

10-0284
CORPORATE FRANCHISE TAX
SIGNED 08-26-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 10-0284

Tax Type: Corporate Income

Tax Year(s): 2003 & 2004

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., CPA

For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Assistant Director Taxpayer Services Division
RESPONDENT REP. 3, 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 May 18, 2010. Petitioner (the "Taxpayer") is appealing Respondent's (the "Division's") denial of refunds of mineral production royalty withholding for tax years 2003 and 2004. The Taxpayer had claimed the refunds by filing amended Utah S Corporation-Franchise or Income Tax Returns on December 9, 2009. The amount of the refund claimed on the amended 2003 return was \$\$\$\$ and the refund claimed on the amended 2004 return was \$\$\$\$\$. The Division denied the refund by notice dated January 28, 2010. The reason given by the Division for denial was that the time to claim a refund or credit for the 2003 & 2004 tax years had expired.

APPLICABLE LAW

Refund procedures are regulated by statute. Utah Code Sec. 59-1-1410(8) provides the following:

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 (i) two years from the date the tax was paid.

The laws regarding mineral production tax withholding are set out at Title 59, Chapter 6, Sec. 59-6-102 in pertinent part provides:

(1) Except as provided in Subsection (2), each producer shall deduct and withhold from each payment being made to any person in respect to production of minerals in this state, but not including that to which the produced is entitled, an amount equal to 5% of the amount which would have otherwise been payable to the person entitled to the payment.

(3) A claimant, estate, or trust that files a tax return with the commission may claim a refundable tax credit against the tax reflected on the tax return for the amount withheld by the producer under Subsection (1).

The Mineral Production Tax Withholding Chapter also provides at Utah Code Sec. 59-6-104(1) the following:

To the extent that following are consistent with this chapter, the commission shall administer this chapter in accordance with: (a) Chapter 1, General Taxation Policies; and (b) Chapter 10, Part 4, Withholding of Tax.

DISCUSSION

The representative for the Taxpayer explained that the Taxpayer had overlooked the fact that mineral producers, who were sending the mineral production payments to the Taxpayer, were withholding taxes on the payments. This was the reason the credits had not been previously claimed. The Taxpayer does not dispute that this claim for refund of the withholding credits had been submitted beyond the general three year statute of limitations set out at Utah Code Sec. 59-1-1410. However, it was the Taxpayer's position that that this section did not govern in this case, that the applicable statute of limitations was the six year provision set out at Utah Code Section 59-5-114(2). The Taxpayer's representative argued that 59-1-1410 was the general statute of limitations, and 59-5-114(2) was the specific provision relating to mineral production.

The Division argued that the applicable statute of limitations was the three year period provided for in Utah Code Sec. 59-1-1410 and that Sec. 59-5-114(2) applied only to severance tax.

Upon review of the statutory provisions cited by the parties, the Division is correct that the applicable statute of limitations is the three year period provided at Sec. 59-1-1410. Chapter 5 Severance Tax on Oil, Gas, and Mining are separate statutory provisions that provide a severance tax on oil, gas and other mineral mining at various percentage rates. A specific limitations period is provided in that chapter at 59-5-114(2), which allows a six year period to claim a credit or refund of the severance tax. However, in this matter before the Commission the issue is not governed by Chapter 5, it is under Chapter 6, Mineral Production Tax Withholding. Utah Code Sec. 59-6-102(3) allows a claimant to claim a refundable tax credit against the tax reflected on the tax return for the amount withheld by the producer. Section 59-6-104(1) of that chapter specifically provides that the chapter is to be administered in accordance with Chapter 1, General Taxation Policies. It is in Chapter 1 that the general limitations period for claiming a refund or credit, at 59-1-1410, is found. There is no reference in Chapter 6 to a different limitations period or that incorporates the extended limitation period provided under Sec. 59-5-114.

Therefore, the express language of Utah Code Sec. 59-6-104 incorporates the provisions of Chapter 1, and the applicable limitations period for refund of the mineral productions withholding credit is the three year period provided at 59-1-1410.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Taxpayer's requests for refund for the 2003 and 2004 tax years are 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:

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.

Appeal No. 10-0284

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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