

14-1388
TAX TYPE: INCOME TAX
TAX YEAR: 2008 & 2009
DATE SIGNED: 2-12-2016
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 14-1388</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2008 and 2009</p> <p>Judge: Marshall</p>
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Presiding:

Robert P. Pero, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, *Pro Se*
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 29, 2015, in accordance with Utah Code Ann. §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Commission in this matter is Petitioner's appeal of income tax, penalty, and interest deficiencies assessed for the 2008 and 2009 tax years.
2. The Respondent ("Division") issued a Notice of Deficiency and Estimated Income Tax for the 2008 tax year on May 27, 2014. The statutory notice reflected tax due in the amount of \$\$\$\$\$,

interest in the amount of \$\$\$\$\$ through June 6, 2014¹, and penalties in the amount of \$\$\$\$\$. (Exhibit R-1).

3. The Respondent (“Division”) issued a Notice of Deficiency and Estimated Income Tax for the 2009 tax year on May 27, 2014. The statutory notice reflected tax due in the amount of \$\$\$\$\$, interest in the amount of \$\$\$\$\$ through June 26, 2014², and penalties in the amount of \$\$\$\$\$. (Exhibit R-1).
4. The Petitioner submitted a letter dated May 30, 2014 contesting the audit assessments. This letter was treated as a Petition for Redetermination. (Exhibit R-2).
5. The Division determined that the Petitioner had state taxable income for the years at issue based on 1099 forms, as reported by various sources. The Division obtained the information electronically from the IRS in the ordinary course of business. (Exhibits R-3 and R-4).
6. For the 2008 tax year, the Petitioner had gross income of at least \$\$\$\$\$. The Petitioner was issued a 1099-MISC from BUSINESS-1. in the amount of \$\$\$\$\$; a 1099-MISC from BUSINESS-2 in the amount of \$\$\$\$\$; and a 1099-SSA from the Social Security Administration in the amount of \$\$\$\$\$. (Exhibit R-3).
7. For the 2008 tax year, the gross income threshold to have a federal filing requirement ranged from \$\$\$\$\$ to \$\$\$\$\$, depending upon the individual’s age and filing status.³
8. For the 2008 tax year, the Division determined the Petitioner’s “federal adjusted gross income” amount was \$\$\$\$\$ because only \$\$\$\$\$ of the Social Security income was taxable. The Division calculated the tax liability treating the Petitioner as a full-year resident of Utah, with a married filing separate filing status, and allowing one personal exemption deduction. (Exhibit R-1).
9. For the 2009 tax year, the Petitioner had gross income of at least \$\$\$\$\$. The Petitioner was issued a 1099-MISC from BUSINESS-3 in the amount of \$\$\$\$\$ and a 1099-SSA from the Social Security Administration in the amount of \$\$\$\$\$. (Exhibit R-4).
10. For the 2009 tax year, the gross income threshold to have a federal filing requirement ranged from \$\$\$\$\$ to \$\$\$\$\$, depending on the individual’s age and filing status.⁴
11. For the 2009 tax year, the Division determined the Petitioner’s “federal adjusted gross income” amount was \$\$\$\$\$ because only \$\$\$\$\$ of the Social Security income was taxable. The Division calculated the tax liability treating the Petitioner as a full-year resident of Utah, with a married filing separate filing status, and allowing one personal exemption deduction. (Exhibit R-1).

¹ Interest continues to accrue on any unpaid balance.

² Interest continues to accrue on any unpaid balance.

³ The Commission takes administrative notice of the IRS Form 1040 Instructions for the 2008 tax year, available online at irs.gov/forms-&-pubs. The income threshold amounts are calculated from 26 U.S.C. §§151 and 6012.

⁴ The Commission takes administrative notice of the IRS Form 1040 Instructions for the 2009 tax year, available online at irs.gov/forms-&-pubs. The income threshold amounts are calculated from 26 U.S.C. §§151 and 6012.

12. Petitioner does not contend he is not a resident of the State of Utah. The correspondence received from the Petitioner identified an address in CITY-1, Utah as the return address. The 1099s for each of the years at issue identified the same address in CITY-1 as Petitioner's address. (Exhibits R-3 and R-4).
13. The Petitioner does not dispute the Division's calculations, but argues he has no legal requirement to file a return. It is the Petitioner's position that the Division's audit is premature because the filing requirement is based on federal adjusted gross income, and he does not have a federal filing requirement.
14. Petitioner testified that he has not filed a federal income tax return since 1979 or 1980, and has had no contact from the IRS in the past six years.
15. RESPONDENT, an income tax audit manager, testified that the Division looked at IRS records, and that it did not appear there were any federal returns filed or tax assessments made by the IRS for the years at issue.

