

13-835
TAX TYPE: INCOME TAX
TAX YEARS: 2005 & 2006
DATE SIGNED: 10-27-2014
COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 13-835</p> <p>Account No. ##### Tax Type: Income Tax Tax Years: 2005 & 2006</p> <p>Judge: Phan</p>
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Presiding:

Robert Pero, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 20, 2014, 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. Petitioner ("Taxpayer") is appealing the denial by Respondent ("Division") to issue a refund to the Taxpayer in the amount of \$\$\$\$ for the 2005 tax year and \$\$\$\$ for the 2006 tax year.
2. The Tax Commission had not received and processed the Taxpayer's 2005 or 2006 Utah Individual Income Tax Returns when they were due for each year. On February 7, 2013, the Division issued Notices of Deficiency and Estimated Income Tax to the Taxpayer

assessing tax, interest and failure to file and failure to pay penalties for both tax years. These were based on non-filing estimates.

3. The amount of the audit deficiencies¹ for each year were as follows:

	Tax	Interest ²	Penalties	Total as of Date of Notices
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

4. After receipt of the Notices of Deficiency, the Taxpayer on March 12, 2013, filed a Petition for Redetermination, to which he attached 2005 and 2006 Utah Individual Income Tax Returns. The 2005 return prepared by the Taxpayer indicated a refund of \$\$\$\$\$ and the 2006 return indicated a refund of \$\$\$\$\$.

5. The Division accepted the 2005 return to the extent that the tax amount claimed on the return replaced the amount indicated in the audit. The Division had made some change to the tax amount stated on the 2006 return. However, the Division denied the issuance of the refund or credit claimed on the 2005 return based on the Taxpayer's failure to meet the statute of limitations for requesting refund or credit. The Division's accepting the 2005 return did result in a \$0 balance due on the account for 2005 year.

6. The Division's representative acknowledged that in his Answer to Petition for Redetermination that the statute that he cited as for the limitation period on the refund was Utah Code Sec. 59-10-529,³ based on the code sections as of the audit period. At the hearing, however, it was the Division's position that the applicable statute of limitations for refund was at Utah Code Sec. 59-1-1410.

7. Based on the provisions of Utah Code Sec. 59-1-1410(8), the latest date by which Petitioner could have filed to obtain a refund or credit for the 2005 tax year was October 15, 2009, three years after the filing deadline plus extension period for the 2005 tax return. For the 2006 tax year the latest date by which Petitioner could have filed to obtain a refund or credit was October 15, 2010. Petitioner missed these deadlines by many years as he did not file returns until March 12, 2013.

¹ Respondent's Exhibits A & B.

² Interest continues to accrue on any unpaid balance.

³ Testimony of RESPONDENT, Manager, Income Tax Auditing.

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).

The time limit for a taxpayer making a claim for a refund is set forth in Utah Code § 59-1-1410(8)(a) (2013), 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(2013)⁴ includes situations where refunds may not be issued to the taxpayer, but may instead be applied to other debts or other factors which did not appear

⁴ Prior to a May 2009 amendment and the Utah Legislature's enactment of Utah Code Sec. 59-1-1410, Utah Code Sec. 59-10-529 provided the statute of limitations period for filing an income tax refund. These

relevant in this matter. For example, Subsections (1) and (2) and (13) of § 59-10-529, state the following:

- (1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:
 - (a) against an income tax due from a taxpayer;
 - (b) against: (i) the amount of a judgment against a taxpayer, including a final judgment or order requiring payment of a fine or restitution to a victim under Title 77, Chapter 38a, Crime Victims Restitution Act, obtained through due process of law by an entity of state or local government; or (ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as determined by the Office of Recovery Services in the Department of Human Services and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection (2) or
 - (c) subject to Subsection (3), (5), (6), or (7), as bail, to ensure the appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment.
- (2) If a balance remains after an overpayment is credited in accordance with Subsection (1), the balance shall be refunded to the Taxpayer.
. . . .
- (13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

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 . . .

provisions were the same from 2005 through the amendment effective in 2009. The Utah Code Sec. 59-10-529(7) (2005-2008) provided:

- (a) If a refund or credit is due because the amount of tax deducted and withheld from wages exceeds the actual tax due, a refund or credit may not be made or allowed unless the taxpayer or his legal representative files with the commission a tax return calling the refund or credit; (i) within three years from the due date of the return, plus the period of any extension of time for filing the return provided for in Subsection (7)(c); or (ii) within two years from the date the tax was paid, whichever period is later.
- (b) Except as provided in Subsection (7)(d), in other instances where a refund or credit of tax which has not been deducted and withheld from income is due, a credit or refund may not be allowed or made after three years from the time the tax was paid, unless, before the expiration of the period, a claim is filed by the taxpayer or his legal representative.

. . . .

DISCUSSION

The Division had disallowed the Taxpayer's requested refunds because Taxpayer had not filed the returns claiming the 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 Taxpayer missed this deadline which was October 15, 2009, for the 2005 tax year and October 15, 2010, for the 2006 tax year. The Taxpayer filed the returns requesting refunds in March of 2013. Therefore, the Taxpayer had failed to file his refund claim within the period set out at Utah Code Sec. 59-1-1410(8). In fact there is no dispute that if the applicable statute of limitations was the version of Utah Code Sec. 59-10-529 which was in effect before the May 12, 2009 amendment, the deadline would have been the same for the Taxpayer and missed as well.

