

03-1077
Audit
Signed 09/14/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	FINDINGS OF FACT,
Petitioners,)	CONCLUSIONS OF LAW,
)	AND FINAL DECISION
)	
v.)	Appeal No. 03-1077
)	Account No. #####
AUDITING DIVISION OF)	Tax Years: 1997 & 1999
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1

For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 28, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners are appealing income tax, penalty and interest audit deficiencies issued against them for the tax years 1997 and 1999.

2. The amount of the deficiencies determined by Respondent are as follows:

Year	Tax	Penalty	Interest as of Notice Date
1997	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

3. Interest continues to accrue on the unpaid balance. The penalties assessed were a 10% failure to file penalty and a 10% failure to pay penalties pursuant to Utah Code Ann. §59-1-401.

4. Petitioners had not filed a Utah Individual Income Tax Return for tax year 1997. Because

Petitioner had not filed a return, Respondent has not given Petitioner any credit for withholding for that year. PETITIONER 1 testified that during 1997 he was working in CITY 1 although his family resided in Utah. He stated that he worked for two different companies and it was his representation that he thought he had sufficient tax withheld so that he was getting a refund and for that reason he did not think he had to file a return for that year and so one was not filed.

5. Respondent submitted a copy of the electronically filed W-2 records which did indicate that withholding was paid to the state of Utah in the amount of \$\$\$\$\$ on behalf of PETITIONER 1 for the 1997 tax year. The amount is less than state tax liability for that year of \$\$\$\$\$. Respondent did not give Petitioner credit in the audit for any portion of the withholding arguing that the statute does not allow credit until an income tax return is filed.

6. For the tax year 1999, Petitioners had filed a Utah Resident Return. However, they failed to include in their taxable income an amount of \$\$\$\$\$. After filing a state and federal return in which they claimed \$\$\$\$\$ in federal taxable income, the Internal Revenue Service audited Petitioner and determined that Petitioners had received an addition \$\$\$\$\$ in taxable income during 1999. The IRS assessed additional tax on this additional income and Petitioners have been making payments to the IRS towards this assessment. As state taxable income is based on federal taxable income, Respondent issued the audit accordingly. PETITIONER 1 testified that he had withdrawn the \$\$\$\$\$ from an investment account, thinking it was not taxable, and, therefore, he had not included it in his taxable income.

7. Petitioner indicates that the 1997 error in not filing a return was a first time error.

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...

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:

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

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 specifically provided that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-10-543 provides the following:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . .

Utah Code Ann. §59-1-401 provides that penalties should be assessed for failure to file and failure to pay the tax. In relevant part, Utah Code Ann. §59-1-401(1) & (2) states:

- (1)The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return. . .
- (2)The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax . . .

Appeal No. 03-1077

The provisions under which Respondent indicates Petitioner is required to file a return in order to obtain credit for taxes withheld is Utah Code Ann. 59-10-529(7)(a), which provides 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 periods 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.

It is the Commission position that the statute for determining whether or not credit for withholding should be given without a return being filed is Utah Code Ann. 59-10-523 which provides as follows:

(1) As used in this chapter, “deficiency” means the amount by which the tax imposed by this chapter exceeds the excess of (a) the sum of (i) the amount shown as the tax by the taxpayer upon his return, if the return was made by the taxpayer and if an amount was shown as the tax by the taxpayer thereon, plus (ii) the amounts previously assessed (or collected without assessment) as a deficiency over (b) the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

(2) For purposes of Subsection (1): (a) If no return is filed, or the return does not show any tax, a return shall be considered as having been made by the taxpayer and the amount shown as the tax by the taxpayer upon his return shall be considered to be zero. (b) The tax imposed by this chapter and the tax shown on the return shall both be determined without regard to any amounts of tax withheld on wages pursuant to Part 4, unless, without regard to such amounts, the tax imposed by this chapter exceeds the excess of the amount specified in Subsection (1)(a) over the amount specified in Subsection (1)(b).

CONCLUSIONS OF LAW

1. Petitioners are liable for Utah individual income tax on their state taxable income for both tax years 1997 and 1999. Utah Code Ann. 59-10-104.
2. Petitioners have not provided evidence to support their assertion that the additional

income assessed by the IRS and State Tax Commission for tax year 1999 was not subject to tax. No evidence was presented that the Utah taxable income amount determined in the audit for tax year 1997 was incorrect. The issue for that year was whether there should be credit for withholding. Petitioners have the burden of proof in this matter. Utah Code 59-10-543.

3. In this matter there is evidence of withholding paid to the state of Utah for Petitioner for tax year 1997. Respondent failed to give Petitioner credit for withholding citing Utah Code. 59-10-529(7)(a). The Commission, however, concludes that section pertains only to requests for refund or credit of overpayments. The express terms of this code section indicate that it pertains to requests for refunds or credits for overpayments due to withholding from wages exceeding the actual tax due. In this matter, there is no overpayment and the issue is whether the withholding should be considered in determining the amount of a deficiency. It is the Commission's position that the applicable section is Utah Code 59-10-523. Utah Code 59-10-523(2)(a) indicates if no return is filed, a return shall be considered as having been made and the amount shown as the tax, zero. Utah Code Sec. 59-10-523(2)(b) appears to indicate that Petitioner should be given credit for withholding in this matter.

4. The Commission may waive penalties and interest upon a showing of reasonable cause. Utah Code. 59-1-401 (10). Penalties were assessed in this matter for tax year 1997. Petitioner had indicated that he had not filed a return because he had thought there was sufficient withholding to pay the tax. Certainly his position that one is not required to file a Utah income tax return if withholding is sufficient to pay the income tax is erroneous. In addition, his supposition that he had sufficient withholding was erroneous, there had not been enough withholding and Petitioner had apparently not bothered to verify whether he owed tax or not. Even if this was a first time error on the part of Petitioner his actions were negligent and do not constitute reasonable cause for the purpose of waiving penalties in this matter. However, as the amount of the

Appeal No. 03-1077

tax deficiency will be reduced based on the credit for withholding, the penalties and interest should be adjusted accordingly.

DECISION AND ORDER

Based on the forgoing, the Commission orders Respondent to amend the audit for the 1997 tax year to allow credit for withholding and adjust the penalty and interest accordingly. The Tax Commission sustains the 1999 audit deficiency in its entirety. It is so ordered.

DATED this ____ day of _____, 2004.

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.

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.

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