

06-0447  
Income Tax Refund Request  
Signed 05/29/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL DECISION**

Appeal No. 06-0447

Tax Type: Income Tax Refund Request  
Tax Period: 2001

Judge: Jensen

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**Presiding:**

Pam Hendrickson, Commissioner  
Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Income Tax Auditing  
RESPONDENT REPRESENTATIVE 2, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 15, 2007. Based upon the evidence and testimony presented at the hearing the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Commission in this matter is the Petitioner's request for a refund for the 2001 tax year.
2. The due date for the 2001 Utah tax return would have been April 15 of the following year, or April

15, 2002. There is no evidence that the Petitioner filed an extension for the 2001 tax return. The longest extension period available, if the Petitioner had filed to request it, would have been until October 15, 2002.

3. The Petitioner first filed her 2001 Utah tax return on March 6, 2006.

4. The 2001 Utah tax return that the Petitioner filed on March 6, 2006 indicated that the Petitioner was entitled to a \$\$\$\$ Utah state tax refund.

5. The Division denied the Petitioner's March 6, 2006 request for a tax refund as being beyond the three-year statute of limitation for requesting a refund for a past tax year.

6. The Petitioner was aware of the due date for her 2001 Utah tax return, but testified that she had been busy with teaching school in two states, moving, the death of her father, helping her mother in STATE, a pet's death, a divorce, and being the victim of a crime that caused her to have to hire an attorney.

APPLICABLE LAW

For Utah tax returns, Utah Code Ann. § 59-10-529(7) provides a time limit for requesting a refund when the amount withheld plus the amount of taxes paid exceeds the amount of the taxes owed:

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.

(c) Beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (7)(a)(i) if:

(i) the time period for filing a claim under Subsection (7)(a) has not expired; and

(ii) the commission and the taxpayer sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

(d) Notwithstanding Subsection (7)(b), beginning on July 1, 1998, the commission shall extend the period for a taxpayer to file a claim under Subsection (7)(b) if:

(i) the three-year period under Subsection (7)(b) has not expired; and

(ii) the commission and the taxpayer sign a written agreement:

(A) authorizing the extension; and

(B) providing for the length of the extension.

#### ANALYSIS

In enacting Utah Code Ann. §59-10-529(7), the Utah legislature has set a three-year limit from the due date of a tax return for a taxpayer to file for a tax refund. Section 59-10-529(7) makes provision for extending this date under some circumstances, but each of these circumstances requires that the taxpayer apply for the extension before the end of the three-year period. This statute makes no provision to waive the three-year deadline.

Applying Section 59-10-529(7), the Petitioner's 2001 tax return had an April 15, 2002 due date. If she has filed under extension, that due date would have been October 15, 2002. Thus, the deadline for filing a request for refund would have expired April 15, 2005. Even if the Petitioner had filed for an extension, the three-year deadline would have expired on October 15, 2005. The March 6, 2006 filing by the Petitioner is

after both April 15, 2005 and October 15, 2005.

CONCLUSIONS OF LAW

1. The Petitioner's March 6, 2006 filing for a refund is beyond the three-year statute of limitation for requesting a tax refund, precluding a refund by the Respondent to the Petitioner.

2. There is no legal basis to extend the three-year statute of limitation as provided in Utah Code Ann. § 59-10-529(7).

3. There is no statutory provision providing for the waiver of the three-year statute of limitation.

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Respondent's denial of a refund for tax year 2001. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2007.

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Clinton Jensen  
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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson

D'Arcy Dixon Pignanelli

Appeal No. 06-0447

Commissioner

Commissioner

**Notice:** Failure to pay within thirty days the balance that results from this order may result in additional penalties and interest. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. & 63-46b-13 et seq.

*CDJ/06-0447.fof*