “overcollected” for the other years in this period.

Second, the Petitioner requested specific action relating to tax years 1999, 2000, 2001, and 2002. Pursuant to the returns he filed for the 1999, 2000, and 2001 tax years, the Petitioner stated that the taxes withheld by DECEASED’S employer exceeded his tax liability by \$\$\$\$\$ for these three years. Furthermore, during this period, the Petitioner claims that the Commission garnished his brother’s wages to pay delinquencies that it had assessed for tax years 1986 through 1989. The Petitioner argues that the returns he filed for tax years 1986 through 1989 show that the “delinquencies” the Commission had assessed were not actually due. Accordingly, the Petitioner believes that the garnishments are all “overpayments” due to erroneous assessments and should be refunded under the doctrine of equitable recoupment. He concludes that the garnishments collected during these three years totaled \$\$\$\$\$, which when added to the \$\$\$\$\$ in excess tax that the employer withheld results in \$\$\$\$\$ in “overpaid” tax. Although the return for the 2002 tax year shows a tax deficiency of \$\$\$\$\$ in tax, plus penalties and interest, the Petitioner asks the Commission to waive

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2 The Division claims that the 1996 return filed by the Petitioner shows \$\$\$\$\$ in additional taxes to be due. However, neither party proffered the return so the Commission could determine the correct amount that was due.

the penalties and interest associated with the 2002 tax year and refund him \$\$\$\$ (the \$\$\$\$ amount “overcollected” for 1999 through 2001 minus the \$\$\$\$ in taxes due from 2002).<sup>3</sup>

Division’s Actions. The Division argues that under the circumstances present in this matter, Utah’s statutes of limitations allow a refund of overpaid taxes if: 1) pursuant to Utah Code Ann. §59-10-529(7)(a), a return is filed to request a refund or credit of tax deducted and withheld from wages within three years from the due date of the return plus any extensions allowed by law, or within two years from the date the tax was withheld; **or** 2) pursuant to Section 59-10-529(7)(b), a claim for refund is filed to request a refund or credit of tax that is not deducted and withheld from wages within three years from the time the tax was paid.

The Division treated each tax year at issue separately to determine whether a refund was due and could be refunded for that year pursuant to the statutes of limitations; whether a refund was due but barred from refund for that year by the statutes of limitations; or whether a tax liability still remained due for that year. The Division proffered documents to show how payments and credits had had been applied to the various years’ liabilities. However, the documents are difficult to comprehend and do not clearly explain the total liability that had been assessed for each year and why the Division transferred certain amounts back and forth between tax years. In spite of these limitations, it appears from the documents and the testimony proffered that the Division took the following actions.

First, from the tax returns submitted by the Petitioner, the Division determined that a tax liability of \$\$\$\$ in tax, penalties, and interest remained due for the 1996 tax year and \$\$\$\$ in tax, penalties, and interest for the 2002 tax year. These remaining liabilities for these two years totaled \$\$. The Division initially determined that a liability for the 1994 tax year also remained due. However, upon receiving

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<sup>3</sup> In his written documents, the Petitioner had requested a refund of \$\$\$\$, pursuant to his agreement to pay \$\$\$\$ in interest and penalty for the 2002 tax year. However, at the hearing, he requested that penalties and interest be waived, which increases his refund request to \$\$\$\$.

additional information from the Petitioner, the Division adjusted the return and determined that no liability was due for the 1994 tax year.

Second, the Division determined that a refund was due and could be refunded pursuant to the statutes of limitations for several of the years. Specifically, it found that refunds of \$\$\$\$ (plus interest) for the 2000 tax year and \$\$\$\$ (plus interest) for the 2001 tax year were allowable because the returns for these years were filed within three years of their respective due dates, plus extensions.

The Division also determined that a refund was allowable for the 1989 tax year. The 1989 return was filed more than three years after its due date. Nevertheless, the Division determined that certain garnishment payments made in 2001 and allocated to the 1989 tax year deficiency could be refunded because they were paid in the three year period prior to the Petitioner filing the 1989 return on March 18, 2004. The Division reached this conclusion by determining that garnishments are not withholding taxes subject to the two-year statute of limitations provided in Subsection 59-10-529(7)(a), but instead are payments that can be refunded up to three years after their remittance, as provided in Subsection 59-10-529(7)(b). The documents and testimony proffered by the Division indicate that \$\$\$\$ in garnished wages was received between May 4, 2001 and August 28, 2001, which led to the Division determining that \$\$\$\$ in tax plus interest (minus any applicable lien and garnishment fees) could be refunded for the 1989 tax year.<sup>4</sup>

