

03-0586  
AUDIT  
TAX YEAR: 1998  
SIGNED: 05-24-2004  
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, P. DEPAULIS  
ABSENT: M. JOHNSON  
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 03-0586
v.	)	Account No. #####
	)	
AUDITING DIVISION OF	)	Tax Type: Income Tax
THE UTAH STATE TAX	)	Audit Period: 1998
COMMISSION,	)	Judge: Phan
	)	
Respondent.	)	

---

**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REP, CPA  
For Respondent: RESPONDENT REP 1, Manager, Income Tax Auditing  
RESPONDENT REP 2, Senior Auditor

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 16, 2003. Petitioner is appealing an audit deficiency of additional Utah individual income tax and interest. The Statutory

Appeal No. 03-0586

Notice of Audit change was issued on March 17, 2003. The amount of additional tax assessed was \$\$\$\$ and the interest as of the date of the notice \$\$\$\$.

### 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)(k) as:

(i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; 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. For purposes of this Subsection (1)(k)(ii), a fraction of a calendar day shall be counted as a whole day.

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 U.S.C. 63 as:

Appeal No. 03-0586

Except as provided in subsection (b), for purposes of this subtitle, the term *Ataxable income*  $\cong$  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 U.S.C. 61(a) as:

Appeal No. 03-0586

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; ...

The Utah Legislature has required that the taxpayer file an amended Utah return in the event the Internal Revenue Service adjusts the amount of federal taxable income in Utah Code Ann. 59-10-536(5) 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 that conforms to the changes on the federal return. No notification is required of changes in the taxpayer's federal income tax return that 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 provision of this Subsection (b) does 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 at any time within six years after the date of said correction.

The Utah Legislature has specifically provided statutes of limitations pertaining to refund requests as Utah Code Ann. 59-10-529(7)&(14) as follows:

If a refund or credit is due because the amount of tax deducted and withheld from wages exceeds the actual tax due, a refund or credit may not be made or allowed unless the taxpayer or his legal representative files with the commission a tax return claiming the refund or credit: (i) within three years from the due date of the return, plus the period of any extension of time for filing the return provided

for in Subsection (7)(c); or (ii) within two years from the date the tax was paid, whichever period is later.

(14) (a) If a taxpayer is required to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were any overpayment for federal income tax purposes, or to file an amended return with the Commission, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the date the notice of the change, correction, or amended return was required to be filed with the commission. . .

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return..

#### DISCUSSION

The Utah income tax audit was based on changes made by the Internal Revenue Service to Petitioner's federal taxable income for 1998. Petitioner had filed his 1998 individual income tax return claiming \$\$\$\$\$ in federal taxable income and the IRS audited the return and changed the amount to \$\$\$\$\$. Petitioner did not contest the IRS audit and paid the additional tax determined by the IRS based on federal taxable income of \$\$\$\$\$. The changes were then provided by the IRS to the State Tax Commission and were relied on by Respondent in determining the audit amount.

It is Petitioner's contention that the revised federal taxable income of \$\$\$\$\$ is incorrect and that his taxable income was actually lower than he had claimed on his 1998 income tax return. Petitioner attempted to go back to the IRS to have his federal taxable income readjusted, but by the time he did so it was past the IRS' statute of limitations and no adjustment could be made. He did try to resolve the matter with the Taxpayer Advocate Service of the IRS. They provided a letter

Appeal No. 03-0586

indicating basically that they agreed that the correct AGI was \$\$\$\$\$, lower than what was claimed on Petitioner's return, but also indicated that they could not adjust the IRS' official records to this lower amount because the statute of limitations had expired. For that reason, although the Taxpayer Advocate supported Petitioner's contention that Petitioner had in error claimed \$\$\$\$\$ in the same wages earned in 1997 on both his 1997 and 1998 tax returns and that Petitioner's correct federal adjusted gross income was \$\$\$\$\$, Petitioner's federal taxable income officially remained at \$\$\$\$\$ according to the IRS.

It is Respondent's position in this matter that Petitioner's federal taxable income for purposes of determining the Utah state taxable income must remain at the same amount determined by the Internal Revenue Service audit of \$\$\$\$\$. They point out that Petitioner did not contest the audit amount with the IRS and had paid the IRS audit deficiency. Respondent points to Utah Code Ann Secs. 59-10-111 and 59-10-536(5) in support of its position.

#### DECISION AND ORDER

Upon review of the statutes of limitations for claiming a refund applicable in this matter, Petitioner is beyond the time period allowed or otherwise not entitled to claim a credit or refund for tax year 1998. See Utah Code Ann. Sec. 59-10-529(7) &(14). The Commission, however, concludes that defending an audit assessment is not governed under these limitations provisions. Petitioner is entitled to present information in defense of the audit. In this matter, despite Respondent's contention that it must accept the amount of federal taxable income as determined by the IRS after an audit and as listed on Petitioner's official IRS account record, there was clear and unconverted evidence presented in this matter that the amount of federal taxable income relied on by

Appeal No. 03-0586

Respondent was erroneous. The Commission recognizes that Respondent is following a position that it has applied consistently. However, it is the opinion of the Tax Commission that under Utah Code Ann. Sec. 59-10-111, "federal taxable income" means taxable income as defined in the Internal Revenue Code. Petitioner provided a letter from the IRS indicating that the amount of federal taxable income relied on by Respondent in the audit was incorrect. Respondent did not refute that the taxable income it relied on for the audit deficiencies was incorrect

Based on the foregoing, the Commission abates the audit deficiency listed in the Statutory Notice of Audit Change, issued on March 17, 2003. However, Petitioner is barred by the statute of limitations from claiming a refund. 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 \_\_\_\_\_, 2004.

\_\_\_\_\_  
Jane Phan  
Administrative Law Judge

Appeal No. 03-0586

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 \_\_\_\_\_, 2004.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

*JKP/03-0586.int.doc*