

05-1160
Refund Request
Signed 10/17/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1160
)		
v.	)	Account No:	#####
)		
TAXPAYER SERVICES	)	Tax Type:	Withholding Tax Refund
DIVISION OF THE UTAH)		
STATE TAX COMMISSION,	)	Tax Year:	2001
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Payroll Clerk

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 September 28, 2005.

At issue is the Petitioner's overpayment of withholding tax to Utah for the 2001 tax year. The Petitioner claims that, due to its employment of a payroll clerk who was unfamiliar with filing payroll taxes, it overpaid by \$\$\$\$ the amount of withholding tax it withheld and was required to remit to Utah for the 2001 tax year. This amount is double the amount that was actually withheld and due, because the payroll clerk not only paid the amounts due on a monthly

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basis, but also repaid the amounts on a quarterly basis. As a result, for the 2001 tax year, the Petitioner remitted 16 checks (12 for the monthly payments and four for the quarterly payments), with the last payment for 2001 made on January 22, 2002.

The Petitioner does not appear to have had any internal or external auditing procedures in place to have discovered the overpayment in the past, but has recently hired an outside payroll company to handle its withholding tax payments. It appears that contact from the Auditing Division of the Tax Commission concerning the lack of annual reconciliation reports alerted the Petitioner of a potential problem concerning 2001 and subsequent years. Upon receiving the contact from Auditing Division, PETITIONER REPRESENTATIVE contacted Taxpayer Services Division to reconcile its records, filings and payments.

Beginning in November 2004, PETITIONER REPRESENTATIVE worked with RESPONDENT REPRESENTATIVE 2 in Taxpayer Services Division (“Division”) to discover how the Petitioner and its related companies filed and paid its Utah withholding tax liabilities and what irregularities might have occurred. Upon discovering that the Petitioner’s payments for the 2001 tax year were double the actual amount withheld and due, the Petitioner requested a refund in writing on March 31, 2005.

The Division denied the refund request on the basis that it came more than three years after January 22, 2002, the last date on which the Petitioner paid one of its 16 payments for the 2001 tax year. Even though its written request was made more than three years after the last

of its 2001 tax year payments, the Petitioner states that the mistake was unintentional and that the payments for which it is requesting a refund were not due.

APPLICABLE LAW

UCA §59-10-529 provides that, for purposes of taxes paid under the Utah Individual Income Tax Act, a limited period of time exists during which a person may request a refund of overpaid taxes, pertinent parts 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.

....

(11) If there has been an overpayment of the tax which is required to be deducted and withheld under Section 59-10-402, a refund shall be made to the employer only to the extent that the amount of overpayment was not deducted and withheld by the employer.

....

(17) In the case of an overpayment of tax by the employer under the withholding provisions of this chapter, a refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld from wages under the provisions of this chapter.

DISCUSSION

The facts in this case are undisputed. In November 2004, the Petitioner contacted the Division for help in resolving problems that may have existed in regards to its withholding tax filings and payments. Upon learning that it had doubly paid its 2001 tax year withholding tax liabilities, the Petitioner submitted a written request for a refund of the overpaid amounts on March 31, 2005. The written refund request occurred more than three years and two months after the last of the payments for the 2001 tax year was remitted on January 22, 2002. Section 59-10-529(7)(b) provides that a refund for an overpayment of tax under these circumstances is not permitted if the request occurs beyond three years of the payment of the tax. Accordingly, because the Petitioner made its refund request more than three years after the tax at issue was paid, the Division was correct to deny the refund request and the Petitioner's appeal of that decision is denied.

While the Commission is aware of and concerned that the Petitioner overpaid its 2001 tax liability by such a great amount, the Commission believes that the Petitioner's lack of accounting audit practices contributed to the amount of time that passed before the Petitioner learned of its overpayment. Regardless, the Commission does not have the authority to waive the statute of limitations concerning such refunds. For these reasons, the Commission sustains the Division's denial of the refund request.

DECISION AND ORDER

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Based upon the foregoing, the Commission sustains the Division's decision to deny the refund request for overpaid withholding taxes for the 2001 tax year and denies the Petitioner's appeal. 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.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

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Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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