

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 09-2332</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2004</p> <p>Judge: Chapman</p>
--	--

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer
For Respondent: RESPONDENT REP 1, Assistant Attorney General
RESPONDENT REP 2, 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 September 9, 2009.

On May 13, 2009, PETITIONER (“Petitioner” or “taxpayer”) filed a 2004 Utah individual income tax return on which she claimed a refund of taxes in the amount of \$\$\$\$\$. On June 24, 2009, Taxpayer Services Division (“Division”) issued a Notice of Expired Refund or Credit, in which it informed the taxpayer that “[y]our time to claim a refund or credit for Individual Income Tax period ending Dec 2004 has expired. Utah law limits the time allowed to claim a refund or credit to the later of three years from the due date of the return, plus the extension period, or two years from the payment date.”

The taxpayer admits that she did not file a 2004 Utah income tax return until May 13, 2009 and that the refund at issue concerns withholding tax withheld and remitted by a Utah employer in 2004 or 2005. However, she asks the Commission to grant the refund because she was unable to complete her federal

Appeal No. 09-2332

and state returns for the 2004 tax year because she had relocated to England to attend graduate school and because she did not have all information needed to file the returns. For these reasons, she asks the Commission to reverse the Division's action and refund the \$\$\$\$ overpayment shown on the 2004 Utah tax return.

The Division claims that the period for claiming a refund or credit on individual income taxes for the 2004 tax year expired on October 15, 2008. Because the refund request was submitted on May 13, 2009, approximately seven months after the period allowed, the Division asks the Commission to sustain its action and deny the taxpayer's refund request.

APPLICABLE LAW

Utah Code Ann. §59-10-514 provides for the filing of a Utah individual income tax return, as follows in pertinent part:

- (1)
 - (a) an individual income tax return filed for a tax imposed in accordance with Part 1, Determination and Reporting of Tax Liability and Information, shall be filed with the commission:
 - (i) except as provided in Subsection (1)(a)(ii), on or before the 15th day of the fourth month following the last day of the taxpayer's taxable year; .
-

UCA §59-10-516(1) provides that the Commission shall allow an extension of time for filing an individual income tax return, as follows in pertinent part:

- (1) (a) The commission shall allow a taxpayer an extension of time for filing returns.
 - (b) The extension under Subsection (1)(a) may not exceed six months.
-

UCA §59-1-1410(8) limits the period during which a taxpayer may request a refund or credit of overpaid taxes, as follows in pertinent part:

- (8) (a) Except as provided in Subsection (8)(b) or Section 19-2-124, 59-7-522, 59-10-529, or 59-12-110, the commission may not make a credit or refund unless a person files a claim with the commission within the later of:

- (i) three years from the due date of the return, including the period of any extension of time provided in statute for filing the return; or
 - (ii) two years from the date the tax was paid.
- (b) The commission shall extend the time period for a person to file a claim under Subsection (8)(a) if:
- (i) the time period described in Subsection (8)(a) has not expired; and
 - (ii) the commission and the person sign a written agreement:
 - (A) authorizing the extension; and
 - (B) providing for the length of the extension.

DISCUSSION

The taxpayer's employer withheld Utah individual income tax from income the taxpayer earned in 2004. The employer remitted the tax it withheld to the Commission during 2004 and in early 2005. The amount of taxes withheld and remitted exceeded the taxpayer's 2004 Utah income tax liability by \$\$\$\$\$, as shown on the 2004 Utah income tax return that she filed on May 13, 2009. The taxpayer has asked for a refund of these overpaid taxes.

Section 59-1-1410(8)(a) provides that a taxpayer is entitled to overpaid taxes that were withheld and remitted by the taxpayer's employer within three years from the due date of the return (including any statutory extension) or within two years from the date the tax was paid.

The tax was paid in 2004 and early 2005. Two years from the last payment in early 2005 would be early 2007. The May 13, 2009 refund request was submitted nearly four years after the last payment of 2004 taxes. As a result, the overpayment can only be refunded if the refund request was made within three years of the due date of the return, including the period of any statutory extension of time to file the return.

Pursuant to Sections 59-10-514(1)(a) and 59-10-516(1), a 2004 Utah individual income tax return was due at the end of six months after April 15th, 2005, which results in a due date of October 15, 2005. Three years after this date is October 15, 2008. Pursuant to Section 59-1-1410(8)(a), the taxpayer's refund request is untimely if filed after October 15, 2008. The taxpayer's May 13, 2009 refund request occurred

Appeal No. 09-2332

approximately seven months after the last date permitted under Utah law. Accordingly, the Commission finds that it is not authorized to refund the taxpayer's overpayment of taxes for the 2004 tax year.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action and denies the taxpayer's refund request concerning individual income taxes paid for the 2004 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.

DATED this _____ day of _____, 2009.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this _____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Appeal No. 09-2332

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

KRC/09-2332.int