

13-46

TAX TYPE: REFUND REQUEST

TAX YEAR: 1-2005 THROUGH 4-2007

DATE SIGNED: 9-16-2013

COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION

Respondent.

INITIAL HEARING ORDER

Appeal No. 13-46

Tax Type: Refund Request/Sales Tax

Tax Periods: 01/05 – 04/07

Judge: Phan

Presiding:

Jane Phan, Administrative Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR PETITIONER, Attorney at Law

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General

RESPONDENT-1, Assistant Director, Taxpayer Services Division

RESPONDENT-2, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code §59-1-502.5, on June 25, 2013. Petitioner is appealing Respondent's ("Division's") denial to issue a refund to Petitioner in the amount of \$\$\$\$\$. The refund denial was issued by Statutory Notice dated November 28, 2012, and the refund denied was for tax periods from January 8, 2005 through April 18, 2007.¹ Petitioner had filed the purchaser refund request on October 31, 2012. The reasons given for the

¹ The refund period stated on the Statutory Notice was January 8, 2005 through April 18, 2007, and is the period properly before the Commission in this appeal as it was the subject of the denied refund claim. Taxpayers may appeal a refund denial to the Commission under Utah Code Sec. 59-1-1410(9). When Petitioner filled out the Petition for Redetermination form, Petitioner listed the period as 2001 through 2011 and in the Division's Hearing

denial was that the claim for refund was past the statute of limitations or amounts for some periods had been previously credited to Petitioner by the seller.

APPLICABLE LAW

The Sales and Use Tax Act provides at Utah Code 59-12-110 the following:

- (1) A seller that files a claim for a refund under Section 59-12-107 for bad debt shall file the claim with the commission within three years from the date on which the seller could first claim a refund for the bad debt.
- (2) A seller that files a claim for a refund for a repossessed item shall file the claim with the Commission within three years from the date the item is repossessed.
- (3) Except as provided in Subsection (1) or (2), procedures and requirements for a taxpayer to obtain a refund from the commission are as provided in Section 59-1-1410.

The procedures for claiming a refund are set forth in Utah Code §59-1-1410, below in pertinent part:

- (7) If a person erroneously pays a liability, overpays a liability, pays a liability more than once, or the commission erroneously receives, collects, or computes a liability, the commission shall:
 - (a) credit the liability against any amount of liability the person owes; and (b) refund any balance . . .
- (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, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

Memorandum it lists the periods requested for refund as being January 2005 through December 2008. Only the period covered in the refund denial may be considered in this matter.

DISCUSSION

Petitioner represented that it was a STATE company and not required to file tax returns in Utah. Petitioner purchased PRODUCT from COMPANY. COMPANY was a Utah company and shipped the PRODUCT to Petitioner in STATE via interstate commerce. Petitioner then incorporated the PRODUCT into real property in STATE. COMPANY had charged and collected sales tax from Petitioner on these purchases and remitted it to the State of Utah. Petitioner was unaware that this was an issue until audited by the State of STATE. It was Petitioner's contention that this was now a situation of double taxation with the State of STATE requiring Petitioner to pay that state tax on these same transactions.

It was on October 31, 2012, that Petitioner filed the refund request with the Utah State Tax Commission Taxpayer Services Division for the periods from January 8, 2005 through April 18, 2007. At the hearing the representative for Petitioner did not dispute that Petitioner had previously requested a refund from COMPANY for the periods from January 2005 through December 2008. COMPANY had issued a credit memo to the Taxpayer for tax periods May 2007 through December 2008 in the amount of \$\$\$\$\$. COMPANY had issued a letter stating that this was the portion of the request it found to be within the statute of limitations. The periods at issue in this appeal are prior to those for which Petitioner had previously obtained the credit from COMPANY.

It was Petitioner's contention that the statute of limitations which the Division had applied in this matter under 59-12-110 and 59-1-1410 would not apply to Petitioner because Petitioner was not a "seller" or a "taxpayer" in Utah. It was Petitioner's contention that it was not required to file Utah sales tax returns and had not been required to pay sales tax on these purchases, so it was not a "Taxpayer". Petitioner was the purchaser not the seller of the PRODUCT. Utah Code Sec. 59-12-110 provides refund procedures for the Sale and Use Tax Act. Subsections (1) and (2) deal specifically with the "seller". Subsection (3) provides, "Except as provided in Subsection (1) or (2), procedures and requirements for a **taxpayer** to obtain a refund from the commission are as provided in section 59-1-1410. (Emphasis Added.)" It is Utah Code Sec. 59-1-1410 that provides that the Commission may not issue a refund "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.

However, Petitioner does not cite a statutory provision under which it could claim a refund from the Tax Commission. If, as Petitioner claims, it would not fall under the refund procedures of 59-12-110 because it was not a "taxpayer" or "seller" then the applicable provision for claiming a refund is Utah Code Sec. 59-1-1410. Utah Code Sec. 59-1-1410 is the general refund provision in the Assessments, Collections and Refunds Act, Part 14 of Chapter 1, General Taxation Policies. Petitioner failed to file its refund request for the period of January 2005 through April 2007 during the period for requesting a refund under Utah Code Sec. 59-1-1410. The Commission has no statutory discretion to extend the

refund period and, as noted by the Division, it has been applied consistently by the Commission in prior Tax Commission Decisions.² The fact that STATE is now assessing tax on these purchases is not basis for the State of Utah to extend the refund. The appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on 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

² The Division cites in its Memorandum Utah State Tax Commission decisions in Appeal Nos. 12-1247, 11-115, 09-0037, 09-1601 and 05-1414. The Tax Commission posts many of its decisions in a redacted format for parties to research at tax.utah.gov/commission-office/decisions.