

17-40

TAX TYPE: REFUND / CORPORATE FRANCHISE

TAX YEAR: 12/31/12

DATE SIGNED: 5-2-2017

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

DECISION LOG

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 17-40</p> <p>Account No. XXX-002-CPT</p> <p>Tax Type: Refund / Corporate Franchise Tax</p> <p>Tax Year: Year ending 12/31/12</p> <p>Judge: Chapman</p>
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA (by telephone)
For Respondent: RESPONDENT-1, from Taxpayer Services Division
RESPONDENT-2, from Taxpayer Services Division
RESPONDENT-3, from Taxpayer Services Division

STATEMENT OF THE CASE

TAXPAYER (“Petitioner” or “taxpayer”) is appealing Taxpayer Services Division’s (“Respondent” or “Division”) denial of its request for a refund or credit of Utah corporate franchise and income taxes (“corporate franchise taxes”) for the tax year ending December 31, 2012 (the “2012 tax year”). This matter came before the Utah State Tax Commission for a Telephone Status Conference on April 12, 2017, which, upon agreement by the parties, was converted to an Initial Hearing. The Initial Hearing was continued to April 19, 2017, at which time the parties provided additional information.

On or around November 30, 2016, the taxpayer filed an original 2012 Utah corporate franchise tax return on which it reported that it owed \$\$\$\$ of corporate franchise taxes.¹ The taxpayer remitted a \$\$\$\$ payment with the return. This Division explained that because a \$\$\$\$ overpayment from the tax year ending December 31, 2011 (the “2011 tax year”) had previously been applied to the taxpayer’s 2012 account, the taxpayer’s 2012 return is considered a request for a refund or credit of the \$\$\$\$ that had previously been applied to its 2012 account. On September 28, 2016, 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 2012 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 taxpayer has appealed the Division’s action and asks the Commission to grant its request for a refund or credit of the \$\$\$\$ of taxes that it overpaid for the 2012 tax year. Because of the complexity of this case, a chronology of the events concerning the taxpayer’s 2011 and 2012 Utah corporate franchise tax accounts is set forth below.

Chronology

1. On or about April 18, 2011, the taxpayer paid \$\$\$\$ as an estimated payment for the 1st quarter of the 2011 tax year. Accompanying the payment was a USTC Form TC-559 (Tax Payment Coupon for Utah Corporation/Partnership), which indicated that the \$\$\$\$ payment was an estimated payment for the 1st quarter of the 2011 tax year.

¹ The Division proffered that the Tax Commission received the taxpayer’s 2012 return on November 30, 2016, but it does not have the envelope in which the return was mailed to know whether the envelope was postmarked on a different date. The taxpayer’s CPA admits that the taxpayer mailed its 2012 Utah corporate franchise tax returns to the Tax Commission sometime in November 2016.

2. On or about August 31, 2011, the taxpayer paid \$\$\$\$ as an estimated payment for the 3rd quarter of the 2011 tax year. Accompanying the payment was a USTC Form TC-559 (Tax Payment Coupon for Utah Corporation/Partnership), which indicated that the \$\$\$\$ payment was an estimated payment for the 3rd quarter of the 2011 tax year.

3. On October 15, 2012, the Tax Commission received the taxpayer's 2011 Utah corporate franchise tax return, on which the taxpayer showed its 2011 tax liability to be \$\$\$\$.² On line 8 of the 2011 return, the taxpayer reported the \$\$\$\$ of prepayments that were described in the prior two paragraphs. The taxpayer deducted its \$\$\$\$ tax liability for the 2011 tax year from the \$\$\$\$ of 2011 prepayments that it had made and reported an "overpayment" of \$\$\$\$ on line 12 of the return. On line 13 of the return, the taxpayer indicated that it wanted all \$\$\$\$ of the line 12 overpayment "to be applied to next taxable year."³

4. On November 26, 2012, the Division applied the taxpayer's 2011 overpayment of \$\$\$\$ to the taxpayer's 2012 account, per the taxpayer's request.

5. On July 13, 2016, the Division sent the taxpayer a Payment Without Matching Tax Return letter, in which the Division informed the taxpayer that Tax Commission records showed a payment for the 2012 tax year, but did not show a 2012 return being filed. The letter did not indicate the amount of any payment that had been made or applied to the taxpayer's 2012 account. In the letter, however, the Division informed the taxpayer that Utah law limits the time allowed a claim a refund or credit for the 2012 tax year "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 letter also informed the taxpayer that if it was due a refund or credit for the 2012 tax year

2 The taxpayer's 2011 tax liability was only \$\$\$\$ for the 2011 tax year because of a large loss claimed by the taxpayer for this year. In comparison, the taxpayer's annual Utah tax liabilities ranged between \$\$\$\$ and \$\$\$\$ for tax years ending December 31, 2002 through December 31, 2010.

