

04-1208
Audit
Signed 10/06/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-1208
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income
AUDITING DIVISION OF THE	)	Tax Years:	2001
UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE, 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 September 27, 2005.

At issue is the Auditing Division's (the "Division") assessment of Utah individual income tax to the Petitioner on September 14, 2004 in regards to the 2001 tax year. For the 2001 tax year, PETITIONER deducted from his Utah state taxable income an amount equal to \$\$\$\$\$, which was identified on his return as the federal tax deduction allowable under Utah law. The Division changed this deduction from \$\$\$\$\$ to \$\$\$\$\$, which it claims is one-half of the Petitioner's federal tax liability for the 2001 year, as reported to it by the Internal Revenue Service ("IRS"). Because of

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its decrease to this deduction, the Division assessed the Petitioner \$\$\$\$ in additional tax plus interest.

The Petitioner states that he has not contested his 2001 federal tax liability, as reported to the Division by the IRS, and currently has no information with which to refute the Division's assessment.

APPLICABLE LAW

Utah Code Ann. §59-10-114 provides for certain additions to and subtractions from the federal taxable income of an individual when calculating that person's Utah state taxable income. A subtraction for 1/2 of the net amount of income tax paid or payable to the United States is allowed in accordance with Subsection 59-10-114(2)(b), as follows:

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

(b) (i) except as provided in Subsection (2)(b)(ii), 1/2 of the net amount of any income tax paid or payable to the United States after all allowable credits, as reported on the United States individual income tax return of the taxpayer for the same taxable year; and

(ii) notwithstanding Subsection (2)(b)(i), for taxable years beginning on or after January 1, 2001, the amount of a credit or an advance refund amount reported on a resident or nonresident individual's United States individual income tax return allowed as a result of the acceleration of the income tax rate bracket benefit for 2001 in accordance with Section 101, Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, may not be used in calculating the amount described in Subsection (2)(b)(i);

DISCUSSION

At issue is the amount of the income tax that the Petitioner was liable for to the United States for the 2001 tax year and whether, in accordance with Section 59-10-114(2)(b), the

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Petitioner properly deducted ½ of this amount from his Utah taxable income for Utah income tax purposes. The Division claims that IRS records show that ½ of the Petitioner's 2001 federal income tax liability was \$\$\$\$\$, not \$\$\$\$\$ as claimed by the Petitioner on his 2001 Utah income tax return.

The Petitioner states that he has no information with which to refute the Division's information or its assessment. Without such information, the Petitioner has not met his burden of proof, as set forth in UCA §59-10-543, to successfully appeal the assessment. Accordingly, the Commission denies the Petitioner's appeal.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment of additional Utah individual income tax for the 2001 tax year 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.

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DATED this _____ day of _____, 2005.

Kerry R. Chapman
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

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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