

15-1361

TAX TYPE: INCOME TAX / REFUND

TAX YEAR: 2009 & 2010

DATE SIGNED: 12-18-2015

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

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2,

Petitioners,

v.

TAXPAYER SERVICES DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 15-1361

Account No. #####

Tax Type: Income Tax / Refund

Tax Year: 2009 & 2010

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-2, Taxpayer

For Respondent: RESPONDENT-1, from Taxpayer Services Division
RESPONDENT-2, from Taxpayer Services Division

STATEMENT OF THE CASE

TAXPAYER-1 and TAXPAYER-2 (“Petitioners” or “taxpayers”) are appealing Taxpayer Services Division’s (“Respondent” or “Division”) denials of their requests for refunds or credits of 2009 and 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 November 24, 2015.

On July 15, 2015, the taxpayers filed amended 2009 and 2010 Utah individual income tax returns, on which they claimed refunds of \$\$\$\$ for the 2009 tax year and \$\$\$\$ for the 2010 tax year. On July 27, 2015, the Division issued Notices of Expired Refund or Credit (“Notices”), in which it informed the taxpayers that the time to claim refunds or credits for 2009 and 2010 had expired. The Notices informed the taxpayers that

Appeal No. 15-1361

“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 deadlines to claim refunds or credits of taxes are October 15, 2013 for the 2009 tax year and October 15, 2014 for the 2010 tax year. Because the July 15, 2015 date on which the taxpayers filed their 2009 and 2010 amended returns occurred after these deadlines, the Division contends that Utah law precludes the refunds from being issued.

TAXPAYER-1 has been a partner in BUSINESS (“BUSINESS”) since 2009. The taxpayers believe that the Commission should grant the refund requests at issue because the taxpayers were not aware until 2015 that BUSINESS had been withholding and remitting Utah income taxes on its quarterly distributions to TAXPAYER-1. Because TAXPAYER-1’S portion of BUSINESS income was paid to the taxpayers’ own pass-through entity (TAXPAYER-1 & TAXPAYER-2, LLC), the taxpayers contend that BUSINESS failed to issue K-1 forms to TAXPAYER-1 & TAXPAYER-2, LLC on which the Utah withholding would have been shown. As a result, the taxpayers’ accountant was unaware of the Utah withholding amounts and did not subtract them from the taxpayers’ tax liability when he prepared their Utah income tax returns for 2009 and subsequent tax years.

Once the taxpayers became aware in 2015 that BUSINESS had been withholding taxes, the taxpayers’ accountant prepared amended returns for them to submit for the 2009 and subsequent tax years. The taxpayers explain that the Division issued the refunds shown on their amended returns for the 2011 and subsequent tax years, but denied their refund requests for 2009 and 2010. The taxpayers contend that they should also receive the refunds for 2009 and 2010 because the oversight to claim the refunds was not any fault of their own and because they do not believe that they should be “penalized” for someone else’s actions.

To show that they were unaware of the withholding until 2015, the taxpayers provided a letter from BUSINESS administrator, in which the administrator explained that the company with which BUSINESS

Appeal No. 15-1361

contracts to prepare all of its required tax forms failed to prepare the specific K-1 forms for the taxpayers' LLC that would have reflected the amounts of Utah income taxes withheld from TAXPAYER-1'S distributions. The taxpayers also submitted an email chain between BUSINESS controller and TAXPAYER-2 showing that the taxpayers were first informed in 2015 that Utah taxes had been withheld from TAXPAYER-1'S distributions. TAXPAYER-2 explained that BUSINESS did not withhold any federal taxes from its distributions to TAXPAYER-1.

In addition, the taxpayers submitted a letter from their CPA, NAME-1. In this letter, NAME-1 asks the Commission to also consider that the Tax Commission never informed the taxpayers or TAXPAYER-1 & TAXPAYER-2, LLC that there was a tax credit on the Tax Commission's system. NAME-1 states that the IRS and the Tax Commission "often let us know when there are credits on the system that are not properly applied for." NAME-1 states that it seems unfair to hold the taxpayers responsible for not requesting a refund of taxes that no one told them was available for refund and that it would be unfair for the state to benefit by "simply remaining silent that the credits exist." Given what he deems to be a "highly unusual event," NAME-1 asks the Commission to refund the amounts at issue to the taxpayers. Based on the foregoing, the taxpayers ask the Commission to reverse the Division's actions and refund the amounts at issue for the 2009 and 2010 tax years.

The Division stated that it is sympathetic to the taxpayers' circumstances, but contends that Utah law does not provide for the statute of limitations to claim a refund to be extended or waived just because it was someone else's fault, and not their own fault, that the taxpayers failed to request their 2009 and 2010 refunds within the statutory deadlines. The Division stated that it issued the taxpayers' refund requests for the 2011 and subsequent tax years because the requests were made within the statutory deadlines for those years.

The Division acknowledged that it alerts a taxpayer of a possible credit on the Tax Commission's "system" in a single circumstance, specifically where a taxpayer had submitted a payment by check but has not

submitted a return. Under this limited circumstance, the Division explained that it will send a letter to a taxpayer before the statutory deadline to request a refund has expired to inform the taxpayer that he or she may not qualify for a refund unless a return is filed by a statutory deadline. The Division, however, states that it is unaware of any law requiring the Tax Commission to send out such a letter to any taxpayer. Furthermore, the Division states that the Tax Commission's system does not have the ability to "tie together" a taxpayer's filed return with withholding amounts remitted by a different entity. For these reasons, the Division asks the Commission to sustain its actions to deny the taxpayers' refund requests.

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 timeframe within which a taxpayer can request a refund or credit of overpaid 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.

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 in pertinent part:

- (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 2009 tax year, all taxes at issue were withheld and paid 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 2009 taxes is timely under Section 59-1-1410(8)(a) only if the request is made by October 15, 2013. Because the Tax Commission did not receive the taxpayers' request for a refund or credit of 2009 taxes until July 15, 2015, the 2009 request was made after this statutory deadline.

For the 2010 tax year, all taxes at issue were withheld and paid on or before April 15, 2011. Two years from this date would be April 15, 2013. The due date of a 2010 return, with extensions, is October 15, 2011. Three years from this date is October 15, 2014. As a result, a request for a refund or credit of 2010 taxes is timely under Section 59-1-1410(8)(a) only if the request is made by October 15, 2014. Because the Tax Commission did not receive the taxpayers' request for a refund or credit of 2010 taxes until July 15, 2015, the 2010 request was made after this statutory deadline.

The taxpayers have the burden of proof in this matter. The taxpayers ask the Commission to excuse the statutory deadlines and grant their 2009 and 2010 refund requests for the reasons previously described. Historically, the Commission has strictly honored the statute of limitations period to claim a refund and has not waived or extended the period except where the Tax Commission itself was somehow responsible for a taxpayer filing his or her claim late. In fact, the Commission has consistently ruled in refund cases that it "does not have discretion to extend limitations periods."¹ The taxpayers' CPA suggests that the Tax Commission is at least partially responsible for the taxpayers' late refund requests because the Tax Commission did not alert the taxpayers that they had credits on the system for which they had not applied for refunds. The Commission, however, is unaware of any statutory provision requiring the Tax Commission to discover and alert a taxpayer of an overpayments and to inform a taxpayer of the statutory period within which a refund can be claimed. Accordingly, the Tax Commission was not responsible for the taxpayers' failure to file their 2009 and 2010 refund requests within the statutory periods.

Furthermore, the Commission is not aware of any Utah court ever finding that the limitations period to claim a tax refund can be waived or extended. The taxpayers, who again have the burden of proof, have not

1 See *USTC Appeal No. 13-835* (Findings of Fact, Conclusions of Law, and Final Decision Oct. 27, 2014). See also *USTC Appeal No. 05-1414* (Order Feb. 13, 2006). Redacted copies of these and other selected decisions can be viewed on the Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

Appeal No. 15-1361

provided any court decision or other precedent to suggest otherwise. Finally, the Legislature has provided that the limitations period to claim a refund may be extended under a single circumstance, specifically where the Tax Commission and a taxpayer sign a written statement to extend the limitations period before it has expired and by a specific amount of time.² The Legislature has not provided that the statutory period to claim a refund can be waived or extended for circumstances such as those that affected the taxpayers. For these reasons, the Commission should strictly honor the statute of limitations periods at issue in this case and sustain the Division's actions denying the taxpayers' refund requests.

Kerry R. Chapman
Administrative Law Judge

2 *See* Section 59-1-1410(8)(b).

Appeal No. 15-1361

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action to deny the taxpayers' request for refunds or credits of taxes for the 2009 and 2010 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, 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