

09-1601
REFUND REQUEST
SIGNED 07-09-2009

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-1601

Account No. #####

Tax Type: Income Tax

Tax Year(s): 2003-2005

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Pastor

For Respondent: RESPONDENT REP 1, Assistant Attorney General

RESPONDENT REP 2, Assistant Director 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 June 22, 2009.

Petitioner is appealing Respondent's denial of a refund request for tax years 2003 through 2005. The amount of the refunds for these years total \$\$\$\$\$. The refund request was for sales tax Petitioner had paid on purchases in the conduct of its regular religious or charitable functions. The Division had already issued refunds to the Petitioner for the years 2006 through 2008 totaling \$\$\$\$\$. The reason the Division denied the issuance for the 2003 through 2005 years was that the refund request had been filed after the three-year statute of limitations had expired. The statute of limitations is set at Utah Code Sec. 59-12-110(2)(b). The Petitioner had not filed a request for refund until February 6, 2009.

The representative for Petitioner explained that he did understand that the statute of limitations was set by law, but asked if there could be an exemption granted due to the circumstances in this matter. First, Petitioner was a charitable organization and he explained that a refund to the organization would benefit those in need that the organization helps. Also, this was currently very important due to difficult economic circumstances. Second he explained why the refunds requests had been late. On July 14, 1997, Petitioner had filed refund requests for 1995, 1996 and part of 1997. The Division issued these requested refunds to the Petitioner. On January 14, 2000, Petitioner submitted a refund request for the remainder of 1997, 1998 and 1999, which totaled \$\$\$\$\$. In this request, Petitioner had reminded the Division that it had previously requested refunds for 1995, 1996 and part of 1997. However, when the Division issued the refund, instead of the \$\$\$\$\$ requested they sent to Petitioner a refund of \$\$\$\$\$, an overpayment of \$\$\$\$\$, which apparently was calculated by sending again the refund for 1995 through the first part of 1997.

Petitioner's representatives eventually recognized this was an overpayment and did not want to spend more than their fair share of the tax money. They thought the best way to handle this was to not request a refund for 2000, 2001 and 2003 until the amount of potential refunds would equal the overpayment. However, in the meantime, Petitioner's accountant had retired and Petitioner's other employees and representatives lost track of the fact that they should be requesting refunds of sales taxes paid on items purchased for use in performance of the charitable operations. It was not until 2009 that it came again to the representatives for Petitioner's attention that they could request these refunds.

The Division's representatives explained that they did not dispute the facts as explained by Petitioner's representative. However, they stated that the statute of limitations was set at Utah Code Sec. 59-12-110(2)(b), and the refund requests for 2003 through 2005 were beyond the statute of limitations. Therefore, the refunds could not be issued.

APPLICABLE LAW

Refund procedures are regulated by statute. Utah Code Sec. 59-10-110(2) provides the following:

- (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission erroneously receives, collects, or computes any tax, penalty, or interest, including an overpayment described in Subsection (1)(c), the commission shall: (i) credit the amount of tax, penalty, or interest paid by the taxpayer against any amounts of tax, penalties, or interest the taxpayer owes; and (ii) refund any balance to the taxpayer or the taxpayer's successors, administrators, executors, or assigns.
- (b) Except as provided in Subsections (2)(c) and (d) or Section 19-2-124, a taxpayer shall file a claim with the commission to obtain a refund or credit under this Subsection (2) within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.

DECISION AND ORDER

The statute of limitations is strictly construed and there is no basis provided that would allow the Tax Commission to extend the deadline. Although the Commission is sympathetic to the fact that Petitioner is a charitable organization and proceeds from the refund could be used for charitable activities, this and the circumstances that led to Petitioner missing the deadline, do not provide basis for waiving the statute of limitations for the refund.

Based on the foregoing, Petitioner's request for sales tax refunds for the years 2003 through 2005 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:

Appeal No. 09-1601

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.

Jane Phan
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
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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