

11-115
INCOME
TAX YEAR: 2005
SIGNED: 05-31-2011

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 11-115

Account No. #####

Tax Type: Income Tax

Tax Years: 2005

Judge: Chapman

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

RESPONDENT REP. 3, 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 May 17, 2011.

PETITIONER (“Petitioner” or “taxpayer”) has filed a 2005 Utah individual income tax return on which she claimed a refund of \$\$\$\$ for the 2005 tax year. Taxpayer Services Division (“Division”) received the return on September 20, 2010. On November 18, 2010, the Division issued a Notice of Expired Refund or Credit (“Notice”), in which it informed the taxpayer that the time to claim a refund or credit for the 2005 tax year had expired. The Notice informed the taxpayer that “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.”

Appeal No. 11-115

The Division states that the period for claiming a refund or credit of taxes for the 2005 tax year expired on October 15, 2009 and asks the Commission to sustain its action to deny the refund request. The taxpayer explains that she is raising her daughter on her own and has not received any child support in seven years. She also explains that her daughter is frequently ill and that she had lost some of her tax papers when moving from home to home. For these reasons and given the fact that she was also the caregiver for her stepfather who died in 2005, the taxpayer explained that she was unable to file her 2005 return until September 2010. She explains that she and her daughter are in need of the requested refund and asks the Commission to refund it to her.

APPLICABLE LAW

UCA §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.
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UCA §59-1-1410(8)¹ 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:

¹ 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).

Appeal No. 11-115

- (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.

UCA §59-1-1417 provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

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 mailed the notice of deficiency.

DISCUSSION

Section 59-1-1410(8)(a) provides that a taxpayer is entitled to receive a refund of overpaid taxes 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. For the 2005 tax year at issue, all taxes were withheld and paid on or before April 15, 2006. Two years from this date would be April 15, 2008. The due date of a 2005 return, with extensions, is October 15, 2006. A request for a refund or credit of overpaid taxes for 2005 is timely if made by October 15, 2009. The taxpayer did not submit her refund request until September 20, 2010. Accordingly, the refund request is untimely pursuant to Section 59-1-1410(8)(a).

Appeal No. 11-115

Although the taxpayer's circumstances are ones to which the Commission is sympathetic, Utah law does not grant the Commission the authority to waive the statute of limitations concerning refund requests under such circumstances. Accordingly, the taxpayer's refund request should be denied, and the Division's action to deny the refund request should be sustained.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action to deny the taxpayer's refund request for the 2005 tax year. The taxpayer's refund request is 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.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

Appeal No. 11-115

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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