The Taxpayer argues, however, that the deadline set at Utah Code 59-1-1410(8)(a) does not apply to tax years 2005 and 2006. He argues that the version of Utah Code Sec. 59-10-529(7) that was in effect up until 2009 also does not apply because Subsection 59-10-529(7) was entirely deleted with the 2009 amendment. He does acknowledge Utah Code 59-1-1410(8) was enacted at the same time with very similar limitations provisions. He argues that the newly adopted Section 59-1-1410(8) would not apply to the years 2005 or 2006 because there is nothing in the language that makes it retroactive, asserting that statutes are not applied retroactively unless they expressly state they are to apply retroactively. It was his position that there was no applicable statute of limitations for the 2005 and 2006 years, that these years were then in limbo and a statute that never runs is not enforceable. Further, the Taxpayer points out that Utah Code 59-1-1410(8) does state "except as provided in . . . Utah Code 59-10-529" and points to the deletion of subsection Utah Code Sec. 59-10-529(7). However, it should be noted the amended version of Utah Code Sec. 59-10-529 does provide some exceptions or further criteria to the issuance of refunds to a taxpayer. For example certain debts or fees owed by the taxpayer must be paid first.

The Taxpayer cites as support for this position the Utah Supreme Court's recent decision in *Waddoups v Noorda*, 2013 UT 64, 321 P.3d 1108 (2103). The facts in *Waddoups* are dissimilar to those of the subject and a careful reading of that case does not

support the Taxpayer's conclusion. *Waddoups* dealt with a negligent credentialing claim in a medical malpractice suit. As discussed in that case, negligent credentialing claims had been recognized by the courts as "a valid common-law cause of action." *Waddoups*, ¶ 3. The Utah Legislature then passed 78B-3-425 which expressly prohibited negligent credentialing as a cause of action. This was a substantive change that completely reversed prior case law. The Court notes at ¶ 8, "In purporting to eliminate the cause of action of negligent credentialing, section 78B-3-425 cannot be said to be merely procedural, but rather is clearly substantive in nature."

In the matter before the Tax Commission there was a prior statute specific to statute of limitations for income tax filings at Utah Code Sec. 59-10-529(7) which was amended by the deletion of the Subsection (7) and at the same time Utah Code Sec. 59-1-1410(8) was enacted which applied to Title 59, Revenue and Taxation provisions regarding multiple tax types. These two statutes were consistent regarding the period of time for filing a claim for a refund. Unlike the substantive change in the *Waddoups* case, the amendment and enactment of the statute of limitations provisions effective May 12, 2009, which moved the provision from one statute to another, are a procedural matter. Also the provisions were nearly identical before and after the change. As noted by the Court in *Waddoups*, ¶ 8 :

In addition to the single statutory exception, we have long recognized a distinction between substantive and procedural laws as it relates to retroactive application of newly enacted statutes. Laws that "enlarge, eliminate, or destroy vested or contractual rights" are substantive and are barred from retroactive application absent express legislative intent. However, laws which "merely pertain to and prescribe the practice and procedure of the legal machinery by which the substantive law is determined or made effective" are procedural and "may be given retrospective effect." (Citations Omitted.)

Furthermore, the procedural change in this matter before the Commission merely moves a provision from one section to another. The limitations provisions remained continuously in effect, there was no gap or period of limbo as argued by the Taxpayer. The Taxpayer missed the deadline provided under the new provisions of Utah Code Sec. 59-1-1410(8) in effect on May 12, 2009. He would have missed the similar deadline in affect prior to the May 12, 2009 amendment set at Utah Code Sec. 59-10-529(7). The

limitations period for filing refund claims is strictly construed and the Tax Commission does not have discretion to extend limitations periods.⁵ The applicable statute of limitations in this matter is Utah Code Sec. 59-1-1410(8). The Taxpayer missed the deadline for a refund under that section and, therefore, the refund was appropriately denied.

CONCLUSIONS OF LAW

1. There was no dispute that the Taxpayer had failed to file his refund claim within the period set out at Utah Code Sec. 59-1-1410(8). Under this section the deadline to file for a refund was October 15, 2009, for the 2005 tax year and October 15, 2010, for the 2006 tax year. The Taxpayer filed the returns requesting a refund in March of 2013. Therefore, the Taxpayer had failed to file his refund claim within the period set out at Utah Code Sec. 59-1-1410(8).

2. It was the Taxpayer's argument, however, that the deadline set at Utah Code 59-1-1410(8) did not apply to his refund request filed in 2013 for tax years 2005 and 2006 because it should not be applied retroactively. He argues that the version of Utah Code Sec. 59-10-529(7) that was in effect up until May 12, 2009 also should not apply because the provision of 59-10-529(7) was deleted with the 2009 amendment. The Taxpayer is incorrect in his conclusions. The Utah Legislature merely moved the applicable limitations period from one section of the Utah Code to another. This was not a substantive change. The deadline was consistent before and after the change. The Taxpayer missed the deadline provided under the new provisions of Utah Code Sec. 59-1-1410(8) in effect on May 12, 2009.

3. The applicable statute of limitations in this matter is Utah Code Sec. 59-1-1410(8). The Taxpayer missed the deadline for a refund under that section and, therefore, the refund was appropriately denied.

⁵ See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 12-633* (2013); *Initial Hearing Orders Appeal Nos. 12-1247* (2013) and *13-395* (2013). See also *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.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

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

DATED this _____ day of _____, 2014.

John L. Valentine
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.