APPLICABLE LAW

Individuals who have been assessed a tax deficiency by the Utah State Tax Commission may file an administrative appeal as provided in Utah Code Ann. §59-1-501(2), below:

A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.

If a person does not file an administrative appeal regarding a deficiency, the deficiency is assessed against that person. Utah Code Ann. §59-1-503(2) provides as follows:

If the taxpayer does not file a petition with the commission within the time prescribed for filing the petition, the deficiency, notice of which has been sent to the taxpayer, shall be assessed, and shall be paid within 30 days from the date the notice and demand is sent from the commission.

Article XIII, Sec. 4 of the Utah Constitution provides:

- (1) Nothing in this Constitution may be construed to prevent the Legislature from providing by statute for taxes other than the property tax and for deductions, exemptions, and offsets from those taxes.
- (2) In a statute imposing an income tax, the Legislature may: (a) define the amount on which the tax is imposed by reference to a provision of the laws of the United States as from time to time amended; and (b) modify or provide exemptions to a provision referred to in Subsection (2)(a).

The Utah Legislature has imposed an individual income tax for resident individuals in Utah Code Ann. §59-10-104,⁵ as follows:

⁵ The Commission cites to the 2008 statutory provisions, which were substantively similar to the 2009 provisions. The Commission applies the substantive provisions that were in effect during the audit years.

- (1) For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.
- (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the product of: (a) the resident individual's state taxable income for that taxable year; and (b) 5%.
- (3) This section does not apply to a resident individual exempt from taxation under Section 59-10-104.1

As noted above, there is an exemption in Subsection (3) of Utah Code Ann. §59-10-104.1 for those individuals whose income is less than the personal exemptions and standard deduction. Subsection (2) of Utah Code Ann. §59-10-104.1 provides:

For taxable years beginning on or after January 1, 2002, an individual is exempt from a tax imposed by Section 59-10-104 or 59-10-116 if the individual's adjusted gross income on the individual's federal individual income tax return for the taxable year is less than or equal to the sum of the individual's:

- (a) personal exemptions for that taxable year; and
- (b) standard deductions for that taxable year.

"Taxable income" or "State taxable income" is defined in Utah Code §59-10-103(1)(w) as follows:

- (i) subject to Subsection 59-10-1404(3), for a resident individual means the resident individual's adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115...

Utah Code Ann. §59-10-103(1)(a) defines "adjusted gross income", set forth below:

"Adjusted gross income":

- (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code...

Section 62 of the Internal Revenue Code defines "adjusted gross income" as "gross income" minus certain deductions.

"Gross income" is defined in Section 61 of the Internal Revenue Code, as follows:

- (a) General Definition. Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
 - (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
 - (2) Gross income derived from business;
 - (3) Gains derived from dealings in property;
 - (4) Interest;
 - (5) Rents;
 - (6) Royalties;
 - (7) Dividends;
 - (8) Alimony and separate maintenance payments;
 - (9) Annuities;
 - (10) Income from life insurance and endowment contracts;

- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

The requirement to file a Utah Income Tax Return is set out in Utah Code Ann. §59-10-502, as follows:

An income tax return with respect to the tax imposed by this chapter shall be filed by:

- (1) every resident individual, estate, or trust required to file a federal income tax return for the taxable year, and
- (2) every nonresident individual, estate, or trust having federal gross income derived from sources within the state for the taxable year and required to file a federal income tax return for such taxable year.

Penalties for the late filing of a return and late payment of tax are assessed in accordance with Utah Code Ann. §59-1-401, below in pertinent part:

- (2) (a) The due date for filing a return is:
 - (i) if the person filing the return is not allowed by law an extension of time for filing the return, the last day on which the return is due as provided by law; or
 - (ii) if the person filing the return is allowed by law an extension of time for filing the return, the last day of that extension of time.
- (b) (i) A penalty in the amount described in Subsection (2)(b)(ii) is imposed if:
 - (A) a person is required to file a return with respect to a nonqualifying obligation; and
 - (B) the person described in Subsection (2)(b)(i)(A) files the return after the due date described in Subsection (2)(a).
- (ii) for the purposes of Subsection (2)(b)(i), the penalty in an amount equal to the greater of:
 - (A) \$20; or
 - (B) 10% of the unpaid nonqualifying obligation due on the return...
- (3) (a) If a person fails to pay a tax, fee, or charge due, the person is subject to a penalty as provided in this Subsection (3).
- (b) (i) a penalty in the amount described in Subsection (3)(b)(ii) is imposed if...
 - (B) a person:
 - (I) is subject to a penalty under Subsection (2)(b); and
 - (II) fails to pay a nonqualifying obligation due on a return within a 90-day period after the due date for filing a return described in Subsection (2)(a)...
 - (ii) For purposes of Subsection (30)(b)(i), the penalty is an amount equal to the greater of:
 - (A) \$20; or
 - (B) 10% of the unpaid nonqualifying obligation due on the return...

