

09-2960  
INCOME  
TAX YEAR: 2005  
SIGNED: 04-19-2010  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER 1 & PETITIONER 2,                           | <b>ORDER GRANTING PETITIONERS'<br/>REQUEST FOR RECONSIDERATION</b> |
| Petitioners,   |  |
| v.   | Appeal No. 09-2960   |
| AUDITING DIVISION OF THE<br>UTAH STATE TAX COMMISSION, | Account No. #####<br>Tax Type: Income Tax<br>Tax Years: 2005       |
| Respondent.  | Judge: Chapman   |

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STATEMENT OF CASE

This matter came before the Utah State Tax Commission upon a Request for Reconsideration, which PETITIONER 1 and PETITIONER 2 (“Petitioners” or “taxpayers”) timely submitted on March 22, 2010. The taxpayers submitted the Request for Reconsideration in response to the Commission’s Amended Order Granting [Auditing Division’s] Motion to Dismiss, which was issued on March 18, 2010 (“Order to Dismiss”).

The Division’s Motion to Dismiss was granted because the Division issued a Statutory Notice to the taxpayers in which it assessed additional taxes for the 2005 tax year, and the taxpayers did not timely file a petition to contest the assessment. In the Order to Dismiss, however, the Commission informed the taxpayers that they had “an additional remedy” to object to the assessment by paying the tax and then filing a claim for a refund within two years of that payment. In their Request for Reconsideration, the taxpayers state that on February 24, 2010, they paid the additional taxes assessed by the Division for the 2005 tax year and are requesting a refund of those taxes.

APPLICABLE LAW

1. Utah Code Ann. §63G-4-302(1)(a) provides that a party receiving a final decision from the Commission may request reconsideration, as follows:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63G-4-301 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

2. Utah Administrative Rule R861-1A-29(B) provides that “[w]ithin 20 days after the date that an order . . . is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or the discovery of new evidence.”

3. Certain taxpayers who have not previously filed timely appeals may object to a final assessment by paying the tax and then filing a claim for a refund as provided in the statutes. UCA §59-1-501(7). The Tax Commission will either grant or deny the claim for a refund. If the Tax Commission denies the claim, then a taxpayer may appeal the denial by filing a petition with the commission within 30 days of the denial. UCA §59-1-1410(9). A taxpayer’s claim of refund must meet the general deadline for all claims of refunds, which for income tax cases is generally two years from the date of payment. UCA §59-1-1410(8)(a)(ii).

#### DISCUSSION

The taxpayers have not alleged any mistake of fact or law to show that the Commission’s Order to Dismiss was incorrect. As a result, the taxpayers’ Request for Reconsideration would, ordinarily, be denied. However, as stated in the Order to Dismiss, the taxpayers are provided an alternative statutory remedy to contest an assessment that they did not timely appeal. Specifically, the taxpayers are allowed to contest the assessment by paying it and requesting a refund within two years of the payment. The taxpayers paid the assessment at issue in this appeal on February 28, 2010 and, in their Request for Reconsideration, have requested a refund within a month of that payment.

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Under these unique circumstances, the Commission will treat the taxpayers' Request for Reconsideration as a request for refund of the assessment they paid on February 24, 2010. As the request for refund has not yet been denied, a petition to the Commission is technically premature.<sup>1</sup> However, the Commission believes it is more efficient to hold this appeal open until the appropriate division has taken action on the refund request. In case the appropriate division denies the refund request, this appeal will already be open for the refund request issue to come before the Commission for a hearing. To this extent, the taxpayers' Request for Reconsideration is granted, and a telephone status conference will be scheduled with the parties to discuss the refund request.

DECISION AND ORDER

Based upon the foregoing, it is the decision and order of the Utah State Tax Commission that the taxpayers' Request for Reconsideration is granted and treated as a refund request. A telephone status conference will be scheduled with the parties to discuss how to proceed in this matter, notice of which will be mailed separately. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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<sup>1</sup> Upon receipt of a refund request of taxes paid within two years, the ordinary process would involve the appropriate division reviewing the request and either granting or denying the request. If the request were denied, the taxpayer could appeal the denial and a new appeal would be opened.