

04-0279
Audit
Signed 01/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 04-0279
v.)	Account No. #####
)	Tax Type: Income Tax
TAXPAYER SERVICES DIVISION OF)	Tax Year: 1988, 2003
THE UTAH STATE TAX COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Taxpayer Services Division

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 April 29, 2004. For the 2003 tax year, the Petitioner filed a Utah individual income tax return on which he claimed a \$\$\$\$ overpayment of tax. Subsequently, the Tax Commission notified the Petitioner that his 2003 overpayment was applied to an outstanding income tax debt from the 1988 tax year. Taxpayer Services Division (“Division”) claims that although the Petitioner lived and earned income in Utah in 1988, he did not file a Utah income tax return for that year. The Petitioner has appealed the application of his 2003 overpayment to the purported 1988 deficiency.

At the hearing, an issue arose whether or not the Petitioner discharged any 1988 tax liability as a result of a bankruptcy filing in 1991. Both parties were given an opportunity to present post-hearing information regarding this issue. The Division submitted a letter dated May 3, 2004, to which it attached a docket report of the Petitioner's 1991 bankruptcy filing under Chapter 7 of the United States Bankruptcy Code and a copy of Bankruptcy Code Section 523(a)(1)(B)(i). The Petitioner did not submit any post-hearing information.

APPLICABLE LAW

Utah Code Ann. §59-10-502 currently provides and provided in 1988 that every resident individual who is required to file a federal income tax return for the taxable year shall also file a Utah individual income tax return.

UCA §59-10-536 provides the time limitations within which Utah individual income tax may be assessed. In the event no return has been filed, Subsection 59-10-536(3)(a) currently provides and provided in 1988 that the tax may be assessed at any time.

UCA §§59-10-111 and 59-10-112 currently provide and provided in 1988 that Utah "state taxable income" means federal taxable income, as defined in Section 63, Internal Revenue Code of 1986, with the modifications, subtractions, and adjustments provided in Section 59-10-114.

UCA §59-10-402 provides that an employer shall deduct and withhold from wages certain amounts to pay an employee's Utah individual income tax liability. Subsection 59-10-402(3) currently provides and provided in 1988 that the amount of tax withheld under this section shall be allowed to the recipient of the income as a credit against his or her Utah income tax liability.

Enacted in 1999, Utah Code Ann. §59-1-303(2) provides that “[t]he commission may apply an overpayment of any tax or fee against a taxpayer’s liability for any tax or fee.” If the overpayment is for the payment of individual income tax, Utah Code Ann. §59-10-529(1)(a) provides that “[i]n cases where there has been an overpayment of any tax imposed by [the Utah Individual Income Tax Act], the amount of overpayment is credited as follows: (a) against any income tax due from the taxpayer[.]”

Pursuant to 11 U.S.C. §523(a)(1)(B)(i), a discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of the Bankruptcy Code does not discharge an individual debtor from any debt for a tax with respect to which a return, if required, was not filed.

DISCUSSION

1988 Liability. The Division received notice from the Internal Revenue Service (“IRS”) that the Petitioner filed a 1988 federal income tax return showing federal taxable income in the amount of \$\$\$\$\$. The Petitioner admits that, in 1996, he filed a 1988 federal tax return in order to satisfy his federal tax obligation for the 1988 tax year. However, he has never filed a 1988 Utah individual income tax return. Pursuant to UCA §59-10-502, any resident individual required to file a federal tax return must also file a Utah tax return. The Petitioner does not claim or proffer evidence that he was a resident of a state other than Utah in 1988. For these reasons and based on the evidence and testimony proffered at hearing, the Petitioner was required to file a Utah individual income tax return for the 1988 tax year and did not do so.

The Petitioner argues that it is unfair for the Division to be allowed to assess him tax for a return due over 15 years ago. However, Subsection 59-10-536(3)(a) provides that income tax may be assessed at any time for a tax year for which the taxpayer never filed a return. Had the Petitioner filed a 1988 tax return at the time due, the Division would not have a right to assess taxes for that year under these circumstances. However, he did not do so. Accordingly, the law provides the Division the right to assess taxes to the Petitioner for the 1988 tax year.

The Petitioner also argues that the tax liability imposed for 1988 by the Division should be disallowed because the Division has no evidence, such as W-2 reports, to show that he earned income in that year. However, the Division proffers evidence it received from the IRS that shows the Petitioner's "federal taxable income" for 1988 to be \$\$\$\$\$. Under Utah law, a taxpayer's "state taxable income" is equal to "federal taxable income" plus or minus certain additions and subtractions provided in Utah law. The Division states that it has imposed 1988 income tax liability on the Petitioner in an amount consistent with his "federal taxable income" as reported by the IRS. Although the Division has not provided W-2 reports to confirm the information provided by the IRS, the Commission believes that, with the IRS information, a preponderance of the evidence proffered shows the Petitioner to have "state taxable income" consistent with the amount the Division imposed.

The Petitioner also points out that the Division has not applied a credit to his 1988 tax liability to account for withholding tax that his employer in 1988 may have already paid to the state. For this reason, he contends that the Commission should disallow the Division's imposition of

income tax liability for the 1988 tax year. The Division admits that it did not apply a credit for taxes withheld by an employer because it does not have any evidence of the amount, if any, that was withheld and paid by an employer. The Division proffered evidence provided to it by the IRS, which shows an amount of “total pre-paid credits” that the IRS applied to his federal liability. However, this document does not show the amount of his pre-paid state credits. Without the amount of the pre-paid state credits, the Commission would have no evidence of the amount, if any, that should be applied to the state tax liability imposed by the Division. However, if the Petitioner provides evidence that a portion of his 1988 tax liability has already been paid, the Commission would adjust the remaining amount of tax liability due.

The Petitioner explains that, because of the 15-year interval, he no longer has access to W-2 reports for the 1988 tax year to contest the Division’s assessment. He contends that it is unfair for the Commission to assess taxes under these circumstances. The Commission acknowledges the difficulty that arises when a taxpayer does not file a return and then needs to reconstruct his tax information many years later. However, such a situation often arises when a taxpayer is required to file a tax return and fails to do so. In this case, the Division has complied with Utah law in assessing the Petitioner. It is the Petitioner’s responsibility to show that he has paid a portion or all of the tax liability that the Division has shown due for 1988, which he has not done. For these reasons, the Commission sustains the 1988 tax assessment imposed by the Division.

Bankruptcy. Also at issue is whether the Petitioner’s 1988 tax liability was discharged when he filed for bankruptcy in 1991. The Division proffers evidence that the Petitioner

filed for bankruptcy under Chapter 7 of the Bankruptcy Code in 1991. In addition, the Division contends that, pursuant to 11 U.S.C. §523(a)(1)(B)(i), the Petitioner's Utah income tax liability for 1988 was not discharged due to the bankruptcy proceedings. Section 523(A)(1)(B)(i) of the Bankruptcy Code provides that tax liability will not be discharged when the party filing for bankruptcy was required to file a return, but did not do so. As stated earlier, the Commission finds that the Petitioner was required to file a Utah individual income tax return for the 1988 tax year, but did not do so. Accordingly, it appears that the Petitioner's 1988 Utah income tax liability was not discharged because of his 1991 bankruptcy filing.

Applying a 2003 Overpayment to a Prior Liability. The Petitioner contends that the Commission should not allow the Division to apply his 2003 tax year overpayments to a prior year's tax liability because it is unfair. However, Utah law provides the Commission this method for collection. *See* UCA §§59-1-303(2) and 59-10-529(1)(a). Because the Commission sustains the 1988 tax liability imposed by the Division and finds that the Division may apply overpayments made for the 2003 tax year to the liability for the 1988 tax year, the Commission sustains the Division's actions in this matter.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's application of the Petitioner's income tax overpayment for the 2003 tax year to the tax liability he owes for the 1988 tax year. It is so ordered.

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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 _____, 2005.

Kerry R. Chapman
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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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