

11-2537  
INCOME TAX  
TAX YEAR: 2006  
SIGNED: 03-07-2012  
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: M. JOHNSON

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BEFORE THE UTAH STATE TAX COMMISSION

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| PETITIONER 1 & PETITIONER 2,<br><br>Petitioners,<br><br>v.<br><br>TAXPAYER SERVICES DIVISION OF THE<br>UTAH STATE TAX COMMISSION,<br><br>Respondent. | <b>INITIAL HEARING ORDER</b><br><br>Appeal No. 11-2537<br><br>Account No. #####<br>Tax Type: Income Tax<br>Tax Years: 2006<br><br>Judge: Chapman |
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, 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 February 14, 2012.

On April 18, 2011, PETITIONER 1 and PETITIONER 2 (“Petitioners” or “taxpayers”) filed an original 2006 Utah individual income tax return on which they claimed a refund of \$\$\$\$\$. On July 18, 2011, Taxpayer Services Division (the “Division”) issued a Notice of Expired Refund or Credit (“Notice”), in which it informed the taxpayers that the time to claim a refund or credit for the 2006 tax year had expired. The Notice informed the taxpayers 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.”

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The Division states that the period for claiming a refund or credit of taxes for the 2006 tax year expired on October 15, 2010 and asks the Commission to sustain its action to deny the refund request.

The taxpayers recognize that their 2006 refund request is untimely if the 2006 tax year is considered by itself. However, the taxpayers ask the Commission to consider the following circumstances and to apply the 2006 refund to amounts that they owe for subsequent years. The taxpayers explain that PETITIONER 1 was hospitalized in 2007, when the 2006 tax return was due, and that he was unable to work or do “much of anything” for six months after the hospitalization. PETITIONER 1 explained that he “got behind on everything” because of his medical problems and did not get around to completing and filing the taxpayers’ 2006 through 2010 tax returns until April 18, 2011, when they filed their returns for all five years.

The 2006 and 2009 returns showed that the taxpayers overpaid their taxes for these two years, while the 2007, 2008, and 2010 returns showed that the taxpayers owed taxes for these years. The Division denied a refund or credit of the 2006 overpayment of \$\$\$\$\$, which has given rise to this appeal. In addition, the Division determined that the taxpayers timely requested a refund or credit of the 2009 overpayment of \$\$\$\$\$ and granted them a credit of the \$\$\$\$\$ overpayment, which was applied to their 2007 liability.

The amounts of taxes shown due on the 2007, 2008, and 2010 returns, plus penalties and interest (calculated as of February 14, 2012) that the Division has imposed are as follows for each of these years:

| <u>Year</u> | <u>Tax Due From Return</u> | <u>Penalties</u>  | <u>Interest</u>   | <u>Total Amount Due</u> |
|-------------|----------------------------|-------------------|-------------------|-------------------------|
| 2007        | \$\$\$\$\$                 | \$\$\$\$\$        | \$\$\$\$\$        | \$\$\$\$\$              |
| 2008        | \$\$\$\$\$                 | \$\$\$\$\$        | \$\$\$\$\$        | \$\$\$\$\$              |
| 2010        | <u>\$\$\$\$\$</u>          | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u> | <u>\$\$\$\$\$</u>       |
|             | \$\$\$\$\$                 | \$\$\$\$\$        | \$\$\$\$\$        | \$3\$\$\$\$             |

The Division points out that it entered into a payment plan with the taxpayers where the taxpayers would pay \$\$\$\$\$ per month until they have paid all amounts due for these years. As of February 14, 2012, the taxpayers

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have paid enough to reduce their liability for the 2007 tax year to \$\$\$\$\$. No payments have yet to be applied to their 2008 or 2010 liability.

The taxpayers ask the Commission to consider PETITIONER 1's illness and their willingness to "catch up" on their tax filings and to allow them to apply the \$\$\$\$\$ of taxes they overpaid in 2006 as a credit to the tax liability they owe for the 2007, 2008, and 2010 tax years. The Division, however, contends that the 2006 overpayment must be considered separately and that it cannot be refunded or applied as a credit to any portion of the taxpayers' liability for subsequent years.

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.
- . . . .

UCA §59-1-1410(8)<sup>1</sup> 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:

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<sup>1</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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- (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 or credit 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 2006 tax year at issue, all overpaid taxes were withheld and paid on or before April 15, 2007. Two years from this date would be April 15, 2009. The due date of a 2006 return, with extensions, is October 15, 2007. Three years from this date is October 15, 2010. As a result, a request for a refund or credit of overpaid taxes for 2006 is timely only if made by October 15, 2010. The taxpayers did not submit their request for a refund or credit of overpaid taxes for the 2006 tax year until April 18, 2011. Accordingly, the request for a refund or credit is untimely pursuant to Section 59-1-1410(8)(a).

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Although the Commission is sympathetic to the taxpayers' circumstances, Utah law not only denies a refund (i.e., the issuance of a check) of the overpaid taxes under these circumstances, but it also specifically denies a credit of the overpaid taxes from being against a taxpayer's current or future liabilities. Accordingly, the taxpayer's request for a refund or credit of overpaid taxes for the 2006 tax year should be denied.<sup>2</sup>

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Kerry R. Chapman  
Administrative Law Judge

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<sup>2</sup> Although the 2006 overpayment cannot be applied to the taxpayers' liabilities for subsequent tax years, the taxpayers may discuss with the Division whether or not they qualify for a waiver of penalties under the Tax Commission's "Fresh Start Program," which is described on the Tax Commission's website at <http://tax.utah.gov/extension/freshstart>.

Furthermore, once a taxpayer has paid a tax, including a payment of penalties or interest, the taxpayer has two years to request a refund of the amount that has been paid. If the Division denies the refund request, the taxpayer can file an appeal and ask for a redetermination of the Division's action. If a taxpayer files an appeal concerning a request to waive penalties, the Commission would determine whether "reasonable cause" exists to waive the penalties. Information about "reasonable cause" to waive penalties and interest can be found on the Tax Commission's website at <http://tax.utah.gov/forms/pubs/pub-17.pdf>.

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action to deny the taxpayers' request for a refund or credit of overpaid taxes for the 2006 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 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 \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner