

10-0050  
TAX TYPE: INCOME TAX REFUND REQUEST  
TAX YEAR: 2005  
DATE SIGNED: 8-19-2010  
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: M. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 &amp; TAXPAYER-2,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-0050</p> <p>Tax Type: Income Tax Refund Request Tax Period: 2005</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER'S, Representative  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT-1, Taxpayer Services Division  
RESPONDENT-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 April 13, 2010. At issue is the denial by the Respondent ("Division") of Petitioner's ("Taxpayer") request for a refund of the overpayment of individual income tax for the 2005 tax year. The Division denied the refund request on the grounds that it was made after the applicable statute of limitations.

APPLICABLE LAW

The time limit for making a claim for refund is set forth in Utah Code Ann. §59-1-1410, 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.

Utah Code Ann. §59-1-1410 (2009).

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).

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.

#### DISCUSSION

Taxpayers filed an individual income tax return for the 2005 tax year on December 2, 2009, claiming a refund in the amount of \$\$\$\$\$. Taxpayer asked to have the refund amount credited to the 2006 tax year, and the 2006 payment to apply to the 2007 tax year. Taxpayer does not argue that the refund request was made within three years of the due date of the return. Rather, the Taxpayer believes

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<sup>1</sup> The statute cited regarding the filing deadline was effective as of 2005, the tax year at issue.

the refund request is timely on the grounds that the request is made within two years from the date the tax was paid. The claimed refund results from a Mineral Production Withholding Credit in the amount of \$\$\$\$\$.

Taxpayer's representative proffered that on September 30, 2009, BUSINESS-1 filed its 2005 Utah Partnership Return of income, reflecting Utah source income and mineral production withholding. In November of 2009, the Taxpayers received Forms TC-65 from BUSINESS-1 reflecting the Taxpayers' share of Utah source income and mineral production withholding. Taxpayer's representative argued Taxpayers were unaware that they had Utah sourced income for the 2005 tax year until they received the TC-65 in November of 2009, and that Taxpayers filed their return within two weeks. Taxpayer's representative further argued that the Taxpayers should be treated as having "paid" the mineral production withholding on September 30, 2009. He maintains that when BUSINESS-1 filed its return, the mineral production withholding payments were then credited to Taxpayers' individual income tax account, and that is the date on which the tax should be considered "paid".

Taxpayers submitted with their Petition for Redetermination copies of the Notice of Expired Refund or Credit dated December 14, 2009; Taxpayers' 2005 Utah Individual Income Tax Return; the TC-65 received by the Taxpayers in November of 2009; Form K-1 for BUSINESS-2 that was received by BUSINESS-1; and a Statement of Utah Tax Withheld on Mineral Production indicating BUSINESS-3 of Utah as the payer. Taxpayer's representative stated that BUSINESS-1 is a partner in BUSINESS-2; however, he could not definitively stated that BUSINESS-3 and BUSINESS-2 were related entities. When asked whether BUSINESS-1 paid the tax in 2009, the Taxpayer's representative answered that there is no definition of "paid" in the code, but stated that there were no additional funds remitted by BUSINESS-1 in 2009.

The Division's representative stated that under Utah Code Ann. §59-1-1410(8)(a), a taxpayer may not make a claim for refund or credit more than three years after the due date of the return, plus any extension period; or two years from the date the tax was paid. He stated that there does not seem to be a factual dispute as to whether the return filed within the time period allowed to claim a refund; rather, the issue is when the tax was "paid". It is the Division's position that payment occurred when the funds were deposited with the State of Utah, which they believe would have been made either in 2005 or 2006 by BUSINESS-3. The Division's representative proffered that BUSINESS-3 had an account in place in 2005, and that they believe the mineral withholding was timely deposited with the State.

In enacting Utah Code Ann. §59-1-1410, the Utah legislature has set a limit for a taxpayer to file a claim for a tax refund or credit. It is not contested that Taxpayer did not file a return within three years of the due date of the return. Rather, the Taxpayer is contending that they did file a claim for refund within two years of the date the tax was paid. Taxpayer contends that the tax was “paid” on September 30, 2009, the date that BUSINESS-1 filed its 2005 Utah Partnership Return of income. The claimed refund results from a Mineral Production Withholding Credit. This a refundable credit allowed under Utah Code Ann. §59-6-102 on amounts required to be withheld by a producer. The producer is required to deduct and withhold the tax, file returns, and remit payment pursuant to Utah Code Ann. §59-6-103. Further, Utah Code Ann. §59-6-104 imposes on the producer the same provisions applicable to the withholding of tax by employers relating to records, penalties, interest, deficiencies, overpayments, refunds, assessments, venue, and civil and criminal penalties. The Mineral Production Withholding Credit is akin to having withholding amounts on wages earned, that are credited against a taxpayer’s liability. These amounts were paid by BUSINESS-3, the Division proffered it was their belief that those payments were made timely, which under the statute would have been in 2005 and 2006. The only reasonable interpretation of when tax is “paid” is when it is received by the State. To consider tax “paid” when it is credited to the books of individual taxpayers treats taxpayers unequally. Based on the evidence before the Commission, the Taxpayer did not make a payment of tax within two years of the date the refund request was made.

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Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Division’s denial of a refund for the 2005 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 either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such request shall be mailed to the address listed below and must include the Petitioner’s name, address, and appeal number:

Appeal No. 10-0050

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 \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

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