

00-1527
INCOME TAX
SIGNED: 12-19-2000

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioners,)	AND FINAL DECISION
)	
v.)	Appeal No. 00-1527
)	
AUDITING DIVISION OF)	
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP., CPA
 PETITIONER 1

For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, Manager Income Tax Auditing
 RESPONDENT REP. 3, Manager Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 17, 2001. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners are appealing additional income tax, along with interest thereon, assessed following an audit for the 1997 tax year.

2. The Statutory Notice of Audit Assessment was issued on November 22, 2000. The amount of additional tax assessed was \$\$\$\$\$. Interest as of the date the statutory notice was issued was \$\$\$\$\$. Interest continues to accrue on any unpaid balance. No penalty was assessed.

3. For the 1997 tax year, Petitioners had filed a Utah Individual Income Tax Return. However, they deducted from their taxable income \$\$\$\$\$ on Line 18, under "Other," with a statement that this amount was STATE 1 Income. Respondent disallowed the deduction and the result was the additional income tax assessment at issue.

4. Petitioners had been residents of STATE 1 up through the end of 1995. They moved to Utah and became Utah residents in January 1996.

5. While in STATE 1 and through May 1997, PETITIONER 2 was employed by COMPANY 1. She received a bonus for the 1995 tax year in the amount of \$\$\$\$\$. The bonus was earned in that year. However, the bonus was put back into the company in the form of restricted stock which was kept in the company's Management Purchase Plan. Because of this arrangement the income tax on the bonus was deferred and no state or federal income tax was paid on the bonus income for the 1995 tax year.

6. When PETITIONER 2 terminated her employment with COMPANY 1 in May 1997, this automatically triggered a cash-out of restricted stock. The income was then included in her W-2 income for the 1997 tax year.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Ann.

§59-10-104 as follows:

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

Resident individual is defined in Utah Code Ann. §59-10-103(1)(j) as follows:

A "resident individual" is either: (I) an individual who is domiciled in this state for any period of time during the taxable year; or (ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state.

State taxable income is defined in Utah Code Ann. §59-10-112 as follows:

"State taxable income" in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114 . . .

Federal taxable income is defined in Utah Code Ann. §59-10-111 as follows:

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

Taxable income is defined in the Internal Revenue Code at 26 USC 63 as:

Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Gross income is defined in the Internal Revenue Code at 26 USC 61(a) as:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to)

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the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; ...

CONCLUSIONS OF LAW

Petitioners argues that because the bonus was earned and paid out in 1995, while Petitioners were residents of STATE 1, it is STATE 1 income and is not taxable to the state of Utah. There is no statutory support for Petitioner's argument. Respondent is correct in determining that since the bonus, regardless of when it was earned, was included in Petitioners' federal taxable income for the tax year 1997 it is properly included in Petitioners state taxable income for 1997. Respondent's position is clearly consistent with the statutory provisions of Utah's Income Tax Act.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the audit assessment of additional income tax and interest and denies Petitioners' appeal. It is so ordered.

DATED this ____ day of _____, 2002.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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

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DATED this ____ day of _____, 2002.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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. §63-46b-13. 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 and 63-46b-13 et. seq.

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