

04-0367
Audit
Signed 01/11/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 04-0367
v.)	Account No. #####
)	
AUDITING DIVISION OF)	Tax Type: Income Tax
THE UTAH STATE TAX)	Tax Year: 1999, 2000, 2001, 2002
COMMISSION,)	
)	
Respondent.)	Judge: Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
PETITIONER REPRESENTATIVE 1
PETITIONER REPRESENTATIVE 2
PETITIONER REPRESENTATIVE 3

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Auditing Division
RESPONDENT REPRESENTATIVE 3, from the Auditing 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 December 2, 2004.

Petitioner failed to file an income tax return for 1999, 2000, 2001, and 2002. Respondent received information from the Internal Revenue Service indicating Petitioner had received sufficient income to be required to file, so an assessment was made against Petitioner. A

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Statutory Notice of Estimated Income Tax was sent to Petitioner for each of the years at issue on February 25, 2004.

At the hearing, Petitioner did not present any evidence that he did not receive the income or did not owe the taxes which were set forth in the Statutory Notice of Estimated Income Tax for the years at issue. Instead, Petitioner stated that this matter was a matter of commerce, and therefore he was entitled to see any contract between him and Respondent, which authorized them to impose income tax against him.

Respondent presented a copy of the Statutory Notice of Estimated Income Tax for each of the years at issue, together with a transcript received from the Internal Revenue Service for each of the years at issue. Respondent further presented a copy of the 1999 TC-40 form filed by Petitioner across the top of which was written "Replaces substitute for return (sfr)". That return was not accepted by Respondent because it included an itemized deduction for an "unrestricted claim of right for personal labor", form 8275 in the amount of \$\$\$\$\$, which does not appear to be a properly allowable deduction. Petitioner did not present any evidence that such a deduction was allowable by Utah State law.

In addition to the tax, Respondent made an assessment for a 10% non-filing penalty, and a 10% late payment penalty. Petitioner did not present any evidence to substantiate that those penalties were not appropriate.

APPLICABLE LAW

The state of Utah imposes income tax on individuals who are residents of the state in

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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) . . ."

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 23 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 23 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) the following items:
(1) Compensation for services, including fees, commissions, fringe benefits, and similar items; . . ."

The requirement to file a federal income tax return is established by IRC. §6012.

Utah Code Ann. §59-10-502, provides in relevant part:

"An income tax return with respect to the tax imposed by this chapter shall be filed by:

(1) Every resident individual, estate, or trust required to file a federal income tax return for the taxable year; . . ."

Utah Code Ann. §59-1-401(1) and (2) impose failure to file and failure to pay penalties as follows:

- "(1)(a) 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.
- (b) Subsection (1) does not apply to amended returns.
- (2) the penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:
- (a) failure to pay any tax, as reported on a timely filed return;
 - (b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);
 - (c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for Redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;
 - (d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petitioner for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and
 - (e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review."

DISCUSSION

In this matter, Petitioner has a perceived notion that some type of contract is required between himself and the Tax Commission authorizing actions to be taken. There is no basis in law or fact for that notion. This matter is not governed by what Petitioner referred to as the laws of commerce. This matter is governed by the provisions of Title 59, Chapter 10, of the Utah Code Annotated. Those statutes clearly give Respondent the authority to take the actions which it has done.

DECISION AND ORDER

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Based upon the foregoing, Petitioner's Petition for Redetermination is hereby denied, and the audit assessment made against him by Respondent is hereby affirmed. 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 _____, 2005.

G. Blaine Davis
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

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Palmer DePaulis
Commissioner

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Marc B. Johnson
Commissioner