

16-15

TAX TYPE: INCOME TAX / REFUND REQUEST

TAX YEAR: 2008

DATE SIGNED: 4/25/2016

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

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>INITIAL HEARING ORDER</p> <p>Appeal No. 16-15</p> <p>Account No. #####</p> <p>Tax Type: Income Tax / Refund Request</p> <p>Tax Year: 2008</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
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”) denial of their request for a refund or credit of 2008 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 April 12, 2016.

On October 15, 2015,¹ the taxpayers filed an amended 2008 Utah income tax return, on which they claimed a refund or credit of \$\$\$\$\$. On December 1, 2015, the Division issued a Notice of Expired Refund or

¹ In its Response to Petition for Redetermination, the Division indicated that the taxpayers submitted their amended 2008 Utah return on November 29, 2015. The taxpayers proffered that they have a receipt showing that they sent their amended 2008 Utah return to the Tax Commission by certified mail on October 15, 2015. The Division indicated that if the taxpayers have such a receipt, they will concede that the taxpayers filed their amended 2008 Utah return on October 15, 2015. As will be explained later in the decision,

Credit (“Notice”), in which it informed the taxpayers that the time to claim a refund or credit for the 2008 tax year had expired. The Notice 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 period for claiming a refund or credit of taxes for the 2008 tax year expired on October 15, 2012, which is three years and six months after the original due date for a 2008 Utah return, pursuant to Utah Code Ann. §59-1-1410(8)(a). Because the October 15, 2015 date on which the taxpayers filed their amended 2008 Utah return occurred three years after the statute of limitations deadline of October 15, 2012, the Division contends that Utah law precludes the Commission from issuing a refund or credit for 2008.

The taxpayers explain that they filed their *original* 2008 federal and state income tax returns on October 15, 2012 and, as a result, were refunded the federal and Utah taxes shown due on these original returns. Since then, the taxpayers have determined that they overreported their federal and state tax liabilities on these original returns. As a result, they filed amended 2008 federal and Utah returns on October 15, 2015, requesting not only an additional refund or credit of 2008 Utah income taxes from the Tax Commission, but also an additional refund or credit of 2008 federal income taxes from the Internal Revenue Service (“IRS”).²

The taxpayers contend that they have filed their amended 2008 Utah return and claimed the refund at issue within the timeframe found in UCA §59-10-529(12)(a). They argue that this statute allows a taxpayer to file an amended Utah return and claim a refund or credit within two years of filing an amended federal return,

however, the fact that the taxpayers may have filed their amended 2008 Utah return on October 15, 2015 instead of November 29, 2015, would have no impact on this decision.

² The IRS has yet to refund or credit the additional amount the taxpayers claimed on their amended 2008 federal return. The fact that the IRS has not refunded the additional amount the taxpayers have claimed on their amended 2008 federal return, however, does not affect the Commission’s decision in this case.

regardless of the circumstances surrounding the filing of the amended federal return. Because they filed both their amended 2008 federal return and their amended 2008 Utah return on the same day, they contend that their request for the refund at issue was made within two years of filing their amended 2008 federal return and, thus, satisfies the statute of limitations deadline found in Subsection 59-10-529(12)(a). The taxpayers admit that they did not file their amended 2008 federal return because of an audit or other action of the IRS. They filed the amended 2008 federal and Utah returns on their own initiative.

The Division admits that Subsection 59-10-529(12) provides an alternative deadline to claim a refund or credit of Utah taxes if the request is made within two years and ninety days after an amended Utah return is *required* to be filed with the Tax Commission. In this case, however, the Division contends that the taxpayers were not required to file an amended 2008 Utah return because the IRS did not perform an audit or take some other action. Because the taxpayers did not file their amended 2008 Utah return because of an IRS action, the Division contends that the alternative statute of limitations deadline found in Subsection 59-10-529(12) does not apply. As a result, the Division claims that the general statute of limitations deadline found in Subsection 59-1-1410(8) is applicable to this case. Because the taxpayers did not submit their amended 2008 Utah return within the deadline set forth in Subsection 59-1-1410(8), the Division claims that the Tax Commission is precluded from issuing a refund or credit of the \$\$\$\$ at issue. For these reasons, the Division asks the Commission to sustain its action to deny the taxpayers' 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.

