

05-1546  
Audit  
Signed 12/05/2006

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	05-1546
v.	)		
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF THE	)	Account No:	#####
UTAH STATE TAX COMMISSION,	)	Tax Year:	2001, 2002, 2003
	)		
Respondent.	)	Judge:	Chapman

---

**Presiding:**  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE, Representative  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, from Auditing Division  
RESPONDENT REPRESENTATIVE 3, from the Auditing Division

STATEMENT OF THE CASE

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 28, 2006.

On October 14 and October 19, 2005, Auditing Division (“Division”) issued Statutory Notices of Audit Change (“Statutory Notices”) to the Petitioner, imposing additional Utah income tax for the 2001, 2002, and 2003 tax years. The Division imposed additional tax in the amount of \$\$\$\$ for 2001, \$\$\$\$ for 2002, and \$\$\$\$ for 2003. The Division also imposed interest on each assessment, but did not impose any penalties.

On the Petitioner’s Utah income tax returns for each of the years at issue, he took an “other deduction” from his federal adjusted gross income (“FAGI”) when calculating his Utah taxable income. The “other deduction” was related to income distributed by a retirement plan of which the Petitioner was a plan participant and amounted to \$\$\$\$ for 2001, \$\$\$\$ for 2002, and \$\$\$\$ for 2003. The Division disallowed

the other deduction for each year and imposed its assessments because the retirement plan issued Internal Revenue Service (“IRS”) Form 1099R’s to the Petitioner for each year, on which it reported the income the Petitioner had deducted as his income.

The Petitioner does not contest that the retirement plan distributed the income at issue and that the plan reported it as his income on the Form 1099R’s. However, he is appealing because he did not receive all of the income that the retirement plan distributed and reported on his Form 1099R’s. The Petitioner explained that the retirement plan distributed a portion of the income reported on his Form 1099R’s to his ex-spouse, pursuant to the terms a document that the Petitioner referred to as a qualified domestic relations order (“QDRO”)<sup>1</sup>.

The Petitioner further explained that the QDRO provided that each party receiving distributions from the retirement plan would be responsible for taxes on the distributions he or she received. Nevertheless, the retirement plan issued Form 1099R’s to the Petitioner on which it included the amounts distributed to all payees. Furthermore, even though the Petitioner contacted the retirement plan and requested that it issue a separate Form 1099R to each payee receiving distributions pursuant to the QDRO, the retirement plan would not comply with his request. Because the Petitioner did not receive all of the income reported on his Form 1099’s and because the QDRO provided that he would only be responsible for taxes on those distributions he received, the Petitioner adjusted his income on his tax returns to account for the income he had not received. For these reasons, the Petitioner asks the Commission to approve his “other deductions” as equitable adjustments and to overturn the Division’s assessments.

---

<sup>1</sup> Pursuant to 26 U.S.C. §414(p), a “QDRO” is a judgment, decree, or order (including approval of a property settlement agreement) made under a State’s domestic relations or community property laws. Furthermore, federal law provides that a QDRO must meet specified requirements as to content and must relate to the provision of child support, alimony or marital property rights to a spouse, former spouse, child or other dependent of a plan participant.

APPLICABLE LAW

**Equitable Adjustments.** For the years at issue, UCA §59-10-115<sup>2</sup> provided that a taxpayer's Utah taxable income could be adjusted for equitable purposes under certain circumstances. Subsection 59-10-115(4) provided that the Commission could specify in rule other circumstances allowing for equitable adjustment, as follows in pertinent part:

The commission shall by rule prescribe for adjustments to state taxable income of the taxpayer in circumstances other than those specified by Subsection (1), (2), and (3) of this section where, solely by reason of the enactment of this chapter, the taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. . . .

The Commission adopted Utah Admin. Rule R865-9I-4 ("Rule 4") to address other amounts of income that may qualify as an equitable adjustment to Utah taxable income, as follows:

- A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.
- B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

DISCUSSION

The Commission is not convinced that the "other adjustments" the Petitioner made on his Utah tax returns for the years at issue are appropriate equitable adjustments. First, Section 59-10-115 and Rule 4 both provide that equitable adjustments are appropriate to prevent a taxpayer from being subjected to a double

---

2 This section was amended in 2006.

tax benefit or double tax detriment. Such circumstances are not present in this matter. The issue here is whether the Petitioner is responsible for Utah income tax on income reported to, but not received by, him. The Division's assessment does not result in the Petitioner being taxed twice on the income reported on his Form 1099R's.

Second, the Internal Revenue Code provides that a distribution made by a qualified plan to an "alternate payee" (e.g., spouse, ex-spouse, child or other dependent of the participant) under the terms of a QDRO is taxable to the alternate payee and not to the participant. 26 U.S.C. §402(e)(1)(A). Accordingly, the Commission would expect the retirement plan to issue separate Form 1099R's to each payee, if the document providing for separate distribution and taxation was, indeed, a QDRO. The Division has suggested that the retirement plan has determined that the document is not a QDRO because there the Petitioner presented no evidence to show that the plan determined the document to be a QDRO, as required under §414(p)(6) of the IRC, and because it has refused the Petitioner's request to report the ex-spouse's income to her on a separate Form 1099R. The Division also suggests that because the divorce document provides for distributions from the retirement plan to the ex-spouse's attorney, such a provision may result in the document not qualifying as a QDRO.

In any case, the Petitioner has neither proven that the divorce document has been recognized by the retirement plan as a QDRO nor taken appropriate steps to correct the retirement plan's refusal to recognize its terms if it is a QDRO (such as filing IRS Form 4852's to correct the Form 1099R's issued by the retirement plan). For these reasons, the Commission finds that the evidence and testimony proffered at the Initial Hearing are insufficient to show that the Petitioner is not responsible for taxes on the amounts of distributions reported on the Form 1099R's issued to him. Accordingly, the Commission sustains the Division's assessments.

Appeal No. 05-1546

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's imposition of additional tax and interest to the Petitioner for the 2001, 2002, and 2003 tax years. Accordingly, the Petitioner's appeal is denied. 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 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

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

---

Kerry R. Chapman  
Administrative Law Judge

Appeal No. 05-1546

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

*KRC/05-1546.int*