Third, the Division concluded that returns for all other years were filed more than three years after their respective due dates and that all payments received and allocated to these years, including garnished wages, had been paid more than three years prior to the Petitioner filing a return and requesting a refund for

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<sup>4</sup> The documents proffered by the Division show that a credit of \$\$\$\$ was applied to the 1989 tax year on January 8, 2002. Although a payment made on this date would also be eligible for refund, it appears that this credit is traceable to garnishment payments made in 2000 and initially applied to the 1988 tax year. As this payment was received more than three years prior to the filing of the 1989 tax return, the \$\$\$\$ credit was not included in the \$\$\$\$ that the Division determined eligible for refund.

each of the years. For these reasons, the Division denied a refund of the overpayments shown due for tax years 1986, 1987, 1988, 1990, 1992, 1993, 1994, 1995, 1997, 1998, and 1999.

In summary, the Division refunded the amounts due the Petitioner for the 1989, 2000, and 2001 tax year (approximately \$\$\$\$ plus interest) minus the amounts remaining due for the 1996 and 2002 tax years (approximately \$\$\$\$), for a total refund of approximately \$\$\$\$\$. However, the Division did not consider that the circumstances in this matter were grounds to refund additional amounts barred by the statutes of limitations under the theory of equitable recoupment. The Petitioner appealed the Division's actions and asks the Commission to refund the additional amounts he has requested, as described earlier.

#### APPLICABLE LAW

**Tax Return Due Date.** Utah Code Ann. §59-10-514(1) provides that an individual income tax return “shall be filed with the commission . . . on or before the 15<sup>th</sup> day of the fourth month following the last day of the taxpayer’s taxable year[.]”

UCA §59-10-516(1) provides that the that the Commission shall allow an extension of time for filing returns, but that the extension may not exceed six months.

**Deficiencies.** UCA §59-10-524(1) provides that “[i]f the commission determines that there is a deficiency in respect to the tax imposed by this chapter, it shall send notice of the deficiency to the taxpayer at the taxpayer’s last-known address.”

UCA §59-1-501 provides that “[a]ny taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.”

UCA §59-10-525(1)(a) provides that unless the taxpayer has previously filed a petition for redetermination of the deficiency as provided in Title 59 Chapter 1, Part 5, a notice of deficiency shall

constitute a final assessment “upon the expiration of 30 days . . . after the date of mailing of the notice of deficiency to the taxpayer[.]”

For purposes of the above statutes, UCA §59-10-523(1) defines “deficiency” to mean:

the amount by which the tax imposed by this chapter exceeds the excess of (a) the sum of (i) the amount shown as the tax by the taxpayer upon his return, if the return was made by the taxpayer and if an amount was shown as the tax by the taxpayer thereon, plus (ii) the amounts previously assessed (or collected without assessment) as a deficiency over (b) the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

**Allocation of Payments.** In 1996, the Tax Commission adopted Utah Admin. Rule R861-1A-18 (“Rule 18”), which provides that payments are to be allocated as follows:

- A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.
- B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.
- C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

**Statutes of Limitations.** Section 59-10-529<sup>5</sup> provides statute of limitations and other restrictions concerning the refund of overpaid individual income tax, as follows in pertinent part:

- (1) In cases where there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:
  - (a) against any income tax then due from the taxpayer;
  - . . . .
  - (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

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5 The Petitioner filed income tax returns and requested refunds of overpaid tax for the years at issue in December 2003 and March 2004. The portions of Section 59-10-529 that are issue have not been amended since the returns were filed and the refunds requested.

(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.

....

(18) If a taxpayer who is entitled to a refund under this chapter dies, the commission may make payment to the duly appointed executor or administrator of the taxpayer's estate. If there is no executor or administrator, payment may be made to those persons who establish entitlement to inherit the property of the decedent in the proportions set out in Title 75, Utah Uniform Probate Code.

....

**Equitable Adjustments.** When the Petitioner made his refund request in 2004, UCA §59-10-115 specifically provided that a taxpayer could claim an equitable adjustment where: 1) an item of gross income in the taxpayer's current year federal adjusted gross income was taxed by a state in a prior year; 2) the taxpayer reports certain gains or losses associated with the ownership of property; and 3) the taxpayer receives certain distributions from an electing small business corporation. In addition, Subsection 59-10-115(4) provided that the Commission could specify in rule other circumstances allowing for equitable adjustment, as follows in pertinent part:

The commission shall by rule prescribe for adjustments to state taxable income of the taxpayer in circumstances other those specified by Subsection (1), (2), and (3) of this section where, solely by reason of the enactment of this chapter, the taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. . . .

The Commission adopted Utah Admin. Rule R865-9I-4 ("Rule 4") to address other amounts of income that may qualify as an equitable adjustment to Utah taxable income, as follows:

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as



determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

**Burden of Proof.** The Utah Legislature has specifically provided that the taxpayer bears the burden of proof, with limited exceptions, in proceedings involving individual income tax before the Tax Commission. UCA §59-10-543 provides, as follows:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under Title 59, Chapter 1, Part 5 is filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported, and of which change or correction the commission had no notice at the time it mailed the notice of deficiency.

**Penalties and Interest.** UCA §59-10-539(1) provides for the imposition of penalty and interest, pertinent parts as follow:

(1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401.

.....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

For purposes of Section 59-10-539, UCA §59-1-401 provides for the imposition of penalties, as follows:

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

...

(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

....

Also for purposes of Section 59-10-539, UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

Furthermore, in those situations where penalty and interest have been properly imposed, Section 59-1-401(11) authorizes the Commission to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

#### DISCUSSION

In this matter, Section 59-10-543 imposes the burden of proof on the Petitioner to show that the Division improperly addressed his refund requests or that he is entitled to refunds barred by the statutes of limitations pursuant to the doctrine of equitable recoupment. First, the Commission will address whether the evidence and testimony shows that the Division acted correctly when processing the returns filed by the Petitioner and determining, for each separate year, whether refunds were appropriate or whether tax liability remained due. Second, the Commission will determine whether reasonable cause exists to waive the penalties and interest that the Division imposed in regards to the 1996 and 2002 tax years. Third, the Commission will determine if refunds barred by the statutes of limitations may still be refunded under the doctrine of equitable recoupment.

I. Division's Actions for Each Separate Year. The Petitioner admits that many of the overpayments shown due on the returns he filed are barred from refund by the applicable statutes of limitations. The documents and testimony proffered by the Division indicate that statutes of limitations bar the refund of overpayments that were made for tax years 1986, 1987, 1988, 1990, 1992, 1993, 1994, 1995, 1997, 1998, and 1999. For each of these years, the return was filed more than three years after its due date or the payments received and allocated to the tax year, including garnished wages, were paid more than three years prior to the date on which the Petitioner filed the tax return. Accordingly, the Commission finds that any refunds for these years are barred by the statutes of limitations and sustains the Division's actions not to refund any amounts shown due for these years.

Both parties agree that the 1996 and 2002 returns show that tax liability remained due for each of these years. Although the parties agree that the amount of tax remaining due for 2002 was \$\$\$\$\$, prior to penalties and interest being imposed, they disagree on liability remaining due for the 1996 tax year. The Petitioner asserts that the tax liability, before penalties and interest, is \$\$\$\$\$, while the Division asserts it is \$\$\$\$\$. Neither party submitted the 1996 return that was filed so that the Commission could determine which amount is correct. As the Petitioner has the burden of proof in this matter, the Commission finds that the \$\$\$\$\$ amount determined due by the Division and evidenced on its proffered documents is correct. For these reasons, the Commission sustains the \$\$\$\$\$ tax liability and the \$\$\$\$\$ tax liability that the Division determined as remaining due for the 1996 and 2002 tax years, respectively, prior to the addition of any appropriate penalties and interest.

For the 2000 and 2001 tax years, the parties agree on the amounts of refund due for these years. The Petitioner filed a return for each year within three years of its due date, plus extensions.

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Accordingly, the Commission sustains the Division's refund of \$\$\$\$ (plus interest) for the 2000 tax year and \$\$\$\$ (plus interest) for the 2001 tax year.

For the 1989 tax year, the return was not filed within three years of its due date. Nevertheless, a series of garnishment payments were received from May to August 2001 and allocated to this tax year. The Commission finds that the Division was correct to determine that a three-year statute of limitation applied to the garnishment payments that were received in 2001. Because the return was filed less than three years after the garnishment payments in the amount of \$\$\$\$ were received, the Commission sustains the Division's decision to refund this amount (plus interest, but minus any applicable lien and garnishment fees) for the 1989 tax year.

II. Penalties and Interest. The Division property imposed a 10% late filing penalty, a 10% late payment penalty, and interest on the tax liabilities remaining due for the 1996 and 2002 tax years. The Commission has been granted the authority to waive penalties and interest upon a showing of reasonable cause, pursuant to Section 59-1-401(11). The Petitioner has asked the Commission to waive the penalties and interest that have been imposed for these two years.

