

09-0037
REFUND REQUEST
07-06-2009

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-0037</p> <p>Account No. ##### Tax Type: Income Tax - Refund Request Tax Period: 2003 and 2004</p> <p>Judge: Nielson-Larios</p>
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, *pro se*
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, 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 Sec. 59-1-502.5, on February 26, 2009. Petitioner ("Taxpayer") is appealing denial of his refund requests by Respondent ("Division") for the tax years of 2003 and 2004. The amounts of the refunds at issue are \$\$\$\$ for 2003 and \$\$\$\$ for 2004 and result from overpayments of withholding during the tax years. Taxpayer did not file his Utah Resident Individual Income Tax Returns until November 13, 2008 for both years, which date is after the expiration dates of October 15, 2007 for 2003 and October 15, 2008 for 2004. These expiration dates are based on the three-year statute of limitations for requesting a refund. The Division denied the refund requests because they were made after the applicable statute of limitations.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Ann. § 59-10-104(1) (2003 and 2004), 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 (2003 and 2004), 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 Ann. § 59-10-529(7)(a) (2008) 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.

DISCUSSION

The Taxpayer admitted that he filed after the deadline. Also, he provided that he did not have any agreement with the Tax Commission allowing him to file late. He explained that he deliberately filed late for 2003 and 2004 because he had been involved in a bad project that created tax liens, judgments, and garnishments against him. During earlier years, he did not want the refund money to be in his bank account because of the liens and garnishments. He explained that he paid off the large tax lien and then filed his returns. If he had filed the returns within the three-year time limits, he would have filed during the time of his problems and had to give the refund money to someone else. The Taxpayer asks the Commission to allow his refund requests to the extent of the Commission's discretion.

In response, the Division asserted that under § 59-10-529(7)(a)(i) the statutory deadline for Taxpayer's refund request was October 15, 2007 for 2003 and October 15, 2008 for 2004. The Division stated, however, that the Taxpayer's returns posted on November 13, 2008, after the deadlines. The Division provided that it sympathizes with the Taxpayer's situation, but it has no discretion under the statute to extend the statute of limitations past the three-year deadline. The Division asserted that the statute of limitations protects both the State and the taxpayers; namely, the statute protects the State from late refund requests and protects taxpayers from the State's late audit assessments.

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In this case, § 59-10-529(7)(a)(i) provides that refund requests must be made within three years from the due date of the return plus all possible extensions. This statute of limitations is strictly construed. For Taxpayer's 2003 and 2004 returns, those deadlines were October 15, 2007 and October 15, 2008, respectively. However, Taxpayer filed after that date, on November 13, 2008. The events described by Petitioner provide no basis for waiving the statute of limitations or allowing a credit for the refund.

DECISION AND ORDER

Based on the foregoing, Petitioner's requests for refunds or credits of taxes paid for the tax years of 2003 and 2004 are 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 _____, 2009.

Aimee Nielson-Larios
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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson

D'Arcy Dixon Pignanelli

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Commissioner

Commissioner

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