

08-1313
AUDIT- INCOME TAX
TAX YEAR: 2004
SIGNED:03-19-09
COMMISSIONERS:P. HENDRICKSON, R. JOHNSON, D. DIXON
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-1313 Account No. ##### Tax Type: Income Tax Tax Years: 2004 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER, Taxpayer
 For Respondent: RESPONDENT REP, from 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 March 9, 2009.

 PETITIONER (“Petitioner” or “taxpayer”) is appealing Auditing Division’s (the “Division”) assessment of individual income tax for the 2004 tax year. On May 14, 2008, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayer, in which it imposed additional tax and interest (calculated as of June 13, 2008), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

 The Division made its assessment after receiving information from the Internal Revenue

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Service (“IRS”) showing that the IRS increased the taxpayer’s federal adjusted gross income (“FAGI”) by \$\$\$\$\$, from \$\$\$\$\$ (as the taxpayer reported on his original federal return) to \$\$\$\$\$. The IRS provided information showing that the \$\$\$\$\$ represented taxable unemployment compensation paid to the taxpayer by the Utah Department of Workforce Services (“Workforce Services”).

The Division proffers evidence showing that the IRS’s change led to the IRS assessing \$\$\$\$\$ of additional federal tax, which the taxpayer paid. The taxpayer admitted that he paid the amount that the IRS billed him, but explained that he did not realize how the deficiency with the IRS arose.

The Division also provided evidence that the IRS assessment may be incorrect and suggested that the taxpayer may want to contact the IRS and see if he can get the federal assessment reversed. Specifically, the Division shows that the \$\$\$\$\$ of FAGI that the taxpayer originally reported on his federal and Utah returns already included the \$\$\$\$\$ of unemployment compensation. The Division believes that the IRS imposed its assessment because the taxpayer reported his unemployment compensation on the wrong line of his IRS return. The taxpayer included the unemployment compensation as part of his total wages on line 7 of the federal return instead of separately reporting his unemployment compensation on line 19 of the federal return.

However, until the IRS reverses its assessment, the Division asks the Commission to sustain its assessment and to deny the taxpayer’s appeal. The taxpayer, on the other hand, asks the Commission to reverse the Division’s assessment.

APPLICABLE LAW

Utah Code Ann. §59-10-104 (2004)¹ provides that “a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual. . . .”

¹ The Commission cites to and applies the Utah Individual Income Tax Act that was in effect in 2004 for the tax year at issue in this appeal. In 2007, the Individual Income Tax Act was revised.

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Utah Code Ann. §59-10-112 defines “state taxable income” to mean “federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in §59-10-114.”

UCA §59-10-111 defines “federal taxable income” to mean “taxable income as currently defined in Section 63, Internal Revenue Code of 1986.”

If the IRS makes a change to the Utah resident’s federal taxable income, UCA §59-10-536(5) requires the resident to file an amended Utah return, as follows:

- (a) If a change is made in a taxpayer’s net income on his or her federal income tax return, either because the taxpayer has filed an amended return or because of an action by the federal government, the taxpayer must notify the commission within 90 days after the final determination of such change. The taxpayer shall file a copy of the amended federal return and an amended state return which conforms to the changes on the federal return. No notification is required of changes in the taxpayer’s federal income tax return which do not affect state tax liability.
- (b) The commission may assess any deficiency in state income taxes within three years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Utah tax attributable to such federal change or correction. The provisions of this Subsection (b) do not affect the time within which or the amount for which an assessment may otherwise be made. However, if the taxpayer fails to report to the commission the correction specified in this Subsection (b) the assessment may be made any time within six years after the date of said correction.

UCA §59-10-543 provides that the burden of proof is upon the petitioner in income tax matters before the Commission, with limited exceptions as follows:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under Title 59, Chapter 1, Part 5 is filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported, and of which change or correction the commission had no notice at the time it mailed the notice of deficiency.

DISCUSSION

The evidence proffered by the Division at the Initial Hearing shows that the IRS action that gave rise to the Division's assessment is incorrect. Specifically, it appears that the taxpayer reported the correct amount of FAGI on the original returns he submitted to the IRS and to Utah. It appears that the IRS and Utah assessments arose only because he reported his unemployment compensation on the incorrect line on the federal return. The Division believes that the taxpayer may possibly approach the IRS and have the federal assessment reversed, if he is not barred by statutes of limitations.

At issue is whether the Commission should sustain the Division's assessment because it reflects the IRS's current FAGI or whether the Commission should reverse the Division's assessment because it reflects an FAGI that appears from the evidence to be incorrect. The Commission addressed a matter that was similar in some aspects in *Appeal No. 06-1408* (Utah State Tax Comm'n Nov. 5, 2007). In *Appeal No. 06-1408*, documentation was proffered that supported the Petitioner's original federal and Utah returns and indicated that the revised FAGI determined by the IRS was incorrect. In that case, the Commission reversed the Division's assessment, even though it reflected the IRS's current FAGI, stating that:

The Utah Code sections specify that state taxable income is federal taxable income as defined in the Internal Revenue Code, they do not tie the state taxable income to the federal taxable income as determined by the IRS. Certainly the Tax Commission will give great deference in the interpretation of the Internal Revenue Code to the IRS, as they are the experts in this area. However, where there is a clear error and the taxpayer was unable to have the merits reviewed by the IRS due to the statute of limitations or for other procedural reasons, the Commission concludes that it is appropriate to give consideration to the definitions provided in the Internal Revenue Code.

In *Appeal No. 06-1408*, however, the Petitioner had been told that the IRS considered the federal matter final and closed. The taxpayer in this appeal has not been told that the federal matter is closed. As a result, it may be possible for the taxpayer to file an amended federal return that shows his income on the correct lines, which could result in the IRS reversing the assessment that also gave rise to the current appeal.

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Regardless, the Commission finds that the evidence proffered by the Division shows that the taxpayer's original Utah return reflects the correct amount of "federal taxable income" as defined in Sections 59-10-111 and 59-10-112. Accordingly, under these specific circumstances, the Commission finds that the Division's assessment is incorrect, even though it reflects the FAGI currently recognized by the IRS. As a result, the Commission reverses the Division's assessment.

DECISION AND ORDER

Based upon the foregoing, the Commission grants the taxpayer's appeal and abates the Division's audit assessment for the 2004 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 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 _____, 2009.

Kerry R. Chapman
Administrative Law Judge

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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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: Unless a party requests a Formal Hearing, the balance of tax and interest resulting from this decision must be paid within thirty days from the date this decision is issued or an additional late payment penalty may be assessed.

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