

04-1243
Audit
Signed 01/17/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-1243
)		
v.	)	Account No:	#####
)		
AUDITING DIVISION	)	Tax Type:	Withholding Tax
OF THE UTAH STATE)		
TAX COMMISSION,	)	Tax Year:	2001
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE, 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 October 4, 2005. At the Initial Hearing, the parties discussed having the Petitioner submit an amended withholding tax return for the audit period and entering into a Memorandum of Understanding (“MOU”) that would settle the issue. The parties were given six weeks subsequent to the date of the hearing to perform these actions and submit the MOU to the Commission. Because the parties have not submitted the MOU to the Commission, it issues a decision based on the information provided at the hearing.

On September 17, 2004, Auditing Division (“Division”) issued a Statutory Notice - Employee Withholding Tax to the Petitioner, in which it assessed additional withholding tax for the

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2001 tax year. The Division explains that the assessment occurred because the withholding tax reported on the Petitioner's 2001 Form TC-96R exceeded the amounts reported on company W-2's and the amount of tax actually submitted to the Commission.

Since the issuance of the assessment, several individuals previously or currently associated with the Petitioner have communicated with the Commission to deny or discuss their own personal responsibility in the matter. However, the assessment was issued to a corporation, not an individual. The Commission will determine the corporation's liability in this matter, but will not address any particular individual's liability. None of the individuals who have responded have denied that the Division's assessment to the corporation is incorrect, given the circumstances.

APPLICABLE LAW

Utah Code Ann. §59-10-406(3)(a) provides that “[e]ach employer shall file an annual return, in a form the commission prescribes, summarizing: . . . (iii) the state tax deducted and withheld for each employee during the calendar year.” Furthermore, Subsection 59-10-406(5)(a) provides that “[t]he employer is liable to the commission for the payment of the tax required to be deducted and withheld under this part.”

The Utah Legislature has specifically provided that the taxpayer bears the burden of proof, with limited exceptions, in proceedings involving individual income tax before the Tax Commission. UCA §59-10-543 provides, as follows:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under Title 59, Chapter 1, Part 5 is filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported, and of which change or correction the commission had no notice at the time it mailed the notice of deficiency.

DISCUSSION

Section 59-10-406(5) requires an employer to submit all Utah withholding taxes that it withholds from an employee's wages. The Petitioner, a corporation, is an employer that withheld and submitted Utah taxes from its employees' wages for the 2001 tax year. The amount of taxes that the Petitioner submitted for the 2001 tax year is less than the amount that it reported it withheld on its 2001 annual report. For the Petitioner to show that the lesser amount of tax it actually submitted is correct, it would have to show that its annual report it submitted is incorrect. It has not done so. Because the Petitioner has not provided sufficient evidence to show that the Division's assessment is incorrect, the Division's audit assessment is sustained.

DECISION AND ORDER

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

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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 _____, 2006.

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 _____, 2006.

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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