

06-1481  
Income Tax  
Signed 07/23/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)	Appeal No.	06-1481
	)		
v.	)	Account No.	#####
	)		
AUDITING DIVISION OF THE	)	Tax Type:	Income Tax
UTAH STATE TAX COMMISSION,	)		
	)	Periods:	1999
Respondent.	)		
	)	Judge:	Robinson

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**Presiding:**

R. Spencer Robinson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

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 February 13, 2007. Following an audit in 2006, which revealed no 1999 Utah state income tax return for Petitioner, he filed a 1999 return and requested a refund. Respondent declined to grant the refund. Petitioner appealed.

APPLICABLE LAW

Utah law 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 §59-10-514(1). State law also provides that the Commission

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

UCA §59-10-529(7)(a) provides that a taxpayer has a limited period to request a refund of excess tax withheld and remitted by a taxpayer's employer, 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.

. . . 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.

UCA §59-10-543 states, in pertinent part, "In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . ."

#### DISCUSSION

A 2003 federal refund triggered an audit, during which Respondent discovered it had no 1999 state income tax return from Petitioner. It notified Petitioner, who then filed a state income tax return for the 1999 tax year, requesting a refund of \$\$\$\$\$. Respondent received that return on August 23, 2006. In a letter dated September 21, 2006, Respondent said, as a matter of law, it was prohibited from granting the refund. Petitioner submitted a Petition for Redetermination, received in the Appeals Unit on November 30, 2006.

Petitioner has the burden of proof in this case. He must show he is entitled, as a matter of law, to the refund he seeks based on his 1999 return. Pursuant to Sections 59-10-514(1) and 59-10-516(1), a 1999 Utah individual income tax return was originally due on April 15, 2000. A six-month extension, if one were requested, would have extended the due date to October 15, 2000. Section 59-10-529(7)(a)(i) provides that a refund may be issued pursuant to a return if it is filed within three years of its due date.

The Petitioner submitted his 1999 tax return on August 23, 2006, which is more than three years beyond the statutory deadline dates. Accordingly, the Petitioner did not file his 1999 Utah tax return within the permitted time to receive a refund pursuant to subsection 529(7)(a)(i).

DECISION AND ORDER

Based upon the foregoing, the Commission denies PETITIONER'S appeal and sustains the Division's denial of his refund request concerning the 1999 tax year. 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.

Appeal No. 06-1481

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

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R. Spencer Robinson  
Administrative Law Judge

Appeal No. 06-1481

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  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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