

05-0416
Refund Request
Signed 10/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0416
v.	)	Account No.	#####
)		
TAXPAYER SERVICES DIVISION OF	)	Tax Type:	Income Tax /
THE UTAH STATE TAX	)		Refund Request
COMMISSION,	)	Tax Year:	1992
)		
Respondent.	)	Judge:	R. Spencer Robinson

Presiding:
R. Spencer Robinson

Appearances:
For Petitioner: PETITIONER, *pro se*, via telephone
For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General

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 September 29, 2005. At issue was Petitioner's request for a refund from the 1992 tax year.

Petitioner states that in January of 1992 he returned from military service and found himself embroiled in a contentious divorce proceeding. He was incarcerated for a period of time based on domestic violence charges he states were later dismissed. He said his former wife had all the records necessary for filing a 1992 tax return, and that she moved, taking the records with her. He said she refused to provide records to him. Petitioner did not file a 1992 state tax return.

Petitioner said he was homeless from 1992 through 1999, struggling with alcohol and drug dependency. In October of 1999 Petitioner reports being injured while working for the (X) Program. He said he has had five surgeries. He described additional unfortunate events, including the suicide of his former

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wife and the death of his daughter, leaving him unable to work and responsible for the care of the children from his former marriage and the children of his deceased daughter.

Petitioner said he has remarried and put his life back together. Part of that process included addressing tax issues from previous years. Petitioner filed his 1992 State income tax return on February 9, 2005.

Respondent did a non-filing audit for the 1992 tax year. It computed the return based on the information it had regarding Petitioner's income and one exemption for him. Respondent had no information regarding Petitioner's dependents or other deductions. When Petitioner filed his 1992 return in 2005, he requested a refund based on that return.

On or about April 8, 2005, the Respondent wrote Petitioner stating it was denying his request for a refund. Respondent denied the request based on §59-10-529. Petitioner appealed.

The parties participated in a telephone status conference on June 30, 2005. During the conference, Petitioner stated he would get his money one way or the other. He said either he would receive a refund or he would cost the State the expense of defending against his claim.

During the initial hearing, RESPONDENT REPRESENTATIVE explained Respondent's reliance on the statute and read it verbatim to Petitioner. Petitioner rejected Respondent's argument. He said he needed the money more than the State of Utah did. He stated he would continue to appeal, even if there was no legal basis for the appeal, because it was wrong to take his money and he would get it, one way or the other.

APPLICABLE LAW

Utah Code Ann. §59-10-529 (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.

DECISION AND ORDER

Petitioner did not file a 1992 State income tax return until February of 2005. The last date by which Petitioner could have filed a 1992 return in order to receive a credit or refund was October 15, 1996. Utah Code Ann. §59-10-529 expressly prohibits the Commission from making or allowing a refund or credit “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.”

Petitioner did not file his return within the statutory time for doing so. The law expressly prohibits granting Petitioner a refund.

The Commission hereby denies Petitioner’s request for a refund based on the untimely 1992 return he filed on February 5, 2005. It is so ordered.

This decision does not limit either 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. A party disagreeing with this decision must request a Formal Hearing on its behalf to preserve its right to a Formal Hearing. Requests filed by an opposing party do not preserve the non-requesting party’s right to a Formal Hearing. Requests for a Formal Hearing must include the appeal number, the opposing party’s name and address, and shall be mailed to the address listed below:

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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.

R. Spencer Robinson
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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner