

04-1172
Audit
Signed 09/01/2005

BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|-----------------------|---|----------------------|
| PETITIONER, |) | |
| |) | ORDER |
| Petitioner, |) | |
| |) | Appeal No. 04-1172 |
| v. |) | Account No. ##### |
| |) | |
| AUDITING DIVISION |) | Tax Type: Income Tax |
| OF THE UTAH STATE TAX |) | |
| COMMISSION, |) | Tax Years: |
| |) | |
| Respondent. |) | Judge: Davis |

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

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

On January 21, 2005, Respondent sent to Petitioner a Statutory Notice of Audit Change for Petitioner's 2001 Utah State Individual Income Tax Return. On April 1, 2005, Respondent sent to Petitioner additional Statutory Notices of Audit Change for the individual income tax returns of Petitioner for 1998 and 1999.¹ For 1998 and 1999, the audit change was made for both

¹ The Answer to Petition for Redetermination filed by Respondent represented that the corrections were made for tax years 1997 and 1998 on September 8, 2004 and September 22, 2004. Copies of the Statutory Notices presented as evidence at the hearing indicate that the changes were for 1998 and 1999.

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Petitioner and her former husband, (X). For 2001, the Statutory Notice of Audit Change was only for Petitioner's personal tax return.

Petitioner was formerly married to (X), and they were separated in 1999. The parties were divorced in 2000.

For 1998, Petitioner filed a joint return with (X), her former husband. For 1999, a copy of the return was not provided, but the Statutory Notice of Audit Change assessed the tax as married filing jointly. Petitioner maintains that for 1999, she and her former husband were still married, but he was not a resident of the State of Utah. The only evidence she submitted to support that was that he was not on the rental agreement for her home, and she testified that he was not on the utilities, including gas, lights, or telephone for her home. She claimed that he went to STATE in December 1998 and obtained a STATE driver's license. Based thereon, she has requested permission to file under the special instruction for couples where one spouse is domiciled in Utah and one spouse is domiciled in another state. However, Respondent testified that through 1999, Petitioner had a Utah driver's license that was renewed in 1999, a motor vehicle registered in Utah, and received a driving citation within the State of Utah in December of 1999. Her former husband also had W-2 wages in a small amount in Utah for 1999. The Commission determines that Petitioner has not submitted sufficient evidence to meet her burden of proof to establish that her former husband either abandoned his domicile in Utah or established a new domicile in STATE.

Therefore, it is assumed that the Answer to the Petition for Redetermination was in error.

Petitioner has also requested innocent spouse relief, because she represented that she is having to pay income tax on the income of her former husband, but that she should not be responsible for it. However, the Commission determines that the issue of innocent spouse relief is not one for determination in this proceeding. The only matter at issue in this proceeding is a determination of the correct amount of taxes owed by Petitioner, together with her husband for the years in which joint returns were filed.

Based upon the foregoing, the Commission determines that Petitioner has failed to meet her burden of proof to establish that her husband was not domiciled in the State of Utah for the years in which a joint return has been assessed, and the issue of innocent spouse relief will be determined following a determination by the Taxpayer Services Division on that issue. As of the date of the hearing, there had been no determination by the Taxpayer Services Division, even though a request had been filed.

APPLICABLE LAW

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(10).

DECISION AND ORDER

Based upon the foregoing, the Commission determines that Petitioner has not presented sufficient evidence to establish that the audit assessment made by Respondent is not accurate. Petitioner has further requested a waiver of interest, but has not presented evidence sufficient for the Commission to determine that there was Tax Commission employee error or any

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other reason that the interest should be waived. Penalties were not imposed. The Petition for Redetermination is hereby denied. 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

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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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