. . . .

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:

. . . .

(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.

. . . .

(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 Statute of Limitations Deadline. Subsection 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 at issue, all Utah taxes appear to have been withheld and paid on or before April 15, 2009. Two years from this date would be April 15, 2011. Pursuant to Section 59-10-514 and Subsection 59-10-516(1), 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 2008 Utah taxes must be claimed by the later of these dates (i.e., October 15, 2012) to satisfy the statute of limitations period found in Subsection 59-1-1410(8)(a). Because the Tax Commission did not receive the refund request at issue until October 15, 2015, the request was not made within the general deadline found in Subsection 59-1-1410(8)(a).

Alternative Statute of Limitations Deadline. Although the refund at issue was not claimed within the general deadline found in Subsection 59-1-1410(8)(a), the Commission must determine whether the request is timely under an alternative deadline found in Utah law. The taxpayers submitted their refund request exactly three years after they had filed their original 2008 federal and Utah returns. The Commission, however, is not aware of any Utah law that allows a taxpayer to claim a refund or credit within three years of the date they submitted either an original federal return or an original Utah return. Furthermore, the taxpayers have not indicated that such a law exists. Accordingly, the taxpayers' refund request is not timely on the basis that it was submitted within three years of the date that the taxpayers filed their original 2008 returns.

Remaining at issue is whether the alternative statute of limitations deadline provided in Subsection 59-10-529(12)(a) is applicable to this case. Subsection 59-10-529(12)(a) provides that a taxpayer may file a claim

for a refund or credit of Utah taxes within two years if certain circumstances exist.³ If these circumstances exist, then this alternative deadline will “trump” the general deadline of Subsection 59-1-1410(8). Subsection 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 the taxpayers were required to file their amended 2008 Utah return. If they were required to file the amended Utah return, the alternative deadline of Subsection 59-10-529(12)(a) will apply. Otherwise, it will not apply.

Subsection 59-10-536(2)(a) provides the circumstances where a person is required to file an amended Utah return. With one exception, Subsection 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 Subsection 59-10-536(2)(a)(iii), is applicable to this case. Subsection 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 change the taxpayers reported on their amended 2008 federal return does not increase their 2008 Utah tax liability. Because the exception found in Subsection 59-10-536(2)(a)(iii) applies to the taxpayers’ circumstances, they were not required to file the amended 2008 Utah return on which they claimed the \$\$\$\$ refund. Because the taxpayers were not required to file the amended 2008 Utah return, the alternative deadline of Subsection 59-10-529(12) does not apply to this case.⁴ Accordingly, it is the general deadline of Subsection 59-1-1410(8) that is applicable to this case.

³ The Division indicates that another 90 days is added to this two-year statute of limitations period, pursuant to Subsection 59-10-536(2).

⁴ The Commission reached a similar conclusion in *USTC Appeal No. 15-1186* (Initial Hearing Order Oct. 8, 2015). 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>.

Summary. Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. The taxpayers have not met their burden of proof to show that they submitted their refund claim within the general statute of limitations deadline found in Subsection 59-1-1410(8), nor have they shown that they submitted the refund claim within an alternative statute of limitations deadline that is applicable to this case.

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.”⁵ There is no evidence in this case to suggest that the Tax Commission was responsible for the taxpayers filing the refund claim at issue after the statutory deadline.

The Commission is also not aware of any Utah court ever finding that the limitations period to claim a tax refund can be waived or extended. The taxpayers have not 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.⁶ The Legislature has not provided that the statute of limitations to claim a refund can be waived or extended for any circumstance present in this case. For these reasons, the Commission should strictly honor the statute of limitations period in this case and sustain the Division’s action to deny the taxpayers’ refund request.

Kerry R. Chapman
Administrative Law Judge

5 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).

6 See Subsection 59-1-1410(8)(b).

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DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's action and denies the taxpayers' request for a refund or credit of taxes for the 2008 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 _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner