

04-1068
Audit
Signed 02/24/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER	
Petitioners,)		
v.)	Appeal No.	04-1068
)	Account No.	#####
)		
AUDITING DIVISION OF)	Tax Type:	Income Tax
THE UTAH STATE TAX)		
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Tax Director, COMPANY
For Respondent: RESPONDENT REPRESENTATIVE 1, Manager, Income Tax Auditing
RESPONDENT REPRESENTATIVE 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephone Status Conference on January 3, 2005. At the conference it was determined that the initial decision would be based on the written submissions currently in the record, rather than an Initial Hearing.

Petitioners are appealing an audit deficiency of additional individual income tax and the interest thereon relating to tax year 2001. The Statutory Notice of Audit Change was issued on July 28, 2004. The amount of tax at issue \$\$\$\$\$. As of the date of the notice the interest accrued was \$\$\$\$\$.

APPLICABLE LAW

There shall be subtracted from federal taxable income of a resident or nonresident individual:
... (f) 75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code,

for each dependent child with a disability and adult with a disability who is claimed as a dependent on a taxpayer's return. . . (Utah Code Sec. 59-10-114(2)(f) (2001).)

Every person liable for any tax imposed by this chapter, or for the collections thereof, shall keep such records, render such statements, make such returns, and comply with such rules as the commission may from time to time by rule prescribe. Whenever in the judgment of the commission it is necessary, it may require any person, by notice served upon such person or by rule, to make such returns, render such statements, or keep such records, as the commission deems sufficient to show whether or not such person is liable for tax under this chapter. (Utah Code Sec. 59-10-501(1) (2001).)

The subtraction from income for handicapped children and handicapped adults allowed under Section 59-10-114 must be accompanied, for each year claimed, by the Disabled Exemption Verification, form TC-40D. (Utah Admin. Rule R865-9I-39 (2001).)

DECISION AND ORDER

The issue before the Commission in this matter is a legal question, whether documentation, other than the form TC-40D is sufficient for Petitioners to claim the Disabled Exemption, set out at Utah Code Sec. 59-10-114(2)(f) for two of their children. Petitioners did not file with their Utah return forms TC-40D for the 2001 tax year. Respondent requested the forms during the course of the audit and Petitioners were not able to provide them.

Respondent would have allowed Petitioners to prepare the TC-40D forms for 2001 during the audit and submit them as verification. Petitioners' representative indicated that Petitioners did not do so because the forms must be signed by the children's school principal. He stated that the principal in 2001 for the children's school was not currently at the school and Petitioners determined it was not cost effective to try to track the principal down, considering the dollar amount at issue. It was the representation that Petitioners

Appeal No. 04-1068

did ask the new principal about signing the forms for the 2001 year, but the new principal was uncomfortable doing so.

Petitioners ask that the Commission accept instead of the TC-40D other documentation from the schools that shows the children had a disability. Petitioners provided Individualized Education Programs (IEP's) for their daughters (X) and (X) that were prepared in 2001. These IEP's clearly indicate that the students had some special education needs. The forms were signed by PETITIONER 2 and the children's teachers, but did not appear to be signed by the school principal. Petitioners also submitted TC-40D's for their daughters from the prior year, tax year 2000. On the prior year's forms both children were classified as "Severe Intellectually Handicapped." The form for (X) indicated in addition that she had Down Syndrome. Petitioners' representative had stated in his correspondence that both children had Down Syndrome. He also stated that they had obtained the exemption on 2000, 2002 and subsequent years.

Upon review of the evidence in his matter, the evidence is clear that the children's disabilities are of a permanent nature and as such the evidence submitted in this matter is sufficient to indicate that they are entitled to the exemptions for tax year 2001.

Based on the foregoing, the Commission finds that Petitioners are entitled to take the exemptions for disabled dependents as claimed on their 2001 Utah income tax return. The Commission hereby abates the audit. 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:

Appeal No. 04-1068

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.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: If the parties do not request a Formal Hearing, failure to pay the balance resulting from this order within thirty-days may result in a late payment penalty.

JKP/04-1068.int.doc