Interest is assessed in accordance with Utah Code Ann. §59-1-402(5), 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 payment is received.

The Commission has discretion to waive penalties and interest, as provided in Utah Code Ann. §59-1-401(14), below:

Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

CONCLUSIONS OF LAW

- A. Petitioner is a “resident individual” of the State of Utah. Petitioner’s correspondence identifies an address in CITY-1, Utah as the return address. The 1099s issued to the Petitioner for the years at issue are from companies based in Utah, and were sent to the Petitioner at the same address in CITY-1, Utah. Further, the Petitioner has made no argument that he was not a resident of Utah for the years at issue.
- B. Petitioner had “state taxable income.” “State taxable income” is determined from the amount of an individual’s adjusted gross income less certain adjustments. Section 63 of the Internal Revenue Code defines “adjusted gross income” as “gross income” minus certain deductions. “Gross income” is defined as “all income from whatever source derived” and provides a list of examples, including compensation for services. *See* 26 U.S.C. §61 (1986), as amended. The Division provided evidence, including copies of 1099s issued to the Petitioner for the years at issue, which show that the Petitioner had gross income of at least \$\$\$\$ for the 2008 tax year and at least \$\$\$\$ for the 2009 tax year.
- C. Petitioner had a filing requirement for the State of Utah. Utah Code Ann. §59-10-502 requires “every resident individual, estate, or trust required to file a federal income tax return for the taxable year” to file a Utah Income Tax Return. The Petitioner argued that he is not required to file an income tax return with the State of Utah because he does not have a federal filing requirement.⁶ Further, the State’s authority to assess an individual income tax has been challenged in the Courts, and has been upheld.⁷ The Commission need not address each of the Petitioner’s arguments, but notes that the Initial Hearing Decision and the Respondent’s briefs in this matter do so at length.⁸ Regardless of whether he actually filed a federal return, the

⁶ Petitioner submitted letters dated June 22, 2015 (Exhibit P-1) and July 20, 2015 (Exhibit P-2), that set forth his specific claims that Utah does not have the authority or jurisdiction to issue a tax assessment against him.

⁷ See *Nelson v. Auditing Division*, 903 P.2d 939 (Utah 1995) and *Jensen v. State Tax Comm’n*, 835 P.2d 965 (Utah 1992).

⁸ The United States Tax Court in *Wnuck v. Commissioner*, 136 T.C. 498 (T.C. 2011), set forth a number of explanations as to why it is not disingenuous, or improper, for a court to give “short shrift” to frivolous arguments.

Petitioner's income exceeded the federal filing requirement threshold for the years at issue, and he did not provide any evidence that would support a different calculation of tax liability for the years at issue. Thus, the Division's estimated tax liability should be upheld.

- D. Interest is required to be assessed under Utah Code Ann. §59-10-537 for the non-payment of a tax deficiency. Under Utah Code Ann. §59-1-402(5), interest is calculated from the due date of the return, and continues to accumulate until the deficiency amount is paid. Interest was assessed on the Taxpayer's outstanding liability from April 15, 2009 for the 2008 return, and from April 15, 2010 for the 2009 return. Interest continues to accrue. The Commission finds that the Division properly assessed interest on the Petitioner's deficiency balance, and that the Petitioner has not shown reasonable cause that would justify a waiver of that interest.
- E. The Division assessed penalties for the late filing and late payment of tax for each of the years at issue in accordance with Utah Code Ann. §59-1-401. The Taxpayer did not file returns nor did he pay the tax liability within the time periods prescribed. The Commission finds that the Division properly assessed penalties on the Petitioner's deficiency balance, and that the Petitioner has not shown reasonable cause that would justify a waiver of those penalties.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit assessment of tax, penalties, and interest for the 2008 and 2009 tax years. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

The Court's reasons included the following: the number of potential frivolous anti-tax arguments is unlimited; a frivolous anti-tax argument may be unimportant even to its proponent; many frivolous anti-tax arguments have already been answered; the litigant who presses the frivolous anti-tax argument often fails to hear its refutation; many frivolous anti-tax arguments are patently so; addressing frivolous anti-tax arguments wastes resources; the time taken to address frivolous anti-tax arguments delays the assessment of tax; and addressing frivolous anti-tax arguments risks dignifying them.

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.