

13-1088

TAX TYPE: REFUND REQUEST INCOME TAX

TAX YEAR: 2006 and 2008

DATE SIGNED: 10-25-2013

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

EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

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| <p>TAXPAYER-1 AND TAXPAYER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p> | <p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 13-1088</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2006 & 2008</p> <p>Judge: Chapman</p> |
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA
TAXPAYER-1, Taxpayer
TAXPAYER-2, Taxpayer

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, from 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 August 12, 2013.

On February 12, 2013, TAXPAYER-1 AND TAXPAYER-2 filed original 2006 and 2008 Utah individual income tax returns. On the returns, the taxpayers showed that they had made overpayments in the amounts of \$\$\$\$ for the 2006 tax year and \$\$\$\$ for the 2008 tax year.¹ These returns are considered to be requests for refunds or credits of the 2006 and 2008 overpayments.

¹ Both parties agree that the 2007 tax year is not at issue in this appeal because the Division has not yet taken an action concerning the original and amended 2007 Utah income tax returns that the taxpayers have

On March 4, 2013, the Taxpayer Services Division (“Division”) issued Notices of Expired Refund or Credit (“Notices”), in which it informed the taxpayers that the time to claim refunds or credits for the 2006 and 2008 tax years had expired. The Notices 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 deadline to claim a refund or credit of taxes was October 15, 2010 for the 2006 year and October 17, 2012 for the 2008 tax year, pursuant to Utah Code Ann. §59-1-1410(8). Because the February 12, 2013 date on which the taxpayers filed their 2006 and 2008 returns occurred after these dates, the Division contends that Utah law precludes the Tax Commission from granting refunds or credits of the overpayments from these two years. For these reasons, the Division asks the Commission to sustain its actions to deny the taxpayers’ refund requests.

The taxpayers do not believe that the statute of limitations found in Section 59-1-1410(8) is applicable to their circumstances for the 2006 and 2008 tax years. First, they point out that UCA §59-10-529(2) requires overpayments to be refunded to a taxpayer after the overpayment is first applied to amounts due under Section 59-10-529(1). Because the taxpayers do not owe amounts for any of the items listed in Section 59-10-529(1), they claim that the Commission is required to issue the overpayments to them in accordance with Section 59-10-529.

Second, they point out that UCA §59-10-531 provides that “[a] taxpayer that claims to be allowed a refund or credit under Section 59-10-529 may file a claim for the refund or credit with the commission within the time provided in Section 59-10-529.” Because Section 59-10-529 does not provide any limitations to claim

submitted. The parties were informed at the Initial Hearing that once the Division does take an action concerning the 2007 tax year, they would need to file another, separate petition (if they wanted to appeal that action) in order to protect their 2007 tax year appeal rights.

the overpayments made by the taxpayers and because Section 59-10-529 does not reference Section 59-1-1410, which does provide such limitations, they contend that the Commission must issue the 2006 and 2008 refund requests.

Third, the taxpayers point out that USTC Publication 2 (Revised 4/10) (“Publication 2”), which is entitled the Utah Taxpayer Bill of Rights, provides that the Tax Commission will refund overpayments after submitting an *original* return, but that the refund will only be granted for an *amended* return if the request is made within three years of the due date of the return or two years of date the overpayment is made. Because the taxpayers made their 2006 and 2008 refund requests through *original* returns, they contend that the Utah Taxpayer Bill of Rights clearly provides that they are entitled to the refunds.

In the alternative, should the Commission decide that that Section 59-1-1410(8) is applicable to their refund requests, the taxpayers ask the Commission to consider that TAXPAYER-2, who has been responsible for seeing to the taxpayers’ taxes for 40 years, has had a number of medical procedures and ailments since 2006. TAXPAYER-2 has had heart surgery and has had a number of eye procedures that prevented her from completing their taxes. In addition, because of her illnesses, she lost her job, and the taxpayers lost their home. They have had to move twice and were unable to find their tax documents because relatives had packed them away without labeling the boxes. Finally, TAXPAYER-1 explained that he does not write well and has depended on his wife for many years to handle their taxes. He explained that he had never written a check prior to his wife’s illnesses and could not file the returns on time. TAXPAYER-2 explained that all of these matters were “dumped” on her husband when she became ill and that she considers that he has done a great job seeing to matters since she became ill. She also asked the Commission to consider that around the time of her illnesses, the taxpayers lost their life savings in a Ponzi scheme. Finally, TAXPAYER-2 asked the Commission to consider that they have timely filed their returns for many years until her illnesses and that they

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should not be “lumped” in with people who could have filed on time but chose not to. For these reasons, the taxpayers ask the Commission to refund or credit the 2006 and 2008 overpayments.

The Division contends that Sections 59-1-1410(8) and Section 59-10-529 must be read “in harmony” and that in so doing, it is clear that the statute of limitations found in Section 59-1-1410(8) is applicable unless it is “trumped” or “overruled” by one of statute of limitations found in Section 59-10-529. Because none of the statutes of limitations found in Section 59-10-529 are applicable to the taxpayers’ circumstances for the 2006 and 2008 tax years, the Division contends that the statute of limitations found in Section 59-1-1410(8) is applicable to the taxpayers’ 2006 and 2008 refund requests.

The Division also contends that the information provided in the Utah Taxpayer Bill of Rights under “Refund Claims” does not, as the taxpayers claim, provide that an overpayment shown on an original return must be granted without regard to the appropriate statute of limitations. However, even if the information in the Utah Taxpayer Bill of Rights is incorrect, the Division argues that it cannot take precedence over the applicable law. Lastly, the Division contends that Utah law does not extend or forgive statutes of limitations because of illness or because of other circumstances that have occurred in a taxpayer’s life. For these reasons, the Division asks the Commission to find that the statute of limitations found in Section 59-1-1410(8) is applicable to the taxpayer’s refund requests for 2006 and 2008 and to deny the taxpayers’ refund requests for these two years.

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;

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 §59-10-529 also provides guidance concerning refunds or credits of overpayments of income tax,

as follows in pertinent part:

(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 of 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.

....

(9) (a) Subject to Subsection (9)(b), a claim for credit or refund of an overpayment that is attributable to a net operating loss carry back or carry forward shall be filed within three years from the due date of the return for the taxable year of the net operating loss.

(b) The three-year period described in Subsection (9)(a) shall be extended by any extension of time provided in statute for filing the return described in Subsection (9)(a).

....

UCA §59-10-531 provides that “[a] taxpayer that claims to be allowed a refund or credit under Section 59-10-529 may file a claim for the refund or credit with the commission within the time provided in Section 59-10-529.”

USTC Publication 2 (Revised 4/10) (“Publication 2”), which is entitled the Utah Taxpayer Bill of Rights, explains a taxpayer’s rights and responsibilities as a Utah taxpayer under Utah law and Tax Commission rules. The “Refund Claims” portion of Publication 2 provides as follows:

The Tax Commission will refund tax overpayments in a reasonable period of time after you file the original return. You can claim a refund for a past tax year by filing an amended return within:

- three years from the original return filing date, or
- two years from the date the tax was paid (whichever is later).

Contact the Tax Commission for refund information on taxes other than individual income tax.

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.

....

DISCUSSION

At issue is whether statute of limitations found in Section 59-1-1410(8)(a) is applicable for income tax purposes and, if so, whether it is applicable in a case where the refund request was made by filing an original tax return for that tax year.

The taxpayers do not contest that they filed their 2006 and 2008 returns beyond the statute of limitations provided in Section 59-1-1410(8). However, they contend that Section 59-1-1410(8) is not applicable to their refund requests for overpaid income taxes. They contend that Section 59-10-529 takes precedence over the statute of limitations provided in Section 59-1-1410(8). Because Section 59-10-529 does not provide a statute of limitations pertinent to the taxpayers' circumstances for the 2006 and 2008 tax years and because Section 59-10-529(2) provides for overpayments to be refunded to the taxpayers, they assert that Utah law requires the Tax Commission to grant their requests for refunds of their overpaid 2006 and 2008 taxes.

The Division, on the other hand, contends that Sections 59-1-1410(8) and 59-10-529 work in concert with one another and that, as a result, they must be read in a manner that is harmonious with one another. The Division's position is more convincing. The taxpayers' position could result in many taxpayers being able to receive income tax overpayments either many years into the future or even indefinitely. It appears that the Legislature, however, intended to limit the period during which a taxpayer could request a refund or credit of an overpayment of income taxes both before and after Section 59-1-1410(8) was enacted. Prior to 2009, Section 59-10-529(7) (2008) provided a statute of limitations limiting the refund of overpaid income taxes to claims made within three years from the due date of a return plus extensions or two years from the date of overpaid. In 2009, Utah law was amended to remove this specific statute of limitations from Section 59-10-529(7) and place it, instead, in Section 59-1-1410(8). There is no evidence to suggest that the Legislature's intent was to eliminate this statute of limitations for income tax purposes. For these reasons, the Division's argument is more persuasive, and the taxpayers' refund claims for 2006 and 2008 are subject to the statute of limitations found in Section 59-1-1410(8).

Section 59-1-1410(8) 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 2006 tax year, all taxes were withheld and paid on or before April 15, 2007. Two years from this date would be April 15, 2009. The due date of a 2006 return, with extensions, is October 15, 2007. Three years from this date is October 15, 2010. As a result, the taxpayers' request for a refund or credit of the taxes they overpaid for 2006 would only be timely if made by October 15, 2010. Because the Tax Commission did not receive the taxpayers' request for a refund or credit of 2006 taxes until February 12, 2013, the request for the 2006 tax year is untimely pursuant to Section 59-1-1410(8)(a).

For the 2008 tax year, all taxes were withheld and paid on or before April 15, 2009. Two years from this date would be April 15, 2011. The due date of a 2008 return, with extensions, is October 15, 2009. Three

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years from this date is October 15, 2012. As a result, the taxpayers' request for a refund or credit of the taxes they overpaid for 2008 would only be timely if made by October 15, 2012. Because the Tax Commission also did not receive the taxpayers' request for a refund or credit of 2008 taxes until February 12, 2013, the request for the 2008 tax year is also untimely pursuant to Section 59-1-1410(8)(a).

The taxpayers point out that the Refund Claims section of the Utah Taxpayer Bill of Rights could be misinterpreted. It appears that the Refund Claims section refers to original returns that were timely filed and, arguably, does not refer to original returns that were untimely filed. Regardless, any confusion possibly caused by this section does not negate the applicable Utah law. As a result, the statute of limitations found in Section 59-1-1410(8) must be considered and applied to the refund requests at issue in this appeal.

Lastly, the taxpayers asks the Commission to consider the reasons why they were unable to file their 2006 and 2008 returns in a timely manner and why they did not file the returns within the statute of limitations period provided in Section 59-1-1410(8). The Commission is sympathetic to the taxpayer's circumstances. Unfortunately, Utah law does not allow the Commission to extend the statute of limitations for these circumstances. Accordingly, the taxpayers' requests for refunds or credits of overpaid taxes for the 2006 and 2008 tax years should be denied.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action to deny the taxpayers' requests for refunds or credits of taxes for the 2006 and 2008 tax years. 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