

10-2360
TAX TYPE: INCOME TAX
TAX YEAR: 2006 – 2007
DATE SIGNED: 8-15-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-2360</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Years: 2006 - 2007</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA, By Telephone

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on May 7, 2013. Petitioner (the “Taxpayer”) is appealing an audit deficiency of Utah individual income tax for the years 2006 and 2007. Respondent (the “Division”) issued the original Notices of Deficiency and Audit Change on August 12, 2010 and then issued amended Notices of Deficiency and Audit Change on December 20, 2011, which reduced the deficiency for both years. The Taxpayers timely appealed the audit. The amounts of the audit deficiencies listed on the Notices of Deficiency are as follows:

	Tax	Penalty	Interest	Total as of Notice Date ¹
2006 Original	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006 Amended	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007 Original	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007 Amended	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104 (2006)² as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

State taxable income is defined in Utah Code Sec. 59-10-112 (2006) as follows:

"State taxable income" in the case of a resident individual means the resident individual's federal taxable income as defined by Section 59-10-111, with the additions and subtractions required by Section 59-10-114 . . .

Federal taxable income is defined in Utah Code Sec. 59-10-111 (2006) as follows:

"Federal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.

If the Internal Revenue Service makes a change to a Utah resident's federal taxable income the resident must file an amended Utah return according to Utah Code Sec. 59-10-536(5) (2006) which provides:

(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.

² The Utah Individual Income Tax Act has been revised and provisions renumbered subsequent to the audit period. The Commission cites to and applies the provisions that were in effect during the audit period on substantive legal issues.

Interest is assessed pursuant to Utah Code Sec. 59-1-402(5)(2006) as follows:

Interest on any underpayment, deficiency or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

The applicable statutes specifically provide that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code Sec. 59-1-1417(1) provides:

In a proceeding before the commission, the burden of proof is on the petitioner. . .

DISCUSSION

In this matter the audit deficiencies were the result of an audit by the Internal Revenue Service of the Taxpayer's 2006 and 2007 federal tax filings. The IRS substantially increased the Taxpayer's federal taxable income. For the 2006 year the IRS originally increased the Taxpayer's federal taxable income from \$\$\$\$\$ to \$\$\$\$\$, but then made a subsequent revision adjusting it down to \$\$\$\$\$. The amended 2006 Utah audit is based on the FAGI of \$\$\$\$\$. For 2007 the IRS increased the Taxpayer's FAGI from \$\$\$\$\$ to \$\$\$\$\$ and then revised that to \$\$\$\$\$. The amended 2007 Utah audit is based on the FAGI of \$\$\$\$\$.

The representative for the Taxpayer did not provide evidence at the hearing to support a lower FAGI for the Taxpayer and did not provide at the hearing what FAGI he thought was correct for each of these years. He stated that in the IRS audit, the IRS had considered all of the Taxpayer's expenses to be income. He indicated that the Taxpayer did have ledgers to support the expenses, but during the course of the IRS audit was told by an IRS agent that he needed to redo all his Quick Books. The Taxpayer did not want to do so as it would cost too much money and the IRS audit was issued substantially increasing the Taxpayer's FAGI. Then the Taxpayer did not timely appeal the IRS audit, but now more recently has been working with the IRS Taxpayer's Advocate. The representative stated that he thought the IRS might open up the federal audit for an appeal or some further review or adjustment.

The representative also argued that the State Tax Commission should make an independent audit separate from what the IRS has done. He stated that the Taxpayer's books and records supported the expenses and wanted an auditor to come out and look through the records and make a determination. The Taxpayer did

not submit copies of the records as evidence at the hearing, nor had they been provided to the Division prior to the hearing.

It was the Division's position that the Utah taxable income is based on the federal taxable income at Utah Code Sec. 59-10-112. The Division's representative pointed out that the amended audit is based on FAGI as indicated in the current IRS transcripts. He did point out that the IRS had made some substantial changes to its original audit and that was the difference between the Utah original audit deficiencies and the Utah amended audit deficiencies. He did ask the Taxpayer's representative what the FAGI was that the Taxpayer was claiming, but the representative did not have that information available.

The Tax Commission generally gives deference to the IRS in determining federal taxable income for purposes of the Utah income tax filing which is based on the federal taxable income by statute. However, the Commission has found in prior decisions that it would consider making an independent determination regarding a person's federal taxable income.³ Generally, this occurs if the person had failed to appeal an IRS audit administratively or otherwise to the IRS, due to failing to meet deadlines or other procedural issues and, if it was clear that the IRS' determination was in error. Also this step would generally occur only after the IRS has made a final determination and there are no additional rights to appeal or review.

However, the Taxpayer has the burden of proof in this matter under Utah Code Sec. 59-1-1417(1). It is not sufficient for the Taxpayer to assert that the Division should have come out and audited the Taxpayer's books. The Taxpayer would need to provide the documentation supporting his position and no evidence was provided at the hearing. The Taxpayer's representative indicated at the hearing that the Taxpayer's Advocate at the IRS was now looking into the matter and there might still be further adjustments with the IRS. If the IRS does further reduce the Taxpayer's FAGI, the Taxpayer may file an amended return or contact the Division about amendments based on the change. However, the Taxpayer has not shown that the FAGI determined by the IRS was erroneous and the Taxpayer's appeal should be denied.

Jane Phan
Administrative Law Judge

³ See Tax Commission decisions issued in Appeal Nos. 07-0365, 06-1408, 07-1036, 03-0510 & 03-0586. These and other Tax Commission decisions are available in a redacted format at tax.utah.gov/commission-office/decisions.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission sustains the amended audit deficiencies for tax years 2006 and 2007. 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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

NOTICE: If a Formal Hearing is not requested, failure to pay the balance due as determined by this order within thirty days of the date hereon, may result in a late payment penalty. Petitioner may contact Taxpayer Services at (801) 297-7703 to make payment arrangements.