

09-3800  
INCOME TAX  
TAX YEAR: #####  
SIGNED: 01-11-2011

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioners,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 09-3800</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2004</p> <p>Judge: Marshall</p>
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**Presiding:**

Marc Johnson, Commissioner  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*  
For Respondent: RESPONDENT REP. 1, Assistant Attorney General  
RESPONDENT REP. 2, Assistant Attorney General  
RESPONDENT REP. 3, Taxpayer Services Division  
RESPONDENT REP. 4, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 14, 2010. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Taxpayer had a third party prepare his return for the 2004 tax year, which was timely filed on April 15, 2005. According to the return filed, Taxpayer owed additional tax in the amount of \$\$\$\$\$, which has been paid.
2. Taxpayer began preparing his own tax returns starting with the 2005 tax year and testified that he came to realize he needed to file an amended return for the 2004 tax year.

3. Taxpayer testified that he was working with a former Tax Commission employee named EMPLOYEE, and that he faxed a copy of his amended return to EMPLOYEE on September 25, 2008.
4. A copy of the fax coversheet and amended return were submitted. (Exhibit 1).
5. Taxpayer did not have proof of delivery confirmation for the amended return he asserts was faxed to the Commission on September 25, 2008.
6. Taxpayer testified that sometime in November 2008 he spoke with someone at the Tax Commission named John who told him he needed to resubmit the amended return, which he did on or about December 4, 2008.
7. For the Division, RESPONDENT REP. 4 testified that the Tax Commission had no record of an amended return having been received prior to December 2008.
8. Taxpayer met with RESPONDENT REP. 4 in December 2009, and they completed the amended return that had been submitted in December 2008. The completed return showed Taxpayer had an overpayment of tax in the amount of \$\$\$\$\$. RESPONDENT REP. 4 informed Taxpayer that the return was filed beyond the statute of limitations and he would not be entitled to a refund.
9. On or about December 29, 2009, the Taxpayer submitted a letter to RESPONDENT REP. 4 asking for consideration on his refund request for the 2004 tax year. That same day, the Division issued a Notice of Expired Refund or Credit. (Exhibits 2 and 3).

#### APPLICABLE LAW

Utah Code Ann. §59-10-514<sup>1</sup> sets the filing deadline for individual income tax returns set forth below, in relevant part:

- (1) Except as provided in Subsection (3), a tax return required by this chapter shall be filed with the commission:
  - (a) except as provided in Subsection (1)(b), on or before the 15<sup>th</sup> day of the fourth month following the last day of the taxpayer's taxable year; or
  - (b) notwithstanding Subsection (1)(a), on or before the day on which the return is due under the Internal Revenue Code if:
    - (i) the return is an electronically filed individual income tax return; and
    - (ii) the Internal Revenue Code provides a due date for filing the electronically filed individual income tax return that is different from the due date described in Subsection (1)(a).

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<sup>1</sup> The statute cited regarding the filing deadline was effective as of 2004, the tax year at issue.

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A six-month extension period for the filing of individual income tax returns is provided for in Utah Code Ann. §59-10-516(1), below:

- (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.

The time limit for making a claim for refund is set forth in Utah Code Ann. §59-1-1410<sup>2</sup>, below 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.

The burden of proof is on the petitioner in proceedings before the Commission, with limited exceptions, as set forth in Utah Code Ann. §59-1-1417, below:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
  - (a) required to be reported; and
  - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

#### CONCLUSIONS OF LAW

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<sup>2</sup> This subsection, which became effective in 2009, contains similar restrictions concerning refunds or credits that were previously found in Utah Code Ann. §59-10-529(7).

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In enacting Utah Code Ann. §59-1-1410, the Utah legislature has set a three-year limit from the due date of a tax return for a taxpayer to file for a tax refund. Provisions are made extending this date under some circumstances, but each of these circumstances requires that the taxpayer apply for the extension before the end of the three-year period. This statute makes no provision to waive the three-year deadline. Taxpayer's 2004 return had an April 15, 2005 due date. If it was filed within the extension period, the return would have had an October 15, 2005 due date. Thus, the deadline for filing a request for refund would have expired on October 15<sup>th</sup> of 2008. Taxpayer asserts he faxed an amended return to a former Tax Commission employee on September 15, 2008. Though a copy of the fax coversheet was submitted, there was no delivery confirmation. The Division has no record of an amended return being filed by the Taxpayer until December 2008, which is beyond the three-year statute of limitations for requesting a refund. The Taxpayer has the burden of proof in this matter, and has not shown that the amended return for the 2004 tax year was submitted to the Tax Commission prior to October 15, 2008.

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Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's denial of the Taxpayer's refund request concerning individual income taxes paid for the 2004 tax year. 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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**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63G-4-401 et seq.

*JM/09-3800,fof*