

05-1414
Refund Request
Signed 02/13/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1414
v.	)	Account No.	#####
	)	Tax Period:	2000
TAXPAYER SERVICES DIVISION OF	)	Tax Type:	Income Tax
THE UTAH STATE TAX)		
COMMISSION,	)	Judge:	Phan
)		
Respondent.)		

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Assistant Director Taxpayer Services

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on January 26, 2006. The matter had originally been scheduled for a Telephone Status Conference but was converted to the Initial Hearing.

Petitioner is appealing Respondent's denial of a refund request for the tax year 2000. The amount of the re fund at issue is \$\$\$\$ and results from an overpayment of withholding in excess of the tax liability for tax year 2000. Petitioner did not filed his Utah Resident Individual Income Tax Return until July 15, 2005, nine months after the expiration of the three year statute of limitations period for requesting a refund. Respondent denied the refund request because it was made after the applicable statute of limitations.

Petitioner requested that he be allowed a refund due to the unusual circumstances he had to endure. He explained that in 2000 he worked as a subcontractor on a U.S. Army project and due to his place of residence and the nature of the work he did it took him a long time to procure the tax information and the proper forms.

Respondent pointed to the applicable statutes in this matter and argued that the statute of limitations is strictly construed.

After considering the issue in this matter, Respondent is correct in that the applicable limitation period is based on statute and strictly construed. The Commission has consistently upheld the limitations period and Petitioner's circumstances, although unusual, are not more compelling than other taxpayers whose late refund requests have been denied.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state in Utah Code Ann. §59-10-104 as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

State taxable income is defined in Utah Code Ann. §59-10-112 as follows:

"State taxable income" in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114 . . .

Utah law expressly limits the period for claiming a refund of income tax. It indicates in relevant part at Utah Code Sec. 59-10-529 as follows:

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. (Utah Code Ann. Sec. 59-10-529 (7)(a).)

DECISION AND ORDER

The statute of limitations is strictly construed and the statute provides no basis for waiving the statute of limitations or allowing a credit for a late refund request under the circumstances described by Petitioner. Based on the foregoing, Petitioner's request for a refund or credit of taxes paid for the tax year is hereby denied. 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.

Jane Phan
Administrative Law Judge

Appeal No. 05-1414

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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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