*Interest.* Although penalties and interest may both be waived upon a showing of reasonable cause, the criteria for which the Commission waives interest are different than the criteria for which it waives penalties. Interest is charged because the taxpayer has had the use of the tax dollars during a period when the state should have had that use. For this reason, interest is only waived if the imposition of interest arose from a Commission employee's error. DECEASED'S failure to timely file returns for and timely pay his 1996 and 2002 tax liability did not arise because of Tax Commission employee error. Accordingly, the Commission finds that reasonable cause to waive the interest imposed for either of these years does not exist, and it denies the Petitioner's request for waiver of interest.

*Penalties.* On the other hand, the Commission considers that reasonable cause to waive a penalty may exist under a number of circumstances. In Utah State Tax Commission Publication 17 (Waivers – Reasonable Cause), the Commission provides that a penalty may be waived upon a showing of “clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.” In addition, one of the specifically listed circumstances that may constitute reasonable cause to waive a penalty is “Death or Serious Illness: The delay was caused by the death or serious illness of the taxpayer or a member of the immediate family. . . . The death or illness must occur on or immediately prior to the due date of the return. In addition, the matter must be corrected within a reasonable time given the circumstance.”

The Petitioner informs the Commission in his letter of March 3, 2005 that “[d]uring the last several years of his life, [his brother] was in a state of deteriorating health and increasing depression[.]” DECEASED died on September 13, 2003, approximately five months after the April 15, 2003, due date to file his 2002 tax return. It is conceivable that DECEASED’S state of mind and physical health had deteriorated to the point in April 2003 so that he was not able to file his 2002 return. However, the very general information proffered about DECEASED’S health is insufficient for the Commission to reach this decision, given the fact that the taxpayer had a multi-year history of not timely filing his returns. Nevertheless, it is undisputed that DECEASED overpaid his taxes for numerous years, amounts that are now barred from refund due to statutes of limitations. The Commission also recognizes that one of the purposes of penalties is to encourage a taxpayer to comply in the future. Because DECEASED is deceased and because of the unusual circumstances in this matter, the Commission believes it would serve justice to waive the penalties that have been imposed for

the 1996 and 2002 tax years and orders that the failure to file and failure to pay penalties imposed for these years be waived.

III. Equitable Recoupment. The Petitioner correctly points out that the State of Utah has collected thousands of dollars over the years at issue that would not have been due had his brother timely filed his income tax returns during this period. However, the Commission disagrees with the Petitioner's assertion that the Commission "erroneously" collected these taxes through its garnishment of DECEASED'S income. When a taxpayer does not file a return, the Commission is authorized to impose an assessment of estimated taxes, which, by statute, becomes final and subject to collection unless the taxpayer appeals the assessment or provides information within the timeframes prescribed by law to receive a refund of an overpayment. DECEASED was afforded an opportunity to appeal these assessments and to submit tax returns and other information within the statutory periods afforded by law to receive any overpayments of tax. He did not.

The Commission does not deem the "overpayments" that the Commission collected through garnishment or through employer withholding under these circumstances to result in a "double tax detriment." Instead, the amounts that the Commission received through garnishment of DECEASED'S wages were to pay tax assessments that had become final and were legally due. For these reasons, the Commission finds that those garnishment payments and other payments that are barred from refund by the statutes of limitations in this matter should not be refunded, as the Petitioner requests, under the doctrine of equitable recoupment. Nor does the Commission find that these payments are refundable under the provisions Section 59-10-115 and Rule 4, which address equitable adjustments.

#### DECISION AND ORDER

Based upon the foregoing and the returns submitted by the Petitioner, the Commission finds that the Division properly denied the Petitioner's refund requests for taxes paid or allocated to tax years 1986,

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1987, 1988, 1990, 1992, 1993, 1994, 1995, 1997, 1998, and 1999. In addition, the Commission finds that \$\$\$\$ in tax, plus interest, remained due for the 1996 tax year and that \$\$\$\$ in tax, plus interest, remained due for the 2002 tax year. The Commission orders, however, that all penalties imposed for the 1996 and 2002 tax years be waived. The Commission also finds, based on the returns filed, that the Petitioner should be refunded \$\$\$\$ in tax, plus interest, for the 2000 tax year and \$\$\$\$ in tax, plus interest, for the 2001 tax year. For the 1989 tax year, the Commission finds that the Petitioner should be refunded \$\$\$\$ in tax, plus interest, but minus any applicable lien and garnishment fees that the Commission incurred. Lastly, the Commission denies the Petitioner's request, pursuant to the doctrine of equitable recoupment, for the refund of additional amounts that are barred from refund by the statutes of limitations. 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 \_\_\_\_\_, 2006.

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Kerry R. Chapman  
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 \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

*KRC/05-0276.int*