

11-1206
REFUND REQUEST – SALES AND USE
TAX YEAR: 2007
SIGNED: 11-07-2011
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	AMENDED INITIAL HEARING ORDER ¹ Appeal No. 11-1206 Account No. ##### Tax Type: Sales and Use Tax / Refund Tax Period: 10/01/07 – 11/30/07 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER REP., Representative
 For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, 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 September 19, 2011.

On January 31, 2011, PETITIONER (“Petitioner” or “taxpayer”) filed a Form TC-98 (Application to Extend Time to File a Claim for Refund) (“January 31, 2011 TC-98”), in which it asked for an extension to file a claim for refund of sales and use tax concerning a six-month period, specifically October 1, 2007 through

¹ The only change is in the “Decision and Order” section of the Order.

Appeal No. 11-1206

March 31, 2008. PETITIONER REP., the taxpayer's representative, filed the January 31, 2011 TC-98 on behalf of the taxpayer.

On February 9, 2011 (nine days after receiving the January 31, 2011 TC-98), Taxpayer Services Division (the "Division") issued a Statutory Notice to the taxpayer, in which it partially denied the taxpayer's January 31, 2011 TC-98 extension request. Specifically, the Division denied the taxpayer's extension request for two of the six months requested, specifically denying the request for the period October 1, 2007 through November 30, 2007. The Division stated in its Statutory Notice that it was denying the extension request for this period because "[t]he statute of limitations for claiming refund or requesting extension to file a claim for refund [for this period] expired before 01/31/11, the date you submitted [the January 31, 2011 TC-98.]" On the Statutory Notice, the Division acknowledged that the taxpayer indicated that it had previously been granted an extension to January 31, 2011 to file a claim of refund for the period October 1, 2007 through November 30, 2007. However, the Division denied the extension request for these two months because "we have no record of granting an extension for tax periods 10/01/07 through 11/30/07[.]" The taxpayer has appealed the Division's action.

The Division states that the deadline to file a refund request for the October 2007 period expires three years after a monthly return for this period would be due, specifically November 30, 2010. Similarly, the deadline to file a refund request for the November 2007 period expires December 31, 2010. Because the Division had never extended the deadline for these two months, it contends that the taxpayer's January 31, 2011 TC-98 extension request was made after the deadline had already expired for both of these months. For these reasons, the Division asks the Commission to sustain its Statutory Notice and not to grant the taxpayer's request to extend the deadline to file a refund request for the two months at issue.

PETITIONER REP. responded that he had submitted a prior Form TC-98 on November 30, 2010 ("November 30, 2010 TC-98"), on which he had previously requested an extension for the period October 1,

Appeal No. 11-1206

2007 through November 30, 2007. PETITIONER REP. stated that when he filed the January 31, 2011 TC-98 requesting another extension for the period October 1, 2007 through November 30, 2007 (as well as other periods), he had assumed his prior November 30, 2010 TC-98 request to extend the time to request a refund for the two months at issue to January 31, 2011 had already been granted. Accordingly, he believed that when he filed the January 31, 2011 TC-98, the deadline to request a refund for the two month period October 1, 2007 through November 30, 2007 had not yet expired. Given these circumstances, PETITIONER REP. asks the Commission to grant the January 31, 2011 TC-98 request not only for the four-month period that the Division granted, but also for the two-month period, specifically October 1, 2007 through November 30, 2007, that it denied.

The Division admits that it received the taxpayer's November 30, 2010 TC-98 on November 30, 2010, but states that it was lost and never processed. The Division believes that the taxpayer's November 30, 2010 TC-98 somehow got attached to an extension request for a different taxpayer. The Division found a microfilm copy of the taxpayer's November 30, 2010 TC-98 once the taxpayer filed this appeal. The Division stated that once a Form TC-98 is submitted, it typically processes the extension request within three to five business days and informs a taxpayer of its decision. If the request is denied, the taxpayer receives a Statutory Notice. If the request is approved, the Division fills out Section 5 of the Form TC-98 informing the taxpayer of its new deadline and sends the Form TC-98 (with Section 5 filled in and the new extension date) to the taxpayer. The Division points out that on the Form TC-98, a taxpayer is instructed to "[s]ubmit this application at least 30 days prior to the expiration of the statute of limitations to allow time for processing." The Division states that PETITIONER REP. routinely submits extension requests for clients, including the November 30, 2010 TC-98 and January 31, 2011 TC-98 requests at issue here, on the day the statute of limitations expires. However, the Division did not dispute that it grants refund requests that are received on the day the statute of limitations expires.

PETITIONER REP. states that the taxpayer has no record of the Division either denying or granting its November 30, 2010 TC-98 request. He admits that he did not “reconcile” this particular extension request, at least partially due to the number of extension requests he files for various clients. As a result, he admits that he did not realize that the Division had failed to address the November 30, 2010 TC-98 extension request until the Division responded to the taxpayer’s January 31, 2011 TC-98 request.

APPLICABLE LAW

UCA §59-1-1410(8)² 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:
 - (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 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).

- (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

On November 30, 2010, the taxpayer submitted a request to extend to January 31, 2011 the deadline to claim a refund of sales and use taxes for the October 1, 2007 through November 30, 2007 period. The Tax Commission, however, lost the November 30, 2010 TC-98 request and, consequently, never granted the extension. As a result, the statute of limitations to claim a refund for the October 1, 2007 through November 30, 2007 period had expired when the taxpayer submitted its subsequent request on January 31, 2011 to further extend the deadline. At issue is whether the Commission should grant's the taxpayer's subsequent January 31, 2011 extension request under the instant circumstances, given that Section 59-1-1410(8)(b) precludes an extension if the request is made after the expiration of the statute of limitations.

Neither party is without fault under these circumstances. The taxpayer submitted its November 30, 2010 TC-98 to the Tax Commission, but the Tax Commission lost it. As a result, the Division has never denied or granted this extension request. On the other hand, the taxpayer did not submit the November 30, 2010 within 30 days of the expiration of the statute of limitations, as advised on the TC-98. In addition, the taxpayer did not call the Division to inquire about the November 30, 2010 TC-98 extension request when it had not received a response to the request within a couple of weeks, even though the Division typically

Appeal No. 11-1206

responds within such a period. Instead, the taxpayer “assumed” that the Division had granted the request because it had not received a Statutory Notice denying the request.

Regardless, it was the Tax Commission’s fault that the November 30, 2010 TC-98 request was lost and never processed. It appears that the Division would have granted the taxpayer’s November 30, 2010 TC-98 extension request had it not been lost and had the Division processed it. If so, the deadline to claim a refund for the October 1, 2007 through November 30, 2007 period would have been extended to January 31, 2011. Had this occurred, it also appears that the taxpayer’s January 31, 2011 request for a further extension for the same two months would have been timely and also been granted. Given these circumstances, the taxpayer’s request for an extension to file a claim for the period October 1, 2007 through November 30, 2007 should be granted.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission **grants the taxpayer’s request for an extension to file a claim for the period October 1, 2007 through November 30, 2007.** 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. 11-1206

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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