

04-0777
Audit
Signed 01/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 04-0777
v.)	
)	Account No: #####
AUDITING DIVISION)	Tax Type: Individual Income Tax
OF THE UTAH STATE)	Tax Year: 1996
TAX COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE 1, from Auditing Division
 RESPONDENT REPRESENTATIVE 2, from 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 May 27, 2005.

On May 24, 2004, Auditing Division (“Division”) issued a Statutory Notice of Audit Change (“Statutory Notice”) relating to individual income tax for the 1996 tax year. The Division states that, in 1998, the Internal Revenue Service (“IRS”) changed the Petitioner’s federal taxable income for the 1996 tax year to reflect additional income, but that the Petitioner never reported this change to the Tax Commission by filing an amended Utah tax return.

The Petitioner admitted that he failed to include unemployment benefits as taxable income for the 1996 tax year because he was unaware of the need to do so. Also, he indicated it was possible that he did not amend his Utah tax return upon receiving notice of the IRS changes. However, because the state did not assess him until seven years after he filed his return, he asked about the length of time before he was assessed and whether he could work out a payment plan with the Commission to pay the assessment.

APPLICABLE LAW

Utah Code Ann. §59-10-536(5) provides the time period within which the Tax Commission must assess Utah individual income tax when the assessment results from changes made by the IRS, 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.

DISCUSSION

The assessment imposed by the Statutory Notice resulted from changes made by the IRS. The Petitioner did not report the correction to the Tax Commission within the 90-day period provided in Section 59-10-536(5)(a). Accordingly, Section 59-10-536(5)(b) affords the Tax Commission six years from the date the IRS made the correction to issue an audit assessment associated with the correction.

The Division imposed its assessment on May 24, 2004. Accordingly, this assessment could relate to any correction made by the IRS after May 24, 1998, a date six years prior to the date of the Statutory Notice. At the hearing, the Division provided some documents that relate to the Petitioner. Although it is not completely clear to the administrative law judge, the documents appear to relate to the 1996 tax year and appear to show that changes were made to the amount of the Petitioner's tax liability for either federal or state purposes. It appears that changes may have occurred either on November 19, 1998 or December 28, 1998. Assuming the IRS corrected the Petitioner's federal taxable income on one of these dates, the Division's Statutory Notice was mailed within the six-year time frame afforded by statute. On the basis of the Division's testimony proffered at the hearing, the Commission finds that the Statutory Notice was mailed within the six-year time frame afforded under the circumstances. Based on the Petitioner's admission that the income assessed is correct, the Commission sustains the Division's audit assessment.

The Petitioner also asked if he could arrange a payment plan to pay the amount due. The Petitioner was informed that once the appeal was resolved, he could approach the Offer in

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Compromise Section of Taxpayer Services Division to request a payment plan. If he chooses not to appeal this Order, the Petitioner may contact TAX COMMISSION EMPLOYEE in the Offer in Compromise Section at ##### to discuss payment options.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's audit assessment and denies the Petitioner's appeal. 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.

Kerry R. Chapman
Administrative Law Judge

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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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