

04-1077
Audit
Signed 02/25/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 04-1077
v.)	Account No. #####
)	Tax Type: Income Tax
AUDITING DIVISION OF THE)	Tax Years: 1997
UTAH STATE TAX COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE 1, Auditing Division
RESPONDENT REPRESENTATIVE 2, 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 February 16, 2005. Petitioner is appealing an audit deficiency of additional Utah individual income tax and interest for the 1997 tax year. Auditing Division (“Division”) imposed the assessment in a Statutory Notice of Audit Change dated July 15, 2004, after it received information from the Internal Revenue Service (“IRS”) that the IRS had increased the Petitioner’s federal adjusted gross income for the 1997 tax year.

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 §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 §59-10-111) with the modifications, subtractions, and adjustments provided in §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 "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 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 required that the taxpayer file an amended Utah return in the event the Internal Revenue Service adjusts the amount of federal taxable income in Utah Code Ann. §59-10-536(5) 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 that conforms to the changes on the federal return. No notification is required of

changes in the taxpayer's federal income tax return that 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 provision of this Subsection (b) does 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

In 1999, the IRS assessed additional taxable income to the Petitioner for the 1997 tax year, the majority of which involved a transaction with (X). The Petitioner explained that she did not believe the income was actually taxable, but that she did not contest the IRS's action in 1999 because she was in a different financial situation then. The Petitioner did not file an amended Utah tax return for the 1997 year, as required by law, which led to the Division's assessment. However, because the Petitioner finds herself in a less desirable financial situation now, she wishes to contest Utah's assessment. Unfortunately, the Petitioner has no evidence to show that the IRS would consider the income at issue nontaxable. Without such information, Utah law requires that the income be considered taxable for Utah purposes. For these reasons, the Commission sustains the Division's assessment.

Should a final decision in this appeal determine that the Petitioner is liable for the tax at issue, the Tax Commission will consider a taxpayer's financial situation in setting up a payment schedule and determining whether the taxpayer qualifies for other relief. To discuss how to qualify

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for such consideration, the Petitioner may contact TAX COMMISSION EMPLOYEE at ##### in the Offer in Compromise Section of the Taxpayer Services Division.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit assessment and denies the Petitioner's appeal. It is so ordered. 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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