

12-1247
TAX TYPE: INCOME TAX
TAX YEARS: 2008, 2009, 2010, and 2011
DATE SIGNED: 6-17-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-1247</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Years: 2008, 2009, 2010 and 2011</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Attorney at Law
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Audit Manger, Sales and Use Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on March 28, 2013. Respondent (“Division”) had issued an audit against Petitioner for the period from July 1, 2008 to August 31, 2011. The Statutory Notice was issued on March 19, 2012. Petitioner (“Taxpayer”) timely filed an appeal of the audit on April 17, 2012. However, at the hearing the only issue that the Taxpayer contested was that the Division had not allowed a credit towards the audit deficiency for overpayments made from January 1, 2007 to June 30, 2008. The Division had disallowed credits or refund for overpayments occurring before July 1, 2008 on the basis that this period was beyond the statute of limitations under Utah Code 59-1-1410.

APPLICABLE LAW

The time limit for making a claim for refund is set forth in Utah Code §59-1-1410, below 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.

Utah Code §59-1-1417, provides:

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 . . .

Utah Code §59-1-401(13) provides that “[u]pon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

DISCUSSION

In this matter, the Taxpayer had overpaid tax for the period from January 1, 2007 through May 2009. The reason for the overpayments was that the sales tax rate on grocery items had decreased in 2007 and then again in 2008. The Taxpayer had continued to remit the tax based on the prior rate. When the Division audited the Taxpayer’s account, the Division allowed as a credit toward the audit deficiencies the overpayment from July 1, 2008 forward, but disallowed a credit for the overpayments made prior to that date under Utah Code Sec. 59-1-1410(8). The Division’s representative noted that the Division was also barred by the statute of limitations from auditing the account prior to this date.

At the hearing the representative for the Taxpayer did not provide any evidence or argument to refute that the Taxpayer had owed the \$\$\$\$ in tax, penalty and interest for the period from July 1, 2008 to August 31, 2011 as indicated in the audit. The Division had allowed a credit of \$\$\$\$ to offset much of this tax due based on the overpayments of tax made by the Taxpayer and interest accruing on the overpayments. So after the offset the balance of the audit deficiency, with interest up through March

2012, had been \$\$\$\$\$. It was the Taxpayer's contention based on equitable tolling that credits for overpayments made prior to July 1, 2008 should also be allowed that would offset the remainder of the audit deficiency. It was his calculation that the Taxpayer had paid some \$\$\$\$\$ in overpayments in total and argued that the remainder of the overpayments would be more than sufficient to offset the entire audit amount.

The basis of the Taxpayer's argument regarding equitable tolling was that at some point the Taxpayer had stopped filing any returns or paying tax and had been contacted by the Taxpayer Services Division about filing and payment. The Taxpayer's representative stated that during discussions with employees of that Division, it was the Taxpayer's understanding that the overpayment would cover the taxes that were due. However, he had no specific information about who had represented the Taxpayer at that time, who they had spoken with at the Tax Commission, nor any details regarding what was said during these discussions. His representative indicated that the Taxpayer had an in-house accountant at that time. There was no written confirmation or records of these discussions. The Taxpayer had stopped filing returns in 2010 and none were filed in 2011. The Taxpayer provided no statute, case law or prior Tax Commission decisions that would support the request for an equitable tolling of the statute of limitations to allow the credit.

Under Utah Code Sec. 59-1-1410(8) the Commission may allow a credit unless a person files a claim with the Commission within the later of three years from the due date of the return or two years from the date the tax was paid. This provision specifically addresses both credits and refunds and bars the issuance of the credit in this matter. The statute does not provide the Commission discretion to allow a refund or credit after this period for good cause and the Commission has been consistent in its application of the statute.¹ Had the Taxpayer been able to show a written request or statement from the Taxpayer when negotiating with the Taxpayer Service Division that could be construed as a refund request or written documentation from the Division that the Division agreed to allow a credit for the over payments, it would be information the Commission would consider. The Taxpayer has the burden of proof in this matter. Given the lack of information regarding these prior discussions the request should be denied.

Jane Phan
Administrative Law Judge

¹ See *Utah State Tax Commission Decisions in Appeal Nos. 11-115, 09-0037, 09-1601 and 05-1414*. These and other decisions issued by the Tax Commission are available to the parties in a redacted format at tax.utah.gov/commission-office/decisions.

DECISION AND ORDER

Based upon the foregoing, the Commission denies this appeal. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner