

12-633
TAX TYPE: INCOME
TAX YEAR: 2007
SIGNED: 8-23-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER 1, TAXPAYER 2 Petitioners,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 12-633</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2007</p> <p>Judge: Phan</p>
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Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER 1
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Manager, Income Tax
Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 20, 2013, in accordance with Utah Code §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners (“Taxpayers”) are appealing the denial by Respondent (“Division”) to issue a refund to the Taxpayers in the amount of \$\$\$\$ for the 2007 tax year.
2. Taxpayers had not filed a Utah Individual Income Tax Return for the 2007 tax year when it was due. In MONTH DELETED, 2012, the Division issued a Notice of Deficiency and Estimated Income Tax to the Taxpayers assessing tax in the amount of \$\$\$\$, interest of \$\$\$\$ and penalties of \$\$\$\$. This was a non-filing estimate based on information the Division had obtained from the Internal Revenue Service and other sources.

3. After receipt of the Notice of Deficiency, the Taxpayers on MONTH DELETED, 2012, filed a Utah Individual Income Tax return for the 2007 tax year. The Taxpayers sent in the return with a letter stating:

PORTION REMOVED
4. The Utah return filed by the Taxpayers indicated a refund in the amount of \$\$\$\$\$.
5. The Division did not issue this refund to the Taxpayers. The Division explained this denial by letter dated MONTH DELETED, 2012. In this letter the Division stated:

Utah Code Annotated 59-1-1410(8) 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. Your 2007 Utah income tax return was filed on MONTH DELETED, 2012. The \$\$\$\$\$ refund request will not be issue because your return wasn't filed within 3 years and 6 months of April 15, 2008.

Pursuant to Utah Code Annotated 59-1-1410(3), the commission may assess tax at any time if a person fails to file a return.

Pursuant to Utah Code Annotated 59-1-1410(1), now that a Utah income tax return has been filed, the commission may assess tax within three years after the day on which you filed the return.
6. The Taxpayer testified at the hearing that he had no idea why the 2007 return had not been filed by the April 15, 2008 due date.

APPLICABLE LAW

Under Utah Code § 59-1-1410(3), the Utah State Tax Commission has authority to assess a tax, fee, or charge as follows, in pertinent part:

- (3) The commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee, or charge at any time if:
 - (a) a person:

. . . .
 - (ii) fails to file a return; or
 - (b) the commission estimates the amount of tax, fee, or charge due in accordance with Subsection 59-1-1406(2).

Utah Code § 59-1-1406(2) states the following:

- (a) If a person required to file a return with the commission fails to file the return with the commission, the commission may estimate the tax, fee, or charge due from the best information or knowledge the commission can obtain.
- (b) An estimate the commission makes under Subsection (2)(a) is considered to be a return filed on the date the commission makes the estimate.

The time limit for a taxpayer making a claim for a refund is set forth in Utah Code § 59-1-1410(8)(a), which states the following, in pertinent part:

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.

Utah Code § 59-10-514 provides for the filing of a Utah individual income tax return, as follows in pertinent part:

(1) Subject to Subsection (3) (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 . . .

. . . .

An extension of time is allowed for filing an individual income tax return, under Utah Code § 59-10-516(1), as follows in pertinent part:

- (a) The commission shall allow a taxpayer an extension of time for filing a return.
- (b) (i) For a return filed by a taxpayer except for a partnership, the extension under Subsection (1)(a) may not exceed six months . . .

Utah Code § 59-10-529 includes situations for which the time limits found in § 59-1-1410(8) do not apply. Subsection (12) of § 59-10-529, states the following, in part:

(a) A taxpayer may file a claim for a credit or refund of an overpayment within two years from the date a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:

. . . .

- (iii) file an amended return with the commission.

. . . .

(d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the amount or the time within which a claim for credit or refund may be filed.

For amended returns, Utah Code § 59-10-536 states the following, in part:

- (2) (a) (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because of an action by the federal government, the taxpayer shall file with the commission within 90 days after the date there is a final determination of the action:
- (A) a copy of the taxpayer's amended federal income tax return; and
 - (B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.
- (ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because the taxpayer files an amended federal income tax return, the taxpayer shall file with the commission within 90 days after the date the taxpayer files the amended federal income tax return:
- (A) a copy of the taxpayer's amended federal income tax return; and
 - (B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.
- (iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if a change in the taxpayer's federal income tax return does not increase state tax liability.

Utah Code Ann. § 59-1-1417 states the following about the burden of proof in proceedings before the Commission:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner . . .

CONCLUSIONS OF LAW

1. The Division had disallowed the Taxpayers requested refund in the amount of \$\$\$\$\$ because the Taxpayers had not filed the return or a claim for refund within the period set out at Utah Code Sec. 59-1-1410(8) which was three years from the due date of the return plus extension period or two years from when the tax was paid. There was no dispute that the Taxpayers filed their return on MONTH DELETED, 2012. The time period to file for the 2007 tax year under this statutory provision was October 15, 2011. Therefore, the Taxpayers had failed to file their refund claim within the period set out at Utah Code Sec. 59-1-1410(8).

2. However, Utah Code 59-1-1410(8)(a) provides some exceptions to this deadline, citing specifically the deadline applies, “Except as provided in Subsection (8)(b) or Section . . . 59-10-529 . . .” The Taxpayers argue that the refund was governed under Utah Code Sec. 59-10-529. Subsection 529(a) provides, “A taxpayer may file a claim for a credit or refund of an overpayment within two years from the date a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to: . . . (iii) file an amended return with the commission.” The Taxpayer argues that the Division’s non-filing audit estimate was, in fact, a return filed by the Division and that because it was erroneous the Taxpayers were “required” to file an amended return. The Taxpayers characterized the return which they filed MONTH DELETED, 2012, as an amended return and had sent it with the signed statement indicating it was an amended return.

3. The Taxpayers are not incorrect to argue that the Division’s non-filing audit estimate of deficiency is considered to be a return. Utah Code Sec. 59-1-1406(2)(a) provides that the Division may estimate the tax if a person fails to file a return and Subjection (2)(b) states, “An estimate the commission makes under Subsection (2)(a) is considered to be a return filed on the date the commission makes the estimate.”

4. However, the fact that the Division’s estimate was technically considered to be a return does not mean that the Taxpayers were “required” to file an amended return. The Taxpayers provide no statutory citation under which they were “required” to file, but instead argued that they were “required” to file to correct the Division’s errors in its estimate. The Taxpayers could have contested the audit without filing a return, by filing an appeal and providing W-2s and information regarding the exemptions. The Taxpayers could have paid the amount of the deficiency. It was a voluntary decision on their part to file the return rather than contest the audit in some other manner or pay the audit. As there was no statutory provision that applies to the facts in this matter, which “required” the Taxpayer to file the MONTH DELETED, dated 2012 return, Section 59-10-529 does not apply and the applicable statute is Utah Code Sec. 59-1-1410(8).

The Taxpayers missed the deadline for a refund under Utah Code Sec. 59-1-1410(8) and therefore the refund was appropriately denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayers' refund request. It is so ordered.

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.