

15-1089

TAX TYPE: WITHHOLDING TAX

TAX YEAR: 2010

DATE SIGNED: 3/28/2017

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 15-1089 Account No. ##### Tax Type: Withholding Tax Tax Year: 2010 Judge: Phan
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Presiding:

Robert Pero, Commissioner

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney at Law

REPRESENTATIVE-2 FOR TAXPAYER, CEO, TAXPAYER

REPRESENTATIVE-3 FOR TAXPAYER, CFO, TAXPAYER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General

RESPONDENT-1, Assistant Director, Taxpayer Services Division

RESPONDENT-2, Tax Compliance Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 2, 2016, in accordance with Utah Code Ann. §59-1-1410(9) 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. The matter is before the Tax Commission on Petitioner's ("Taxpayer") appeal of Respondent's ("Division") denial of a refund request for mineral production tax withholding paid by the Taxpayer for the third and fourth quarters of 2010. The refund request had been denied by the Division on the basis that the refund request had not been filed within the period set out at Utah Code Subsection

59-1-1410(8) for claiming a refund. The matter proceeded through the administrative process to this Formal Hearing.

2. Taxpayer started oil and gas production in Utah during the third quarter of 2010. It began to remit mineral production tax withholding at this time. Taxpayer had no Utah employees and did not file W-2 forms or have employee withholding.

3. On July 21, 2011, Taxpayer filed mineral production withholding returns, forms TC-941, for both the third and fourth quarters of 2010. On the third quarter return, Petitioner indicated \$\$\$\$ in Utah tax withholding. On the fourth quarter 2010 return, Petitioner indicated \$\$\$\$ Utah tax withholding.¹

4. Also on July 21, 2011, Taxpayer filed the annual reconciliation form TC-941R for tax year 2010. There was no dispute that a reconciliation form was filed on that date, however two different versions of what was filed were submitted at the hearing. Petitioner provided a copy in Exhibit 1 of a printout of the electronic version of this form as printed from the Tax Commission's records. This filing showed an "over payment" on Line 7 for \$\$\$\$\$. The Division provided a copy of the actual paper form that was filed.² On this form, Line 7 had been left blank. However, on Line 6 was listed \$\$\$\$ and on Line 4 was listed \$0. The instructions for Line 7 were to "subtract line 6 from line 4." Had this been done, the amount on Line 7 would have been a negative or had indicated an overpayment of \$\$\$\$\$, just like the electronic printout. There was also an amended version of the TC-941R filed on December 23, 2014. This version indicated an overpayment on Line 7 for \$\$\$\$\$.³ At the hearing, the Taxpayer's witness, NAME-1, stated a third amount was the correct amount. She testified that after some additional corrections, the amount of the overpayment that the Taxpayer is now requesting is \$\$\$\$\$.

5. When the Taxpayer filed the original TC-941R on July 21, 2011, the Taxpayer did not provide copies of forms TC-675R. The TC-675R is the form that reports to the interest holders in the production the withholding held by the Taxpayer and remitted to the State of Utah on their behalf. The forms TC-675R were not provided to the Division until December 2014. Additionally, the Taxpayer did not submit a letter with the July 21, 2011 TC-941R requesting a refund of the overpayment.

6. The instructions on the second page of the TC-941R⁴ filed by the Taxpayer on July 21, 2011, provide in relevant part:

You must file a reconciliation annually to balance your returns (forms TC-941) with withholding tax paid . . .
If you file on paper, include copies of all W-2, TC-675R and 1099 forms with Utah withholding.

1 Petitioner's Exhibit 1. Respondent's Exhibit TPS 000001-000005.

2 Respondent's Exhibit TPS000008-TPS000009.

3 Respondent's Exhibit TPS 000010-000011.

4 Respondent's Exhibit TPS 000007.

It goes on to note under the “Line Instructions” for Line 7:

If line 6 is more than line 4, you over reported one or more periods. Check your records. If you have overpaid, request a refund in writing. You may be charged a penalty of \$50 per form (up to \$1,000) if you do not file the TC-941R with accompanying W-2, TC-675, or 1099 forms. Other penalties may apply if the Utah withholding account number is not shown on each form, or if your form is incomplete.

Then later in the instructions, it states:

For additional information see Pub 14, Utah Withholding Tax Guide.

7. The version of Publication 14 as revised on December 2010⁵ and in effect at the time the annual reconciliation form TC-941R was due,⁶ also provided the instruction that a letter should be sent to request refund of an overpayment. At pg. 4 of that publication, it stated in part:

Balancing the Reconciliation

If the total Utah taxes withheld as reported on forms W-2, 1099, and TC-675R does not match the total Utah taxes reported on your quarterly or annual withholding return(s), your reconciliation is unbalanced. You may balance the reconciliation in one of two ways.

Method 1

...
If you overpaid one or more periods, include a letter with the amended return(s) explaining the error and if you would like the overpayment refunded or applied to another tax period.

Method 2

...
If you over reported withholding on your quarterly or annual return(s), send a letter to the Tax Commission explaining the error and if you would like the overpayment refunded or applied to another tax period.

8. After receiving the Taxpayer’s Form TC-941R on July 21, 2011, the Division issued a Request for Information letter on August 31, 2011. This letter stated in bold “Annual Withholding Reconciliation Not Filed or Incomplete” and provided “Response Required By: September 30, 2011.” This letter was obviously a form used for income tax withholding. Form TC-941R and the quarterly

5 Respondent’s Exhibit TPS 000044 through 000049. However, the prior version of this publication, effective from January 2010 to December 2010 provided a more general instruction, stating, “If the total Utah withholding on your submitted forms does not equal the total Utah withholding tax paid for the year, you must pay any additional tax due with the reconciliation or claim a refund of overpaid tax in writing.” See Respondent’s Exhibit TPS 000057.

6 This publication was substantially revised after the period at issue.

forms TC-941 are the forms used for other types of withholding, including income tax withholding, and are not limited solely to mineral production withholding. The Request for Information letter stated, “You did not send us the state copies of W-2s you issued to your employees when you filed your 2010 form TC-941R, Utah Annual Withholding Reconciliation.” The Taxpayer had not issued any W-2s, as there were no Utah employees or employee income tax withholding. The letter goes on to give these instructions:

What to Do

- Please return this notice with your response by September 30, 2011.
- Send us copies of all W-2s you issued to your employees for 2010.
- Pay any additional tax penalty and interest in full.
- If an amended return(s) or reconciliation results in an overpayment, send us a written request for refund.

If You Do Not Respond to This Notice

If you do not send us the requested information by September 30, 2011, we may charge you a non-filing penalty of \$1,000.00.

The letter did provide telephone numbers and an address if the recipient had questions.

9. The Taxpayer acknowledges that it may not have responded to this notice by the September 30, 2011 deadline. The Taxpayer argued this letter was “nonsensical” because the Taxpayer had not issued W-2s to Utah employees, so had no W-2s to provide in response. The Taxpayer points out the consequence of nonresponse was listed as a penalty of up to \$1,000. The letter does not mention the possibility that a refund would be denied.

10. At the hearing, REPRESENTATIVE-2 FOR TAXPAYER, the Taxpayer’s current CEO, testified as to the history of the Taxpayer. Taxpayer is an entity that was formed in the State of STATE-1 in 2008. It went through what he described as a “hyper-growth” period and got involved in some production properties in Utah in 2010 as well as STATE-2. He stated the Taxpayer was “not prepared for Utah laws” and was going through a learning curve in 2010. He stated that by 2011 and 2012, due to the volatility in gas prices, the business started into a “bust cycle” and was forced to sell off the Utah properties. In September 2013, Taxpayer had hired REPRESENTATIVE-2 FOR TAXPAYER as part of a crisis management team. One of the things that they did was hire the accounting firm ACCOUNTING FIRM, to make sure taxes had been filed properly.

11. NAME-1, State and Local Tax Manager for ACCOUNTING FIRM, testified at the hearing that she started looking into the Taxpayer’s tax filings in early 2014 and had pulled the Taxpayer’s records from the Tax Commission’s Taxpayer Access Page. She also states that she had called NAME-2, an employee of the Division on March 11, 2014, about the Taxpayer’s account. She testified that they had talked about severance and other types of taxes and which returns still needed to be filed. She states that she had been told by NAME-2 that the 2010 third and fourth quarter mineral production

withholding returns TC-941 had been filed and the TC-941R annual reconciliation had been filed. NAME-2 was not a witness at the hearing. The Division submitted its Comment Log for the Taxpayer's account that supported that a telephone call had been received on March 11, 2014, but does not go into specificity regarding details or periods discussed. The notes on this call state:

Call from NAME-1, PHONE NUMBER. She wanted to know which returns are missing. I told her OGS, OGC and WMP returns are still not filed. She is going to prepare missing returns and e-mail to me to get posted. She will have the returns to me by 4/1/2014. NAME-2.

12. The deadline for filing a refund claim for the 2010 mineral production withholding expired on March 31, 2014.

13. On December 19, 2014, the Taxpayer filed with the Division a letter requesting refund of mineral production withholding for the third and fourth quarters of 2010 as well as periods in 2011 and 2012.⁷ Included with this request and provided for the first time to the Division, were copies of all forms TC-675R issued to the interest holders for the 2010 withholding period.⁸

14. On May 5, 2015, the Division issued "Notice of Expired Refund or Credit Letters" in which the Division denied the refund for the third and fourth quarters of 2010 on the basis that the request for refund had been filed after the statutory period for refunds had expired.⁹

15. On May 12, 2015, the Division issued refunds for the 2011 and 2012 periods as the Division concluded the December 19, 2014 request for refund was within the statutory period for those years and that the Taxpayer had overpaid mineral production withholding for those years.

APPLICABLE LAW

This matter is before the Tax Commission on an appeal of a refund denial under Utah Code §59-1-1410(9) which provides:

If the commission denies a claim for a credit or refund, a person may request a redetermination of the denial by filing a petition or request for agency action with the commission:

(a) (i) within a 30-day period after the day on which the commission mails a notice of denial for the claim for credit or refund;

.....

The Utah Mineral Production Tax Withholding Act is found in Title 59, Chapter 6 of the Utah Code. Utah Code §59-6-102 requires a "producer" to withhold mineral production tax amounts from

7 Petitioner's Exhibit 3.

8 Petitioner's Exhibit 4.

9 Petitioner's Exhibits 6 & 7.

payments made to interest holders in the production (excluding the producer itself), as follows in pertinent part:

(1) . . . each producer shall deduct and withhold from each payment being made to any person in respect to production of minerals in this state, but not including that to which the producer is entitled, an amount equal to 5% of the amount which would have otherwise been payable to the person entitled to the payment.

. . . .

(3) A claimant, estate, or trust that files a tax return with the commission may claim a refundable tax credit against the tax reflected on the tax return for the amount withheld by the producer under Subsection (1).

Utah Code §59-6-103(1) provides that a producer who is required to withhold mineral production tax is required to file a quarterly withholding return,¹⁰ as follows in pertinent part:

(1) (a) Subject to Subsection (1)(b), a producer required to deduct and withhold an amount under this chapter shall file a withholding return with the commission:
(i) for the amounts required to be deducted and withheld under this chapter during the preceding calendar quarter; and
(ii) on a form prescribed by the commission.
(b) A withholding return described in Subsection (1)(a) is due on or before the last day of April, July, October, and January.

. . . .

The Mineral Production Tax Withholding provisions specify that the Tax Commission administer the chapter in accordance with income tax withholding provisions and also authorize the Commission to adopt rules. Utah Code §59-6-104(2) provides:

(1) To the extent the following are consistent with this chapter, the commission shall administer this chapter in accordance with:
(a) Chapter 1, General Taxation Policies; and
(b) Chapter 10, Part 4, Withholding of Tax.
(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules necessary to effectuate the purposes of this chapter.

As authorized by Utah Code §59-6-104, the Commission administers the mineral production tax withholding consistent with withholding provisions of the Individual Income Tax Act, including provisions at Utah Code §59-10-406 which require for an employer (or producer) to file an annual reconciliation return¹¹ and provide each employee (or interest holder) with an annual statement,¹² as follows in pertinent part:

10 The quarterly return required by this statute is the TC-941.

11 The annual reconciliation return that a producer is required to submit to the Tax Commission is TC-941R.

12 The annual statement that a producer is required to issue to an interest holder is TC-675R.

....

(3) (a) Each employer shall file an annual return, in a form the commission prescribes, summarizing:

- (i) the total compensation paid;
- (ii) the federal income tax deducted and withheld; and
- (iii) the state tax deducted and withheld for each employee during the calendar year.

(b)(i) Except as provided in Subsection (3)(b)(ii), the return required by Subsection (3)(a) shall be filed with the commission on or before February 28 of the year following that for which the report is made.

(ii) An annual return described in Subsection (3)(a) that is filed electronically shall be filed with the commission on or before the date established in Section 6071(b), Internal Revenue Code, for filing returns.

(4) (a) Each employer shall also, in accordance with rules prescribed by the commission, provide each employee from whom state income tax has been withheld with a statement of the amounts of total compensation paid and the amounts deducted and withheld for that employee during the preceding calendar year in accordance with this part.

....

The Tax Commission has adopted a rule on mineral production tax withholding, which was revised effective August 25, 2011. Prior to the revision, there was a requirement that each Form TC-675R be attached to a Form TC-96R and after the revision, that requirement was no longer specified. The Form TC-96R was not the form filed by the Taxpayer in this matter, but may have been the predecessor to the Form TC-941R.¹³ Utah Admin. Rule R865-14W-1(7) effective up through August 24, 2011 provided in relevant part:

(7) The return prescribed by the Tax Commission for reporting the information specified in Section 59-6-103 may be obtained from the Tax Commission. These forms are to be completed and filed in accordance with instructions provided by the Tax Commission. They are as follows:

- (a) Form TC-96Q, Utah Employer's Quarterly Income Withholding Return, must be filed quarterly. . . .
- (b) Form TC-96R, Utah Employer's Mineral Production Withholding Return must be filed annually with a copy of each Form TC-675R attached.
- (c) Form TC-96A, Utah Amended Mineral Production Withholding Return, must be filed when adjustments are not for the current calendar year or when adjustments in the current calendar year would create negative amounts.

¹³ There was no dispute that the proper forms for the Taxpayer to be filing were the TC-941 and TC-941R. Additionally, the Division had provided Utah State Tax Commission's Publication 14, effective as of January 1, 2011, and the Publication at that time indicates the proper forms were the TC-941 and TC-941R. The parties did not address when Forms TC-96Q and TC-96R would have been the forms used for this type of withholding.

(d) Form TC-675R, Statement of Utah Tax Withheld on Mineral Production shall be furnished to each person who is entitled to credit for taxes withheld each calendar year . . .

Utah Admin. Rule R865-14W-1(7) effective August 25, 2011, no longer specified a requirement to provide Forms TC-675R. It was simplified and revised to state:

(7) The return prescribed by the Tax Commission for reporting the information specified in Section 59-6-103¹⁴ may be obtained from the Tax Commission.

The law provides for a refund as well as a limitations period for claiming a credit or refund at Utah Code §59-1-1410 as follows 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) . . . , 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 guidance concerning the burden of proof and statutory construction in Commission appeals as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner

(2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:

- (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
- (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

¹⁴ The form and information specified in Section 59-6-103 was the quarterly reporting requirement, not the annual reconciliation.

DISCUSSION

Utah law generally requires those who produce or extract minerals from deposits in Utah to withhold from payments to royalty interest owners, and to submit to Utah, five percent of the amount otherwise payable. See Utah Code Secs. 59-6-101 and 102. However, the withholding obligation does not apply to payments to the producer itself, or to other specified parties like government entities or business entities that file an exemption certificate. Utah Code Subsections 59-6-102(1) and (2). For the tax periods at issue in this appeal, the Taxpayer had made payments based on its total Utah production, which included its own interest in the production. The Taxpayer is requesting a refund of amounts it was not required to withhold and for which tax has otherwise been paid or was not owed. Substantial refunds have already been issued to the Taxpayer on these types of overpayments for later periods where the Division considered the refund request to still be within the statute of limitations.

For the mineral production withheld, Utah Code Sec. 59-6-103 requires the producer to file quarterly withholding returns showing the amount deducted and withheld from the payment to the interest holders. This information is reported on form TC-941. The Taxpayer had filed forms TC-941 for both the third and fourth quarters of 2010, although these were filed late on July 21, 2011. Utah Code Sec. 59-6-104 states that the Tax Commission should administer Utah mineral production tax withholding provisions in accordance with Utah income tax withholding provisions. Under income tax withholding provisions, Utah Code Subsection 59-10-406(3) requires filing of an annual reconciliation return, which is form TC-941R.

During the audit period there was not a statutory provision that specifically required that the Taxpayer provide forms TC-675R with its TC-941R. Furthermore, whether or not including all forms TC-675R was required by Administrative Rule at this time was not particularly clear. At the time, the return was due and at the time it was filed, there was a requirement in the rule that expressly stated it applied to a form that was no longer the form used for this type of filing. The requirement was removed from the rule by the time the Division sent the letter requesting more information on August 31, 2011. See Utah Admin. Rule R865-14W-1(7) as noted above with the revision effective August 24, 2011. However, Utah Code Subsection 59-10-406(3)(a) did provide for an annual return “in the form the commission prescribes.” Therefore, it is clear that the Commission has discretion to determine the form of the TC-941R. Based on the instructions on the Form TC-941R filed by the Taxpayer on July 21, 2011, the Tax Commission had required that copies of all TC-675R forms be submitted with the TC-941R.¹⁵ The Tax Commission had discretion to require copies of forms TC-675R and that they did so is reasonable as a means to verify the amounts withheld and on whose behalf. In order to determine whether or not a refund should be issued, the Division would need the forms TC-675R to verify the amount of the refund.

¹⁵ Publication 14, pg. 4, also stated that the TC-675R forms needed to be included.

The Taxpayer did not submit Forms TC-675R to the Division during the three-year period to request a refund. They were finally submitted to the Division in December 2014.

There was no specific statutory requirement of a separate letter to request refund of an overpayment of mineral production withholding in addition to the TC-941R that showed the overpayment. There was nothing in the Administrative Rule that required a letter requesting refund in addition to the TC-941R form. However, instructions on the Form TC-941R filed by the Taxpayer in July 21, 2011, did indicate, “If line 6 is more than line 4, you over reported one or more periods. Check your records. If you have overpaid, request a refund in writing.”¹⁶ As noted above, Utah Code Subsection 59-10-406(3)(a) authorized the Tax Commission to prescribe the form of the annual return and the Division had required a letter if a refund was desired due to inherent issues with a reconciliation form. At the hearing, the Division had pointed out that an overpayment or underpayment would indicate a discrepancy between the quarterly forms TC-941 and annual TC-941R. Without further instructions from a taxpayer, the Division would not know whether the discrepancy was due to an error on the quarterly forms, if amended returns were going to be filed or if, in fact, a refund was due.

It should be noted that although the TC-941R filed by the Taxpayer on July 21, 2011 had indicated an overpayment for \$\$\$\$\$, a subsequent form submitted in December 2014 stated the overpayment was \$\$\$\$\$. Even that is not the amount of the refund now requested by the Taxpayer of \$\$\$\$\$. Should the Tax Commission or Division determine it would be appropriate, an additional line could be added to form TC-941R asking for the “amount of over payment requested to be refunded” and for any other verification that the Division deemed necessary to show a refund. However, at this time, the Division had chosen to require a separate letter.

The fact that the Division had made an error in its letter dated August 31, 2011 “Request for Information” by requesting copies of W-2s instead of the TC-675Rs is not basis for equitable tolling of the statute of limitations for claiming a refund. The instructions for TC-941R did expressly require copies of all forms TC-675R. The Taxpayer did not provide those with the original TC-941R. The Division’s Request for Information letter, although confusing because of its reference to W-2s, did again provide the instruction to the Taxpayer that if the reconciliation “results in an overpayment, send us a written request for refund.” It also provided telephone numbers if the Taxpayer had any questions. The Taxpayer did not follow-up by sending a letter requesting the refund or call for clarification.

Utah Code Subsection 59-1-1410(7) provides that the commission “shall” credit an erroneously paid liability or overpayment against any amount of liability and refund any balance. However, Utah Code Subsection 59-1-1410(8) provides the limitation that the Commission may not make a refund or

¹⁶ Publication 14, pg. 4, also stated in the event of overpayment “send a letter to the Tax Commission explaining the error and if you would like the overpayment refunded or applied to another tax period.”

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.” In this appeal, the “later of” is three years from the due date of the return. As noted by the Taxpayer at the hearing and in its brief “claim” is not defined in the statute, and therefore, the Taxpayer argues “claim” should be “determined in accordance with the standards established by Utah’s courts.”¹⁷ Petitioner points to the Utah Supreme Court’s decision in *Rent-A-Ctr. W., Inc. v. Utah State Tax Comm’n*, 367 P.3d 989 (Utah 2016) in which the Court had stated the goal in statutory interpretation is “to evince the true intent and purpose of the Legislature.” *Id.* at 992. Petitioner asserts, “the best indication of the Legislature’s intent is the plain and ordinary meaning of a statute’s terms.” To determine the plain and ordinary meaning, Petitioner argues that the courts look to the dictionary and “if the dictionary establishes the meaning of the term, that is the end of the inquiry.”¹⁸

Petitioner provides that dictionaries define “claim” to be a “statement saying that you have a right to something.”¹⁹ Similarly, a “claim” is “a demand for money or property to which one asserts a right.”²⁰ The only Utah court decision provided by the parties that had considered the word “claim” in the context of a claim for refund was *Matrix Funding Corp. v. Utah State Tax Comm’n*, 52 P.3d 1282 (Utah 2002). In *Matrix*, the taxpayer had submitted a letter stating “we will be filing additional claims for periods after 1994,” but *Matrix* had failed to follow up until 1999. The Utah State Tax Commission denied the refund for tax year 1995, as the 1999 filing had been submitted after the statute of limitations for refund for the 1995 period. In *Matrix* at 1291, regarding the limitations on the 1995 refund claim the Court held:

Matrix’s letter to the Commission stated that, “we will be filing additional claims for periods after 1994.” This letter does not indicate to the Commission presently asserted grounds for refund, nor does it advise the Commission of the specific nature of *Matrix*’s claim. Indeed, the purported informal claim refers only to the year for which it will be filing for a refund at some future point. We hold that the language in this letter does not contain sufficient grounds upon which a refund can be claimed and the facts presented in the letter did not apprise the Commission of the basis of the refund claim. Because the 1996 letter did not constitute a sufficient claim, it did not toll the statute of limitations which ran in 1999, and plaintiffs’ 1995 claims are therefore barred.

Upon consideration of the facts and legal arguments submitted by the parties, the Division’s denial of the refund claim for being filed after the limitation period is appropriate. The TC-941R filed by the Taxpayer on July 21, 2011 for the 2010 annual reconciliation was incomplete because it did not

17 Petitioner’s Prehearing Brief, pg. 6.

18 Petitioner’s Prehearing Brief, pg. 7, citing *Rent-A-Ctr. W., Inc. v. Utah State Tax Comm’n*, 367 P.3d 989, 992 (Utah 2016) and *Olsen v. Eagle Mountain City*, 248 P.3d 465, 468 (Utah 2011).

19 Citing Cambridge Dictionary online (<http://dictionary.cambridge.org/us/dictionary/english/claim>, last visited October 19, 2016).

20 Black’s Law Dictionary, 7th Ed., p. 240. Petitioner also cited similar definitions in Oxford Dictionary online (<http://en.oxforddictionaries.com/definition/claim>, last visited October 19, 2016); and Merriam Webster dictionary online (<http://www.merriam-webster.com/dictionary/claim>, last visited October 19, 2016).

include forms TC-675R or a letter stating that the difference should be refunded. Therefore, the incomplete filing did not contain sufficient grounds upon which a refund can be claimed and was insufficient to apprise the Commission of the claim due to the very nature of quarterly filings and annual reconciliations. If there is a discrepancy between the two, it may be due to an error on one or more of the filings and not necessarily an overpayment of the tax. That is why the instructions on the form TC-941R tell the filer that if there is a difference, “Check your records. If you have overpaid, request a refund in writing.” Additionally, the Taxpayer failed to provide the forms TC-675R, which would be required to verify the correct amount of the refund. Had the Taxpayer actually checked its records, it would have concluded that the refund amount was somewhat less than the amount stated as the overpayment as they now acknowledge at the hearing.

The Division had statutory authority to determine what it required as an annual reconciliation return and it had required copies of all forms TC-675R and a letter if a refund was requested. Submitting an incomplete form TC-941R did not provide the Commission with an adequate refund claim. The Taxpayer did not file a “claim” for refund separate from the incomplete return until December 2014. Therefore, no “claim” for refund was filed prior to the expiration of the statutory period set out at Utah Code Subsection 59-1-1410(8) and the Division had appropriately denied the refund claim on that basis.

CONCLUSIONS OF LAW

1. For mineral production withholding, Utah Code Sec. 59-6-103 requires the producer to file quarterly withholding returns showing the amount deducted and withheld from the payment to the interest holders. This information is reported on form TC-941. Utah Code Sec. 59-6-104 states that the Tax Commission should administer Utah mineral production tax withholding provisions in accordance with Utah income tax withholding provisions. Under income tax withholding provisions, Utah Code Subsection 59-10-406(3) requires filing of an annual reconciliation return, which is form TC-941R.

2. Utah Code Subsection 59-10-406(3)(a) gives discretion to the Commission on what it requires in the annual reconciliation return stating the return is to be “in the form the commission prescribes.” Based on the instructions on the Form TC-941R filed by the Taxpayer on July 21, 2011, the form the Tax Commission had prescribed required copies of all forms TC-675R and a letter if a refund is requested. In order to determine whether or not a refund should be issued, the Division would need the forms TC-675R to verify the amount of the refund. Further, the request for a letter providing instructions regarding an overpayment was reasonable because without further instructions the Division would not know whether the discrepancy was due to an error on the quarterly forms, if amended returns were going to be filed or if, in fact, a refund was due. In this case, the Taxpayer has acknowledged that the amount stated as an overpayment on the original TC-941R of \$\$\$\$\$ was not the correct amount for the refund.

3. Refunds are governed under Utah Code Section 59-1-1410. Subsection 59-1-1410(7) provides that the commission “shall” credit an erroneously paid liability or overpayment against any amount of liability and refund any balance. However, this is limited by Utah Code Subsection 59-1-1410(8) which provides that the Commission may not make a refund or credit “unless a person files a claim with the commission within the later of: (i) three years from the due date of the return . . . or (ii) two years from the date the tax was paid.” The only filing submitted within the three year period set out at Subsection 59-1-1410(8) was the Taxpayer’s original TC-941R filing which was incomplete. An overpayment had been listed on the incomplete filing, but the listing of an overpayment on the reconciliation form with no further instructions or request is not “a demand for money or property to which one asserts a right.”²¹ The filing of an incomplete form TC-941R is not a sufficient basis to be a claim for refund. Therefore, no “claim” for refund was filed prior to the expiration of the statutory period set out at Utah Code Subsection 59-1-1410(8) and the Division had appropriately denied the refund claim on that basis.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Taxpayer’s appeal is hereby denied. It is so ordered.

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.

²¹ Black’s Law Dictionary, 7th Ed., p. 240.