

14-126
TAX TYPE: INCOME TAX
TAX YEAR: 2008 & 2009
DATE SIGNED: 9-11-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 & 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. 14-126</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2008 & 2009</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
TAXPAYER-2, Taxpayer

For Respondent: 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 July 2, 2014.

On November 2, 2013, TAXPAYER-1 and TAXPAYER-2 (“Petitioners” or “taxpayers”) filed an amended 2009 Utah individual income tax return. On November 27, 2013, the taxpayers filed an amended 2008 Utah individual income tax return. On these amended Utah returns, the taxpayers claimed refunds in the amounts of \$\$\$\$\$ for 2008 and \$\$\$\$\$ for 2009.¹

¹ The taxpayers also filed amended Utah returns for 2010, 2011, and 2012, on which they also requested refunds. The Division refunded the amounts that the taxpayers requested for these three years.

On December 10, 2013 and February 12, 2014, the Taxpayer Services Division (“Division”) issued Notices of Expired Refund or Credit (“Notice”), in which it informed the taxpayers that the time to claim a refund or credit of Utah taxes for the 2008 and 2009 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 under Utah Code Ann. §59-1-1410(8) was October 15, 2012 for the 2008 year and October 15, 2013 for the 2009 tax year. The November 2, 2013 and November 27, 2013 dates on which the taxpayers requested refunds for 2008 and 2009 fall beyond the deadlines for both years. As a result, the Division contends that Utah law precludes the refunds for these two years from being issued under this statute of limitations.

The taxpayers explain that they moved from Utah and became STATE resident individuals in 2007. They also explain that for the 2007 tax year, they had their long-time Utah accountant prepare their Utah and STATE returns. They proffered that the Utah accountant prepared their 2007 returns to show that about one-half of their 2007 income was taxable to Utah, with the other one-half taxable to STATE.

For the 2008 tax year, TAXPAYER-1 decided to handle the preparation of their returns without the assistance of their Utah accountant. Even though the taxpayers had been full-year STATE residents since 2007, TAXPAYER-1 used the same methodology to file their Utah and STATE returns for 2008 through 2012 that the Utah accountant had used for the 2007 tax year. In other words, the taxpayers filed Utah and STATE returns for 2008 through 2012 by reporting about one-half of their income as being taxable to Utah and the other one-half as being taxable to STATE. The taxpayers stated that they had assumed that TAXPAYER-2

retirement income from the State of Utah was subject to Utah taxation and that this is why the Utah accountant had divided their income between Utah and STATE in 2007.²

The taxpayers stated that in 2013, an employee of the STATE Department of Revenue (whose first name was NAME) contacted them and informed them that they should have been reporting and paying STATE income tax on all of their income for 2008 through 2012, including TAXPAYER-2'S retirement income. The taxpayers stated that STATE can go back five years to collect taxes. Upon learning of this information, the taxpayers decided to file amended STATE returns on which they reported all of their income for 2008 through 2012 as being subject to STATE taxation. They indicate that they paid the additional tax shown due on these amended STATE returns in 2013. They also provided a document from the STATE Department of Revenue showing that they requested a waiver of penalties associated with their additional STATE tax liability for 2008 through 2012, which the department granted.

The Division proffered that when a state other than Utah issues an income tax audit that affects a taxpayer's Utah tax liability, there is another Utah statute of limitations that may be considered, specifically UCA §59-12-529(12).³ The Division stated that had STATE issued an audit for 2008 and 2009, the taxpayers

2 Both parties agree that if the taxpayers are domiciled in STATE, TAXPAYER-2'S retirement income from the State of Utah is subject to taxation by STATE, but not Utah.

3 The Division's policy appears to be based on decisions that the Commission issued in the 1990's, in which the Commission granted a taxpayer's request for refund or credit of overpaid Utah taxes associated with another state's assessment of taxes, even though the general statute of limitations (now found in Section 59-1-14010(8)) had expired. *See, e.g., USTC Appeal No. 95-0006* (Order Aug. 18, 1995). This and other selected Commission decisions have been redacted and are available for review on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

In *Appeal No. 95-0006*, the Commission noted that in Section 59-10-536(5) (which has since been amended and renumbered to Section 59-10-536(2)), "the legislature has addressed the situation that occurs when a taxpayer's federal taxable income is modified in some way that would affect his or her state taxable income." Because the Petitioners in *Appeal No. 95-0006* filed their amended Utah return within 90 days of a California assessment and because the circumstances were similar to an Internal Revenue Service ("IRS") modification of federal taxable income, the Commission found that it would allow the Petitioners in *Appeal*

would have had two years and ninety days to request a refund of overpaid Utah taxes resulting from the STATE audit. The Division, however, states that this alternative statute of limitations is not available to the taxpayers in this case. The Division stated that it called NAME (the woman with whom the taxpayers spoke at the STATE Department of Revenue) and that NAME indicated that the taxpayers had not been audited and had not been issued a STATE audit assessment for 2008 and 2009. As a result, the Division claims that the alternative statute of limitations to request a refund under Section 59-12-529(12) does not apply. For this reason and because the taxpayers filed their 2008 and 2009 amended Utah returns after the deadlines provided in Section 59-1-1410(8), the Division asks the Commission to sustain its actions to deny the taxpayers' refund requests for 2008 and 2009.⁴

The taxpayers ask the Commission to consider that they did not owe Utah any taxes for 2008 and 2009 and that it would be unfair for them not to receive a refund for these years. They also ask the Commission to consider that they will forego any interest they are owed on the 2008 and 2009 overpayments if the Commission will agree to refund the overpayments. Lastly, if the Commission will not issue refunds for 2008 and 2009, the taxpayers wanted to know where these taxes went so that they can claim the overpaid taxes as a tax deduction. The Division stated that the income taxes at issue for 2008 and 2009 would have gone to fund public education in Utah. The Division, however, stated that it was unaware of any statute that would allow a taxpayer to claim a deduction for taxes they overpaid to Utah and for which they were no longer entitled to receive as a refund or credit.

No. 95-0006 “the same period for filing amended [Utah] returns that is applied to an IRS amendment of federal taxable income.” As a result, the Commission “ordered that the amended [Utah] return . . . be processed and the applicable refund issued.”

⁴ At the hearing, the Division informed the taxpayers that should they have any other documents from the STATE Department of Revenue, it would be willing to review the documents to see if they showed that the

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.
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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.
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- (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
-

taxpayers were audited for 2008 and/or 2009.

- (8) (a) Except as provided in Subsection (8)(b) or Section 19-12-203, 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(12) provides an exception to the general timeframes to request a refund or credit of overpaid taxes. It allow a taxpayer to file a claim for a refund or credit of an overpayment within two years of the time that the taxpayer is required to file a notice of change, a notice of correction, or an amended return, as follows:

- (12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within two years from the date a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:
 - (i) report a change or correction in income reported on the taxpayer's federal income tax return;
 - (ii) report a change or correction that is treated in the same manner as if the change or correction were an overpayment for federal income tax purposes; or
 - (iii) file an amended return with the commission.
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- (c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.
- (d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the amount or the time within which a claim for credit or refund may be filed.

UCA 59-10-536(2)(a) provides that a taxpayer has the duty to report changes made by the IRS, as follows in pertinent part:

- (i) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because of an action by the federal government, the taxpayer shall file with the commission within 90 days after the date there is a final determination of the action:
 - (A) a copy of the taxpayer's amended federal income tax return; and
 - (B) an amended state income tax return that conforms with the changes made in the

- taxpayer's amended federal income tax return.
- (ii) Except as provided in Subsection (2)(a)(iii), if a change is made in a taxpayer's net income on the taxpayer's federal income tax return because the taxpayer files an amended federal income tax return, the taxpayer shall file with the commission within 90 days after the date the taxpayer files the amended federal income tax return:
 - (A) a copy of the taxpayer's amended federal income tax return; and
 - (B) an amended state income tax return that conforms with the changes made in the taxpayer's amended federal income tax return.
 - (iii) A taxpayer is not required to file a return described in Subsection (2)(a)(i) or (ii) if a change in the taxpayer's federal income tax return does not increase state tax liability.

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

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 2008 tax year, all taxes at issue were paid to Utah 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 years from this date is October 15, 2012. As a result, a request for a refund or credit of overpaid taxes for 2008 is timely under Section 59-1-1410(8)(a) if made by October 15, 2012.

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Because the Tax Commission did not receive the taxpayers' request for a refund of 2008 taxes until November 27, 2013, a refund for the 2008 tax year is not allowed under Section 59-1-1410(8)(a).

For the 2009 tax year, all taxes at issue were paid to Utah on or before April 15, 2010. Two years from this date would be April 15, 2012. The due date of a 2009 return, with extensions, is October 15, 2010. Three years from this date is October 15, 2013. As a result, a request for a refund or credit of overpaid taxes for 2009 is timely under Section 59-1-1410(8) if made by October 15, 2013. Because the Tax Commission did not receive the taxpayers' request for a refund of 2009 taxes until November 2, 2013, a refund for the 2009 tax year is also not allowed under Section 59-1-1410(8)(a).

The Division stated that had the taxpayers actually been audited by STATE, a different statute of limitations might have applied, specifically Section 59-10-529(12). However, there is no evidence to suggest that the taxpayers were audited by STATE for either 2008 or 2009. It appears, instead, that the taxpayers decided to file amended STATE returns for 2008 and 2009 after speaking with a STATE employee, but without having been audited and assessed by STATE. As a result, even if the statute of limitations found in Section 59-10-529(12) is applicable for actions taken by other states, there is no evidence that another state, in this case STATE, took an action similar to the Internal Revenue Service actions described in that statute. For these reasons, the taxpayers' refund requests for 2008 and 2009 should also not be granted under Section 59-10-529(12).

The Commission is sympathetic to the taxpayers' circumstances. However, the Commission has determined that statutes of limitations must be strictly construed. *See USTC Appeal No. 05-1414* (Order Feb. 13, 2006). In an appeal, the Commission is applying the law to the facts of the case to determine, in this case, whether the taxpayers are legally entitled to the refunds they seek. Utah law does not authorize the Commission to find that an untimely refund request can be granted if the taxpayers agree to forego interest on the refund. Finally, the Commission is not inclined to give the taxpayers tax advice on whether they are

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entitled to claim a deduction associated with the 2008 and 2009 taxes they paid to Utah and to which they not entitled to refund. This is a matter for the taxpayers to discuss with their tax advisor. Based on the foregoing, the Commission should sustain the Division's actions to deny the taxpayers' refund requests for 2008 and 2009.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's actions and denies the taxpayers' request for refunds of Utah taxes for the 2008 and 2009 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

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner