

07-0163  
Individual Income Tax / Refund  
Signed 04/23/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)		
	)	<b>ORDER</b>	
Petitioners,	)		
	)	Appeal No.	07-0163
v.	)		
	)	Account No:	#####
TAXPAYER SERVICES	)	Tax Type:	Individual Income Tax / Refund
DIVISION OF THE UTAH	)	Tax Year:	1987
STATE TAX COMMISSION,	)		
	)	Judge:	Chapman
Respondent.	)		

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**Presiding:**  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE, Representative  
                  PETITIONER 1  
                  PETITIONER 2  
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 April 18, 2007.

At issue is the Petitioners' requested refund of \$\$\$\$ in overpaid income taxes for the 1987 tax year, which the Taxpayer Services Division ("Division") denied on the basis that the refund request was made beyond the applicable statute of limitations.

APPLICABLE LAW

Section 59-10-529 provides statute of limitations and other restrictions concerning the refund of overpaid individual income tax, as follows in pertinent part:

....

(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.

....

### DISCUSSION

The Petitioners are long-term residents of Utah whose 1987 income tax return was not filed until October 24, 2006. On December 19, 1989, Auditing Division issued a non-filing audit assessment for the 1987 tax year, which the Petitioners did not appeal. Over the course of the subsequent years, Utah tax refunds that the Petitioners would have otherwise received, totaling \$\$\$\$\$, were applied to the 1987 assessment of tax and interest that continued to accrue.

The 1987 return that was filed on October 24, 2006 showed that the Petitioners' actual tax deficiency for the 1987 tax year was \$\$\$\$\$. When penalties and interest are added to the actual amount of tax that was due, the Petitioners' 1987 tax liability is \$\$\$\$\$, significantly less than the \$\$\$\$\$ that had been collected throughout the intervening years. As a result, the Petitioners have overpaid their 1987 tax liability by \$\$\$\$\$.

The Division determined that \$\$\$\$\$ of the \$\$\$\$\$ overpayment had been collected in 2004 or later and, as a result, was eligible for refund under the statute of limitation provided in Section 59-10-529(7)(b). The Division refunded this amount to the Petitioners. However, the Division denied a refund for the remaining \$\$\$\$\$ of the overpayment, on the basis that these amounts had been paid prior to 2003 and, as a result, were not eligible for refund under the statute of limitation.

For the Petitioner, PETITIONER REPRESENTATIVE explains that PETITIONER 1 cannot read and would not have understood the mailings that he received concerning the audit assessment for the 1987 tax year and the subsequent collection actions taken by the Commission. PETITIONER REPRESENTATIVE also explains that COMPANY A prepared the Petitioners' 1987 federal and state returns and that the federal return was timely received by the Internal Revenue Service, suggesting that the state return may have been lost in the mail in 1988. In addition, PETITIONER REPRESENTATIVE argues that the statute of limitation should start running when the Utah tax return is filed, in this case October 24, 2006. To do otherwise, he argues, would deny the Petitioners the full amount of their overpayment, based on what he considers a technicality.

The Petitioners did not request a refund of overpaid taxes for the 1987 tax year until they filed a tax return on October 24, 2006. It is uncontested that \$\$\$\$\$ of the overpayment received for the 1987 tax year was paid prior to 2003. Section 59-10-529(7)(b) bars the Commission from issuing a refund of income tax if three years or more have expired since the tax was paid. Accordingly, any payment received prior to October 24, 2003 may not be refunded. Because the \$\$\$\$\$ at issue was paid more than three years prior to October 24, 2006, the Commission finds that the Division correctly denied the refund of this amount.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's denial of the refund of \$\$\$\$\$ for the 1987 tax year. Accordingly, the Petitioners' appeal is 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:

Appeal No. 07-0163

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 \_\_\_\_\_, 2007.

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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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

*KRC/07-0163.int*