3 The taxpayer did not request for any of its 2011 overpayment of \$\$\$\$ to be refunded. On line 14 of its 2011 return, which asks a taxpayer to report the amount of an overpayment that it wants to be refunded, the taxpayer reported \$0.

and did not file its 2012 return before October 17, 2016, “we will not be able to issue you a refund or credit for the amount that is past statute.”

6. REPRESENTATIVE FOR TAXPAYER indicates that in July or August 2016, the taxpayer engaged him to prepare its 2012, 2013, 2014, and 2015 Utah corporate franchise tax returns. As a result, REPRESENTATIVE FOR TAXPAYER was engaged to prepare the taxpayer’s 2012 Utah return around or soon after the July 13, 2016 date that the Division sent the Payment Without Matching Tax Return letter described in the prior paragraph. REPRESENTATIVE FOR TAXPAYER acknowledges that the Division sent the letter to the taxpayer’s correct address, but contends that the taxpayer never received it. As a result, REPRESENTATIVE FOR TAXPAYER contends that the taxpayer never provided the letter to him and that he was unaware of any urgency associated with the filing of the taxpayer’s 2012 Utah return.

7. REPRESENTATIVE FOR TAXPAYER explains that because he was unaware of any urgency for the taxpayer to file its 2012 Utah return, he prepared the returns for the more recent tax years first, which resulted in his preparing the 2012 return last. The Tax Commission received the taxpayer’s 2015 return on September 15, 2016, and received the taxpayer’s 2012, 2013, and 2014 returns on November 30, 2016.

8. The taxpayer signed its 2012 Utah return on November 7, 2016, and the Commission received it on November 30, 2016. On this return, the taxpayer also showed its 2012 tax liability to be \$\$\$\$\$.⁴ On line 8 of the 2012 return, the taxpayer did not report any credits or prepayments for the 2012 tax year.⁵ As a result,

4 REPRESENTATIVE FOR TAXPAYER explained that the taxpayer’s 2012 Utah tax liability was only \$\$\$\$\$ because a portion of the large loss that the taxpayer claimed for the 2011 tax year carried forward to the 2012 tax year.

5 REPRESENTATIVE FOR TAXPAYER explained that when he prepared the taxpayer’s 2012 Utah return, he knew to carry forward the loss the taxpayer had claimed for the 2011 tax year because he had a copy of the taxpayer’s 2011 federal return showing the loss. He stated, however, that he did not have a copy of the taxpayer’s 2011 Utah return and, thus, did not know that the taxpayer had asked for its 2011 overpayment to be applied to the 2012 tax year. For this reason, on the 2012 return, REPRESENTATIVE FOR TAXPAYER did not subtract the \$\$\$\$\$ amount that had previously been applied to the taxpayer’s 2012 account.

on lines 9 and 11 of the return, the taxpayer reported that its “tax due” amount was \$\$\$\$\$. As discussed previously, the taxpayer remitted a \$\$\$\$\$ payment with the 2012 return.

9. On December 7, 2016, the Division issued the Notice of Expired Refund or Credit that was described earlier and on which the Division informed the taxpayer that “[y]ou will not be issued a refund or allowed a credit” for the 2012 tax year.

Parties’ Arguments and Positions

The Division explained that Utah Code Ann. §59-1-1410(8)(a) provides the general statute of limitations periods within which a taxpayer may request a refund or credit of an overpayment. Subsection 59-1-1410(8)(a) provides that a taxpayer can request a refund or credit within the later of two periods, specifically: 1) three years from the due date of the return, including any extension period; and 2) two years from the date the tax was paid.

The first statute of limitations period, as found in Subsection 59-1-1410(8)(a)(i), provides that an individual may request a refund or credit within three years from the due date of the return, including any extension period. The Division stated that the period for claiming a refund or credit of taxes for the 2012 tax year under this subsection expired on October 17, 2016, which is three years and six months after the April 15, 2013 due date for a 2012 return.⁶ Because the November 30, 2016 date on which the Commission received the taxpayer’s 2012 return occurred after this October 17, 2016 deadline, the Division contends that the taxpayer’s request for a refund or credit of 2012 taxes is untimely under this subsection.

The second statute of limitations period, as found in Subsection 59-1-1410(8)(a)(ii), provides that an individual may request a refund or credit within two years from the date the tax was paid. At the hearing, the

⁶ Because October 15, 2016 fell on a Saturday, the Subsection 59-1-1410(8)(a)(i) deadline to claim a 2012 refund or credit was extended to October 17, 2016.

