

15-1186
TAX TYPE: INCOME TAX/ REFUND REQUEST
TAX YEAR: 2010
DATE SIGNED: 10-8-2015
COMMISSIONERS: M. CRAGUN, R PERO, R. ROCKWELL
EXCUSED: J. VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 15-1186 Account No. ##### Tax Type: Income Tax / Refund Request Tax Year: 2010 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative (by telephone)
For Respondent: RESPONDENT-1, from Taxpayer Services Division
 RESPONDENT-2, from Taxpayer Services Division

STATEMENT OF THE CASE

TAXPAYER (“Petitioner” or “taxpayer”) is appealing Taxpayer Services Division’s (“Respondent” or “Division”) denial of her request for a refund or credit of 2010 income taxes. 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 September 21, 2015.

On April 22, 2015, the taxpayer filed a second amended 2010 Utah income tax return, on which she claimed a refund or credit of \$\$\$\$\$. On May 22, 2015, the Division issued a Notice of Expired Refund or Credit (“Notice”), in which it informed the taxpayer that the time to claim a refund or credit for the 2010 tax year had expired. The Notice informed the taxpayer 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 period for claiming a refund or credit of taxes for the 2010 tax year expired on October 15, 2014, which is three years and six months after the original April 15, 2011 due date for a 2010 income tax return. Because the April 22, 2015 date on which the taxpayer filed her amended 2010 return occurred more than six months after this October 15, 2014 deadline, the Division contends that Utah law precludes the Tax Commission from issuing a refund or credit for 2010. On this basis, the Division asks the Commission to sustain its action denying the taxpayer’s refund claim.

REPRESENTATIVE FOR TAXPAYER, the taxpayer’s representative and son, stated that he investigated his mother’s income tax returns a few years ago and discovered mistakes for a number of years. He proffers that he subsequently filed amended returns for his mother for a number of years with the Internal Revenue Service (“IRS”) and with the Tax Commission. The taxpayer had originally filed her 2010 federal and Utah returns in 2011. In March 2013, REPRESENTATIVE FOR TAXPAYER electronically filed an amended 2010 Utah return for his mother showing \$\$\$\$ of federal adjusted gross income (“FAGI”) and claiming a refund of \$\$\$\$ (“first amended Utah return”). After processing and accepting this first amended Utah return, the Tax Commission refunded \$\$\$\$ to the taxpayer.

REPRESENTATIVE FOR TAXPAYER claims that almost immediately after filing the first amended Utah return, he discovered that the \$\$\$\$ of FAGI reflected on it was incorrect and that it should have reflected \$\$\$\$ of FAGI instead. He stated that he immediately tried to file electronically a “second amended Utah return” reflecting the lower amount of FAGI and claiming a refund of \$\$\$\$ (the original refund claim of \$\$\$\$ plus the additional refund claim of \$\$\$\$ at issue in this appeal). He claims, however, that the Commission’s electronic filing system would not accept a second amended return while the first amended return was being processed, which the Division did not refute. REPRESENTATIVE FOR TAXPAYER stated that when he was unable to

electronically file the second amended Utah return within a couple of months of filing the first amended Utah return in 2013, he became occupied with other matters and, thus, did not file the taxpayer's second amended Utah return until April 22, 2015. It is this April 22, 2015 claim for the additional refund of \$\$\$\$ that the Division has disallowed.

REPRESENTATIVE FOR TAXPAYER also explained that because he had to file his mother's amended federal return with the IRS by mail, he was able to correct the erroneous FAGI amount reflected on her first amended Utah return before filing her amended federal return. As a result, he filed an amended federal return with the IRS in 2013 that showed the \$\$\$\$ of FAGI now shown on the second amended Utah return. On May 6, 2013, the IRS accepted the amended 2010 federal return and refunded \$\$\$\$ of federal taxes to the taxpayer.

REPRESENTATIVE FOR TAXPAYER admits that he filed his mother's amended 2010 federal return with the IRS within the general three-year period to claim a refund or credit of federal taxes. However, for other tax years that are not at issue in this appeal, REPRESENTATIVE FOR TAXPAYER explained that he filed his mother's amended federal returns beyond the general three-year period. Nevertheless, the IRS suspended the federal deadline to claim a refund or credit for these other tax years because he provided them information showing that his mother was "financially disabled" (i.e. unable to manage her financial affairs). In the petition REPRESENTATIVE FOR TAXPAYER filed to initiate the appeal now before the Commission, he explained that under federal law, the time period for claiming a refund is "suspended" for the period for which a taxpayer shows that he or she was "financially disabled," as set forth in pages 17 and 18 of IRS Publication 17 ("Publication 17").¹

¹ Internal Revenue Code ("IRC") §6511(a) provides that a claim for refund or credit of an overpayment of federal income tax shall ordinarily be filed within the later of three years from the time the return was filed or two years from the time the tax was paid (or within two years from the time the tax was paid if no return was filed). An exception to this general deadline to claim a refund or credit of federal taxes is found in IRC §6511(h), which provides that the running of the periods set forth in subsection (a) shall be suspended during any period of an individual's life when the individual is "financially disabled."

With the petition REPRESENTATIVE FOR TAXPAYER filed with the Tax Commission, he attached the same information about his mother's financially disabled circumstances that he had provided the IRS for these other years, including a psychiatrist's statement attesting to his mother's inability to manage her financial affairs. On the basis of this information, the taxpayer asked the Commission in the petition to suspend the state deadline to request a refund or credit of 2010 Utah taxes (much like the IRS had done for the other tax years). For these reasons, REPRESENTATIVE FOR TAXPAYER asks the Commission to refund to his mother the additional \$\$\$\$ of 2010 Utah taxes that she overpaid.

At the hearing, the Division stated that it was not aware of the taxpayer's request for the Commission to consider her "financially disabled" circumstances and to suspend the state deadline to claim a 2010 Utah refund or credit for this reason. The Division also stated that it had never heard of the IRS's willingness to suspend the federal deadline to claim a refund or credit if a taxpayer shows that he or she is "financially disabled." Nevertheless, the Division did state that if the IRS were to allow a suspension of the deadline for 2010, it would "reopen" the 2010 state deadline, as well.² The Division explained, however, that there had been no activity on the taxpayer's 2010 federal account since May 6, 2013, when the IRS issued a refund to the taxpayer after accepting her amended 2010 federal return and reducing her 2010 FAGI.

REPRESENTATIVE FOR TAXPAYER submitted his mother's second amended 2010 Utah return on April 22, 2015, which is less than two years after the May 6, 2013 date on which the IRS accepted the taxpayer's amended federal return showing an FAGI amount of \$\$\$\$\$. The Division admits that Utah Code Ann. §59-10-529(12) provides an alternative state deadline to claim a refund or credit of Utah taxes if the request is made within two years and ninety days after the IRS makes certain changes to a taxpayer's account. The Division contends, however, that Section 59-10-529(12) is not applicable in this case because the IRS did not initiate the

² There would be no reason for the IRS to suspend the deadline for 2010 because the taxpayer filed her amended 2010 federal return within the general three-year deadline to claim a refund or credit of federal taxes.

changes it made in May 2013. The Division points out that the IRS made these changes to the taxpayer's 2010 federal account because of an action initiated by the taxpayer, specifically the taxpayer's filing of an amended federal return. The Division contends that these circumstances do not trigger the alternative state deadline to claim a refund or credit of Utah taxes, as found Section 59-10-529(12). As a result, the Division claims that the general state deadline as set forth in Section 59-1-1410(8) is applicable in this case. Because the taxpayer did not submit her second amended Utah return within the deadline set forth in Section 59-10-1410(8), the Division claims that the Tax Commission is precluded from issuing the \$\$\$\$ amount at issue. For these reasons, the Division asks the Commission to sustain its action to deny the taxpayer's refund request.

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(8) provides the general timeframes within which a taxpayer can request a refund or credit of Utah taxes, as follows in pertinent part:

- (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.

Under certain circumstances, UCA §59-10-529 provides an alternative timeframe within which a taxpayer can request a refund or credit of Utah taxes, as follows in pertinent part:

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- (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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- (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 provides the timeframe within which a taxpayer must make certain tax filings, as follows in pertinent part:

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- (2) (a) (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(1) 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

General State Deadline to Claim a Refund or Credit of Utah Taxes. Section 59-1-1410(8)(a) provides that a taxpayer is entitled to receive a refund or credit of overpaid Utah 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 2010 tax year at issue in this case, all taxes were paid on or before April 15, 2011. Two years from this date would be April 15, 2013. The due date of a 2010 income tax return, with extensions, is October 15, 2011. Sections 59-10-514 and 59-10-516(1). Three years from this date is October 15, 2014. As a result, a request for a refund or credit of 2010 Utah taxes must be claimed by the later of these dates, which is October 15, 2014, to satisfy the statute of limitations period found in Section 59-1-1410(8)(a).

The taxpayer submitted her claim for a refund of 2010 Utah taxes on April 22, 2015, which does not satisfy the general deadline to claim a refund or credit of 2010 taxes, as found in Section 59-1-1410(8)(a). Still at issue, however, is whether this general deadline should be excused or suspended or whether the alternative deadline set forth in Section 59-10-529(12) is applicable to the taxpayer's circumstances.

REPRESENTATIVE FOR TAXPAYER Attempt to Electronically File the Second Amended Return. A question exists as to whether the Section 59-1-1410(8) deadline should be excused because the Tax Commission's electronic filing system did not allow REPRESENTATIVE FOR TAXPAYER to file his mother's second amended Utah return soon after he had filed her first amended return in March 2013. The Commission has excused deadlines in the past when a taxpayer has been denied due process. In this case, the taxpayer was not denied due process. REPRESENTATIVE FOR TAXPAYER was aware that the second amended return had not been filed when he tried to file it in the spring of 2013, but he does not appear to have called the Tax Commission at that time to find out an alternative means to file the return. Later, he appears to have forgotten about filing the second amended return until 2015, when he did call the Tax Commission to see how to file it. The taxpayer, who has the burden of proof, has proffered no court precedent or other evidence suggesting that these circumstances constitute a denial of due process. Accordingly, the Commission should not excuse the Section 59-1-1410(8) deadline due to these circumstances.

Financially Disabled. Utah does not have a state law that is similar to the federal law that suspends the general federal deadline to claim a refund or credit when a person shows that he or she is "financially disabled." Although Utah law does provide for Utah taxable income to be based on a taxpayer's federal adjusted gross income (subject to certain subtractions and additions), it does not provide a similar "link" of the state and federal deadlines to claim a refund or credit of taxes. For example, the general federal deadline to claim a refund or credit of federal taxes is three years, whereas the general Utah deadline is three and one-half years. Because Utah law does not provide for the state deadline to claim a refund or credit of Utah taxes to be suspended for a "financially

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disabled” individual, the Commission should not suspend the deadline set forth in Section 59-1-1410(8) for these reasons.

Alternative Utah Deadline to Claim a Refund or Credit. Section 59-10-529(12) provides that a taxpayer may file a claim for a refund or credit of Utah taxes within two years if certain circumstances exist. If these circumstances exist, then the alternative deadline of Section 59-10-529(12) will “trump” the general deadline of Section 59-1-1410(8). At issue is whether these circumstances exist in this case.

Section 59-10-529(12)(a) specifically provides that a taxpayer may claim a credit or refund of Utah taxes within two years from the date that an amended return is required to be filed but only if the taxpayer is required to file an amended return. Critical to determining whether this alternative deadline applies is whether TAXPAYER was required to file the second amended Utah return on which she claimed the \$\$\$\$ refund at issue. If she was required to file the second amended Utah return, the alternative deadline of Section 59-10-529(12)(a) will apply. Otherwise, the alternative deadline does not apply.

Section 59-10-536(2)(a) provides the circumstances as to when a person is required to file an amended Utah return. With one exception, Section 59-10-536(2)(a)(ii) provides that if a change is made in a taxpayer’s federal net income because the taxpayer filed an amended federal return, the taxpayer is required to file an amended Utah return. However, that one exception, as set forth in Section 59-10-536(2)(a)(iii), is applicable to this case. Section 59-10-536(2)(a)(iii) provides that a taxpayer is not required to file an amended Utah return if the change in the taxpayer’s federal income tax return does not increase the taxpayer’s Utah tax liability. The 2013 change in TAXPAYER 2010 federal return decreased her FAGI. As a result, the federal change decreased, not increased, her 2010 Utah liability. Because the exception found in Section 59-10-536(2)(a)(iii) applies to TAXPAYER circumstances, she was not required to file the second amended Utah return on which she claimed the \$\$\$\$ refund. Because TAXPAYER was not required to file the second amended Utah return, the alternative

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deadline of Section 59-10-529(12) does not apply to this case. Accordingly, the general deadline of Section 59-1-1410(8) is applicable to this case.

Conclusion. Pursuant to Section 59-1-1417, the taxpayer has the burden of proof in this matter. The taxpayer did not file her 2010 Utah refund request within the deadline set forth in Section 59-1410(8) and has not shown that this deadline should be excused or suspended. In addition, the taxpayer has not shown that an alternative Utah deadline to claim the refund is applicable to her circumstances. Finally, the Commission has determined that statutes of limitations must be strictly construed. *See USTC Appeal No. 05-1414* (Order Feb. 13, 2006).³ For these reasons, the taxpayer's request for a refund or credit of taxes she paid for the 2010 tax year should be denied.

Kerry R. Chapman
Administrative Law Judge

³ Redacted copies of this and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action and denies the taxpayer's request for a refund or credit of taxes for the 2010 tax year. 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner