

12-1205  
TAX TYPE: INCOME  
TAX YEAR: 2007  
SIGNED: 12-7-2012  
COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONERS Petitioners,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 12-1205</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2007</p> <p>Judge: Chapman</p>
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, (by telephone)  
PETITIONER 2

For Respondent: RESPONDENT 1, Taxpayer Services Division  
RESPONDENT 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 November 28, 2012.

On March 1, 2012, PETITIONER 2 and PETITIONER 1 (“Petitioners” or “taxpayers”) filed an amended 2007 Utah individual income tax return. On the return, the taxpayer claimed a refund or credit in the amount of \$\$\$\$ for the 2007 tax year.

On March 8, 2012, the Taxpayer Services Division (“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 2007 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.”

The Division states that the period for claiming a refund or credit of taxes for the 2007 tax year expired on October 17, 2011.<sup>1</sup> Because the March 1, 2012 date on which the taxpayers filed their 2007 amended return occurred after the October 17, 2011 deadline, the Division contends that Utah law precludes the refund from being issued. For these reasons, the Division asks the Commission to sustain its action to deny the taxpayers’ refund request.

The taxpayers ask the Commission to consider that on March 1, 2012, they filed amended returns not only for the 2007 tax year, but also for the 2006 tax year. The 2006 amended return showed an amount due of \$\$\$\$\$, which they paid, while the 2007 amended return showed an overpayment of \$\$\$\$\$. The taxpayers contend that when these two amended returns that they filed together are considered together, they should not have to pay the \$\$\$\$\$ amount due for 2006 without getting a refund of the \$\$\$\$\$ overpayment for 2007. The Division, however, claims that the two tax years must be considered separately for purposes of determining whether or not the refund request for 2007 is timely.

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; . . . .

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<sup>1</sup> The Division explained that the deadline falls on October 15<sup>th</sup> except when October 15<sup>th</sup> is a weekend or holiday. In 2011, October 15<sup>th</sup> fell on a Saturday. As a result, the Division states that the deadline to request a refund or credit of 2007 taxes is Monday, October 17, 2011.

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 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.

....

UCA §59-1-1410 addresses the timeframes within which the Commission can issue an audit deficiency and within which a taxpayer can request a refund or credit of overpaid taxes, as follows in pertinent part:

(1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114, 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within three years after the day on which a person files a return.

(b) Except as provided in Subsections (3) through (7), if the commission does not assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax, fee, or charge.

....

(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

....

(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 generally upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

- (1) 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:
  - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
  - (b) 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
  - (c) 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:
    - (i) required to be reported; and
    - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.
- (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
  - (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
  - (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

#### 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 2007 tax year at issue in this case, all taxes were withheld and paid on or before April 15, 2008. Two years from this date would be April 15, 2010. The due date of a 2007 return, with extensions, is October 15, 2008. Three years from this date is October 17, 2011. As a result, a request for a refund or credit of overpaid taxes for 2007 is timely if made by October 17, 2011. Because the Tax Commission did not receive the taxpayer's request for a refund of 2007 taxes until March 1, 2012, the refund request is untimely pursuant to Section 59-1-1410(8)(a).

Although the taxpayers ask the Commission to consider that they paid a tax liability for a different year, specifically 2006, on the same day they asked for a refund or credit for 2007, the refund provision of Section 59-1-1410(8)(a) does not provide for multiple years to be considered together when deciding whether a refund request for a specific year is timely. The statute provides for the timeliness of a refund or credit request

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to be determined on the basis of the due date for a single year's return, specifically the return for the year with the overpayment. Furthermore, although the statute allows for a refund or credit if the request is made "two years from the date the tax was paid," it does not provide for a refund or credit of overpaid taxes for one year if the taxpayer has paid taxes for another year within two years of the request. When the statute is read as a whole, it is clear that the request for a refund or credit of a specific year's taxes must be made within two years from the date that the tax for *that specific year* was paid. There is no evidence to show that the taxpayers paid any portion of the 2007 overpayment within two years of submitting their refund request on March 1, 2012. Accordingly, the taxpayers' request for a refund or credit of overpaid 2007 taxes should be denied.

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Kerry R. Chapman  
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action and denies the taxpayers' request for a refund or credit of 2007 taxes. 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