Division stated that pursuant to this subsection, the \$\$\$\$ payment that the taxpayer made at the time it filed its 2012 return can be refunded because a payment received with a refund request is considered to have been paid within two years of the refund request. As to that part of the taxpayer's 2012 overpayment that resulted from the application of the 2011 overpayment to the taxpayer's 2012 account in November 2012, the Division contends that it cannot be refunded because it was paid more than two years before the taxpayer submitted its 2012 return in November 2016. For these reasons, the Divisions asks the Commission to deny the taxpayer's request for a refund or credit of overpaid 2012 taxes, with the exception of the \$\$\$\$ payment that the taxpayer remitted in November 2016.⁷

REPRESENTATIVE FOR TAXPAYER asks the Commission to grant a refund or credit of the entire \$\$\$\$ amount that the taxpayer overpaid for the 2012 tax year. REPRESENTATIVE FOR TAXPAYER acknowledged that the taxpayer filed its 2012 return after the statutory deadlines had expired in regards to most of the 2012 overpayment. However, he asks the Commission to grant an exception and to either waive or excuse the statute of limitations deadlines for several reasons. First, REPRESENTATIVE FOR TAXPAYER asks the Commission to consider that he was unaware of the urgency for the taxpayer to file its 2012 return because he had not seen the July 13, 2016 Payment Without Matching Tax Return letter and because he did not know that the taxpayer had requested its 2011 overpayment to be applied to its 2012 account.

Second, REPRESENTATIVE FOR TAXPAYER asks the Commission to consider that the taxpayer's employee who had previously been responsible for the taxpayer's "tax reporting" left the company without "transitioning" these responsibilities to another of the taxpayer's employees and without communicating the

⁷ The Division has not yet refunded the \$\$\$\$ to the taxpayer. In addition, in its Notice of Expired Refund or Credit, the Division determined that the taxpayer was not entitled to any refund or credit for the 2012 tax year, a position that it reiterated in its Response to Petition for Redetermination. At the hearing, however, the Division asks the Commission to find that the taxpayer is entitled to a refund or credit of \$\$\$\$ of the overpayment that exists for the 2012 tax year.

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status of the taxpayer's tax returns with other employees. Third, REPRESENTATIVE FOR TAXPAYER asks the Commission to consider that the taxpayer filed its delinquent returns for the 2012, 2013, and 2014 tax years before the Tax Commission began any investigation into the taxpayer's possible tax liabilities for these years. He contends that the taxpayer's efforts demonstrate the taxpayer's good faith and intent to be a taxpayer in good standing. For these reasons, REPRESENTATIVE FOR TAXPAYER asks the Commission to grant a refund or credit of all amounts that the taxpayer overpaid for the 2012 tax year.

The Division stated that it is unaware of any authority the Commission has to waive or extend the statutory deadlines to request a refund or credit of taxes. As a result, the Division asks the Commission to sustain its action denying the taxpayer's refund claim, with the exception of the \$\$\$\$ payment that the taxpayer remitted with its 2012 return in November 2016.

APPLICABLE LAW

Utah Code Ann. §59-7-505 provides for the filing of a Utah corporate franchise tax return, as follows in pertinent part:

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- (2) Returns shall be made on or before the 15th day of the fourth month following the close of the taxable year.
 - (3) (a) The commission shall allow a taxpayer an extension of time for filing returns.
 - (b) The extension under Subsection (3)(a) may not exceed six months.
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UCA §59-1-1410 addresses the general timeframe within which a taxpayer can request a refund or credit of overpaid taxes, as follows in pertinent part:

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- (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.

....

For the instant matter, UCA §59-1-1417(1) provides guidance concerning which party has the burden of proof, 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

Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter. The taxpayer is considered to have submitted its request for a refund or credit of 2012 taxes on November 30, 2016, the date the Division received the taxpayer's 2012 Utah return.⁸ As a result, the Commission will determine whether the taxpayer's November 30, 2016 refund request satisfies either of the statutes of limitations found in Subsection 59-1-1410(8)(a).

⁸ Because the taxpayer signed its 2012 Utah return on November 7, 2016, it is possible that the taxpayer mailed the return in an envelope that was postmarked on or after November 7, 2016, but prior to November 30, 2016. The taxpayer, however, has the burden of proof and has not shown that the envelope in which it mailed its 2012 return was postmarked prior to November 30, 2016. Accordingly, the taxpayer is considered to have made its 2012 refund request on November 30, 2016. Nevertheless, even if the taxpayer had been able to show that it mailed its 2012 return on November 7, 2016, it would not have affected the Commission's decision.

Subsection 59-1-1410(8)(a)(i). This subsection provides that an individual may request a refund or credit within three years from the due date of the return, including any extension period. Pursuant to Subsections 59-7-505(2) and (3), the extended due date of a Utah corporate franchise tax return for the 2012 tax year (i.e., for tax year ending December 31, 2012) is six months after the 15th day of the fourth month following the close of the taxable year. For a tax year ending on December 31, 2012, the 15th day of the fourth month following the close of the tax year is April 15, 2013. Six months after this date is October 15, 2013 (which is the extended due date of the taxpayer's 2012 return). Three years after this extended due date of October 15, 2013 is Saturday, October 15, 2016. As a result, a request for a refund or credit of taxes for the 2012 tax year must be claimed by Monday, October 17, 2016 to satisfy the statute of limitations period found in Subsection 59-1-1410(8)(a)(i). The taxpayer filed its 2012 return on November 30, 2016, which is more than six weeks after this particular statute of limitations deadline. Accordingly, the taxpayer is not entitled to receive a refund of any 2012 taxes under this subsection.⁹

Subsection 59-1-1410(8)(a)(ii). This subsection provides that an individual may request a refund or credit within two years from the date that the tax was paid. The taxpayer submitted its 2012 refund request on November 30, 2016. As a result, any payment that occurred within two years prior to November 30, 2016 (i.e., on or after November 30, 2014) may be refunded under this subsection.

Clearly, the \$\$\$\$ payment that accompanied the taxpayer's 2012 return was made within two years of the date that the taxpayer filed this return. Accordingly, this \$\$\$\$ may be refunded to the taxpayer under Subsection 59-1-1410(8)(a)(ii). However, the remainder of the taxpayer's 2012 overpayment arose from the

⁹ The Commission recognizes that the taxpayer filed its 2011 return within three years and six months of the date that its 2011 return was due. As a result, had the taxpayer asked for a refund of its 2011 overpayment on its 2011 return, it appears that the 2011 overpayment could have been refunded instead of being applied to the taxpayer's 2012 account. As explained earlier, however, the taxpayer did not ask for a refund of its 2011 overpayment. Instead, the taxpayer asked for the 2011 overpayment to be applied to its 2012 account, which occurred per the taxpayer's instruction.

taxpayer's instruction for its 2011 overpayment to be applied to its 2012 account (as found on the 2011 return the Tax Commission received on October 15, 2012). The Division complied with the taxpayer's instruction and applied the 2011 overpayment to the taxpayer's 2012 account on November 26, 2012. None of the dates associated with the application of the 2011 overpayment to the taxpayer's 2012 account occurred on or after November 30, 2014 (i.e., none of these dates occurred within two years of the November 30, 2016 date that the taxpayer submitted its 2012 refund request). Accordingly, none of the 2011 overpayment that was applied to the taxpayer's 2012 account in November 2012 can be refunded or credited under Subsection 59-1-1410(8)(a)(ii).

In summary, the taxpayer is only entitled to receive a refund or credit of \$\$\$\$ of the taxes that it overpaid for the 2012 tax year, pursuant to Subsection 59-1-1410(8)(a). The taxpayer, however, asks the Commission to make an exception and grant a refund of the entire \$\$\$\$ amount that it overpaid for 2012. 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."¹⁰ The Commission is not responsible for the taxpayer not receiving the July 13, 2016 Payment Without Matching Tax Return letter because it was sent to the taxpayer's correct address.¹¹

Lastly, 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 taxpayer has not provided any court decision or other

10 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).

11 Furthermore, the Commission is not aware of any statute requiring the Tax Commission to alert a taxpayer of a missing return for a year for which a payment has been made. Accordingly, even if the Division had not sent the July 13, 2016 letter to the taxpayer, this would not have excused or waived the statutory deadlines to claim a refund or credit of 2012 taxes.

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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 agreement to extend the limitations period before it has expired and by a specific amount of time.¹² The Legislature has not provided that the statute of limitations to claim a refund can be waived or extended for the circumstances present in this case. For these reasons, the Commission should strictly honor the statute of limitations periods at issue in this case and find that the taxpayer is only entitled to a refund or credit of \$\$\$\$ for the 2012 tax year. The Commission should deny the remainder of the taxpayer's refund request.

Kerry R. Chapman
Administrative Law Judge

12 *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 taxpayer's request for a refund or credit of Utah corporate franchise taxes for the 2012 tax year, with one exception. The Commission finds that the taxpayer is entitled to a refund or credit of \$\$\$\$\$. 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 _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner