

03-1019  
Audit  
Signed 02/23/2004

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Petitioner,	)	<b>AND FINAL DECISION</b>
	)	
v.	)	Appeal No. 03-1019
	)	Account No. #####
	)	
AUDITING DIVISION OF	)	
THE UTAH STATE TAX	)	Tax Type: Income Tax
COMMISSION,	)	Tax Year: 1998
	)	
Respondent.	)	Judge: Davis

---

**Presiding:**

G. Blaine Davis, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division  
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 3, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.
2. The year in question is calendar year 1998.
3. Petitioner timely filed his 1998 individual income tax return on April 15, 1999, and he also timely filed his federal income tax return at about the same time.

4. The Internal Revenue Service made certain changes to his federal income tax return which required the payment of an additional amount of tax.

5. A record of the changes made by the Internal Revenue Service was received by the Auditing Division, which made changes to Petitioner's Utah Individual Income Tax Return that coincided with the changes made by the Internal Revenue Service. Those changes resulted in the imposition of additional taxes due and owing to the State of Utah. Those additional taxes were imposed on approximately \$\$\$\$\$ of income which had not been reported on Petitioner's income tax return.

6. When the Internal Revenue Service imposed the additional taxes, Petitioner visited with representatives of the Internal Revenue Service and paid those taxes.

7. Petitioner testified that he filed an amended Utah income tax return for 1998 based upon the changes made by the Internal Revenue Service. However, the records of the Tax Commission do not show the receipt of any such amended income tax return, nor is there any record of a payment having been received from Petitioner for any such amended income tax return.

8. Upon questioning, Petitioner acknowledged that he did not really prepare a federal amended tax return, but he made the payments determined to be due by the Internal Revenue Service representative. Therefore, it seems likely that he did not have an amended federal income tax return to use in preparing and filing an amended State of Utah income tax return.

9. Petitioner represented that he has gone through a divorce since that time, and his records are no longer available to him. Petitioner also did not go to the bank to attempt to see if

there was a returned check.

10. In February 2003, Respondent assessed Petitioner additional Utah income taxes associated with the Internal Revenue Service adjustment made to his federal adjusted gross income for 1998. In May 2003, Respondent issued a second amended assessment that was slightly lower because it gave Petitioner credit for the increased federal income tax deduction as a result of the additional federal taxes paid by Petitioner to the Internal Revenue Service.

APPLICABLE LAW

Utah Code Ann. §59-10-112 provides that “state taxable income’ in the case of a resident individual means his federal taxable income. . . .”

Utah Code Ann. §59-10-536(5) addresses the Utah state income tax consequences when a federal income tax return is amended or adjusted, 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 at any time within six years after the date of said correction.

Appeal No. 03-1019

Utah Code Ann. §59-10-543 provides that in any proceeding before the Commission, the burden of proof is upon the Petitioner.

#### DISCUSSION

The Internal Revenue Service adjusted Petitioner's federal adjusted gross income for 1998, increasing it approximately \$\$\$\$\$. Pursuant to Utah Code Ann. §59-10-112, this action also resulted in an increase of Petitioner's 1998 Utah taxable income, which in turn, resulted in Petitioner owing additional Utah income taxes for 1998. Although Petitioner claims that he filed an amended Utah income tax return and paid additional Utah taxes for 1998, neither he nor the Tax Commission have any record of the filing of an amended Utah income tax return or of the payment of additional Utah taxes. Petitioner has the burden of proof to establish that he filed an amended income tax return and that he made any payments beyond those shown on his original income tax return. Petitioner has failed to meet his burden of proof.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Petitioner has not provided any evidence that he does not owe the additional Utah individual income tax assessed to him by Respondent for 1998. Accordingly, Respondent's assessment is sustained, and the Petition for Redetermination is hereby denied. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

G. Blaine Davis  
Administrative Law Judge

Appeal No. 03-1019

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

**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.

GBD/ssw/03-1019.fof