

04-1293
Audit
Signed 11/07/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
Petitioner,)	
)	Appeal No. 04-1293
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Years: 2000, 2001
UTAH STATE TAX COMMISSION,)	Tax Type: Income Tax
)	
Respondent.)	Judge: Chapman

Presiding:

Marc B. Johnson, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on October 26, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.
2. The tax years at issue are 2000 and 2001.
3. The Petitioner's Social Security number is #####, and he is a Utah resident for Utah individual income tax purposes.
4. The Petitioner received revenue, but did not file Utah individual income tax returns for tax years 2000 and 2001.
5. Auditing Division ("Division") obtained information from the Internal Revenue Service ("IRS") that the Petitioner received revenue from a number of sources during the two tax years at issue

(“Exhibit R-1”).

6. For the 2000 tax year, the Division prepared forms from information it obtained from the IRS indicating that the Petitioner received revenue from sources and on IRS forms, as follows: (1) \$\$\$\$ from COMPANY A, Form 5498; (2) \$\$\$\$ from COMPANY B, Form 1099-B; (3) \$\$\$\$ from COMPANY B, Form 1099-B; (4) \$\$\$\$ from COMPANY C, Form 1099-B; (5) \$\$\$\$ from COMPANY D, Form 1098; (6) \$\$\$\$ from COMPANY E, Form 1099-DIV; (7) \$\$\$\$ from COMPANY F, Form 1099-INT; (8) \$\$\$\$ from COMPANY G, Form 099-MISC; (9) \$\$\$\$ from COMPANY H, Form 099-MISC; (10) \$\$\$\$ from COMPANY I, Form 099-MISC; (11) \$\$\$\$ from COMPANY J, Form 099-MISC; (12) \$\$\$\$ from COMPANY K, Form 099-MISC; (13) \$\$\$\$ from COMPANY L, Form 099-MISC; (14) \$\$\$\$ from COMPANY M, Form 099-MISC; and (15) \$\$\$\$ from COMPANY N, Form 099-MISC.

7. For the 2001 tax year, the Division prepared forms from information it obtained from the IRS indicating that the Petitioner received revenue from sources and on IRS forms, as follows: (1) \$\$\$\$ from COMPANY A, Form 5498; (2) \$\$\$\$ from COMPANY O, Form K-1 1041; (3) \$\$\$\$ from COMPANY P, Form 1098; (4) \$\$\$\$ from COMPANY Q, Form 1098; (5) \$\$\$\$ from COMPANY E, Form 1099-DIV; (6) \$\$\$\$ from COMPANY R, Form 1099-DIV; (7) \$\$\$\$ from COMPANY Q, Form 1099-INT; (8) \$\$\$\$ from COMPANY S, Form 099-MISC; (9) \$\$\$\$ from COMPANY G, Form 099-MISC; (10) \$\$\$\$ from COMPANY H, Form 099-MISC; (11) \$\$\$\$ from COMPANY I, Form 099-MISC; (12) \$\$\$\$ from COMPANY J, Form 099-MISC; (13) \$\$\$\$ from COMPANY L, Form 099-MISC; (14) \$\$\$\$ from COMPANY K, Form 099-MISC; and (15) \$\$\$\$ from COMPANY T, Form 099-MISC.

8. The information the Division received from the IRS also includes IRS “Account Transcripts” regarding the Petitioner for the tax years at issue. For the 2000 tax year, the account transcript show that the IRS considers the Petitioner’s “adjusted gross income” to be \$\$\$\$ and his “taxable income” to be \$\$\$\$. For the 2001 tax year, the account transcript shows that the IRS considers the Petitioner’s “adjusted

gross income” to be \$\$\$\$ and his “taxable income” is \$\$\$\$.

9. On October 13, 2004, the Division issued Statutory Notices of Estimated Income Tax for tax years 2000 and 2001, which stated that the Petitioner had failed to Utah individual income tax returns for these years. For the 2000 tax year, the Division assessed \$\$\$\$ in tax (based on federal adjusted gross income of \$\$\$\$), plus penalties and interest. For the 2001 tax year, the Division assessed \$\$\$\$ in tax (based on federal adjusted gross income of \$\$\$\$), plus penalties and interest.

10. The Petitioner did not deny that he was a Utah resident, that his Social Security number is #####, or that he received revenue for the years at issue. The Petitioner neither denied that he failed to file Utah individual tax returns for the years at issue nor denied that the IRS had also assessed him tax on similar amounts of revenue for the years in question. The Petitioner did not present arguments or submit evidence to show that the Division’s assessments were incorrect, but instead stated that he did not believe the revenue he received during the tax years at issue was taxable. The Petitioner also requested to ask questions concerning the legitimacy of the Division’s assessments. During the questioning process allowed both parties, the Petitioner stated that he had researched the legitimacy of taxing the revenue at issue and determined that it is not income subject to taxation. He also admitted that he had conferred with tax attorneys concerning the matter and was advised that such income is nontaxable. However, the Petitioner submitted no evidence of his research and did not answer when asked to name the tax attorneys who had informed him that the income was nontaxable.

APPLICABLE LAW

1. Pursuant to Utah Code Ann. §59-10-104, Utah imposes a tax “on the state taxable income, as defined in Section 59-10-112, of every resident individual. . . .”

2. For purposes of Section 59-10-104, “resident individual” is defined in UCA §59-10-103(1)(k) to mean:

- (i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or
- (ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state....

3. Also for purposes of Section 59-10-104, UCA §59-10-112 provides that “[s]tate taxable income’ in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114”

4. For purposes of Section 59-10-112, UCA §59-10-111 provides that “[f]ederal taxable income’ means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.”

5. For purposes of Section 59-10-111 and as defined in the Internal Revenue Code at 26 U.S.C. 63, “taxable income” means “. . . gross income minus the deductions allowed by this chapter (other than the standard deduction).”

6. For purposes of determining “taxable income,” the Internal Revenue Code at 26 U.S.C. 61(a) defines “gross income” to mean:

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;
- (2) Gross income derived from business;
- (3) Gains derived from dealing in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

7. For situations where a taxpayer fails to file a Utah individual income tax return, UCA §59-10-506(2) provides, as follows in pertinent part:

.....

(2) (a) If any person fails to make and file any return required by this chapter at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the commission shall make such return from its own knowledge and from such information as it can obtain through testimony or otherwise.

(b) Any return so made and subscribed by the commission shall be prima facie good and sufficient for all legal purposes.

8. 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.

9. UCA §59-10-539(1) provides for the imposition of penalty and interest, pertinent parts as follow:

(1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401.

.....

(8) In addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.

10. For purposes of Section 59-10-539, UCA §59-1-401 provides for the imposition of penalties for failure to file a tax return within the prescribed time and for failure to pay tax when due, as follows:

(1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

...

(2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:

(a) failure to pay any tax, as reported on a timely filed return;

(b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);

(c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;

(d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b); and

(e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

11. Also for purposes of Section 59-10-539, UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

DISCUSSION AND CONCLUSIONS OF LAW

The Division assessed the Petitioner individual income tax, penalties, and interest for tax years 2000 and 2001. The Petitioner appealed the assessments, and at the hearing, asserted that the revenue he received during these tax years is not subject to taxation. However, he stated that he had no evidence to support his assertions and believed the assessments should be disallowed until the Division proved the revenue

to be taxable. The Petitioner also requested an opportunity to ask the Division questions concerning the assessments.

Procedural Issues. The Division objected and stated that because the Petitioner has the burden of proof in this matter and had presented no case to refute the assessments, it wished to rest its case and have the Commission base its decision on the Petitioner's burden of proof and his lack of a case.

The Commission is an administrative agency that hears many different types of cases with many types of taxpayers, some of whom are sophisticated and represented by legal counsel, but many of whom represent themselves and have little knowledge of tax matters. For these reasons, the Commission is hesitant, because of procedural technicalities, to deny a pro se petitioner who genuinely does not understand the proceedings or the assessment an opportunity to learn why he or she was assessed. For these reasons, the Commission denied the Division's objection to the Petitioner's request to ask questions concerning the assessments and allowed the Division to present its case and ask questions as well.

Because the Petitioner's initial questions concerned the nature and legality of the assessments, the Division submitted the following documents as evidence to support its assessments: (1) an October 14, 2005 letter in which the Division disclosed the documents and witnesses upon which it might rely at the Formal Hearing; (2) a copy of the Statutory Notices of Estimated Income Tax that it issued to the Petitioner; (3) Account Transcript documents from the IRS showing that a person with a federal identification number that matches the Petitioner's social security number had federal taxable income in excess of \$\$\$\$ for each of the tax years at issue; and (4) a list of revenues that the Petitioner received for the tax years at issue, which the Division states that it prepared from information obtained from the IRS (collectively received as "Exhibit R-1").

Although the Petitioner claimed that the revenues he received during 2000 and 2001 were not taxable, he did not deny the Division's claims that, for the tax years at issue, he received revenue, did not file Utah individual income tax returns, and was a resident of Utah. Nor did he challenge that his social security number is #####. However, upon questioning by the Division, the Petitioner admitted that he had obtained information from the Internet from which he concluded that the revenues he received in 2000 and 2001 were not subject to taxation. Furthermore, the Petitioner stated that he had conferred with attorneys who advised him that his revenue was nontaxable.

Upon learning of these facts, it became apparent to the Commission that the Petitioner had knowledge concerning the nature of the Division's assessments, had access to legal representation, and had access to information that he claimed would show his revenues were nontaxable. When the Commission asked the Petitioner if he brought any of this information for its consideration and why he had not disclosed the information when asked to present his case, he responded that he brought no information and did not believe that he needed to present a case. The Petitioner's responses convinced the Commission that he was not participating at the hearing in good faith, at which point the Commission concluded the hearing.

Burden of Proof. The Petitioner argued that the Division, and not himself, should have the burden of proof in this matter. However, Section 59-10-543 specifically provides that the taxpayer bears the burden of proof in proceedings involving individual income tax before the Tax Commission, except for three circumstances that are not present in this matter.

This matter involves the failure to make and file tax returns. Section 59-10-506(2) allows the Commission, under such circumstances, to "make such return[s] from its own knowledge and from such information as it can obtain through testimony or otherwise." In *Jensen v. State Tax Comm'n*, 835 P.2d 965 (Utah 1992), the Utah Supreme Court stated that:

When a recalcitrant or evading taxpayer refuses to file an income tax return and the Commission is therefore compelled to reconstruct financial data from available evidence to estimate the taxpayer's income, it is reasonable to shift the burden to the taxpayer under §59-10-543 to show that the Commission's figures are incorrect. But to apply §59-10-543 in that fashion, the Commission must first clearly establish that the taxpayer earned some taxable income and then show that its predicate for computing taxable income is not arbitrary or capricious.

Accordingly, before the burden of proof is shifted to the Petitioner, the Division must: (1) establish that the taxpayer earned some taxable income; and (2) show that its predicate for computing the taxable income was not arbitrary or capricious.

The Division's evidence is sufficient to shift the burden of proof to the Petitioner. First, the Division has obtained IRS Account Transcripts that relate to the Petitioner. Although the IRS transcripts do not refer to the Petitioner by name, they refer to him through use of his social security number.¹ These transcripts show that the IRS considers the Petitioner to have federal taxable income similar to the amounts of state taxable income that the Division has estimated in its assessments. The Commission finds this information sufficient to show that the Petitioner earned taxable income for the years at issue and that the Division's estimate for computing Utah taxable income was not arbitrary or capricious.² For these reasons, the burden is shifted to the Petitioner under Section 59-10-543 to show that the Commission's assessment is incorrect.

The Petitioner has submitted no information to show that the Division's assessments are incorrect, even though he bears the burden to do so. For these reasons, the Commission finds that the Petitioner is a Utah resident individual who has state taxable income in the amounts respectively established by the Division for tax years 2000 and 2001. Furthermore, Sections 59-10-539, 59-1-401, and 59-1-402 provide,

1 Petitioner did not claim that the number (#####) was not his.

2 Although the individual revenues that the Division compiled and submitted from IRS information do not add up to the total taxable income that it assessed for each year, the Commission finds that the federal taxable income, as obtained on the IRS transcripts, is sufficient to show that the Division's estimates of income were neither arbitrary nor capricious.

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under the circumstances present in this manner, for the assessment of interest and penalties for failure to file a tax return when due and failure to pay tax when due. For the two tax years at issue, Petitioner both failed to file a return when due and failed to pay the tax when due. Accordingly, the Commission sustains the Division's assessments and denies the Petitioner's appeal.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the Division has sufficiently defended its assessments of income tax to the Petitioner for the tax years 2000 and 2001 so that the burden of proof to disprove the assessments falls upon the Petitioner. The Commission further finds that the Petitioner has failed to show the assessments to be incorrect. For these reasons, the Commission sustains the audit assessments at issue and denies the Petitioner's appeal. It is so ordered.

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.

Appeal No. 04-1293

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: 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. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§99-1-601 and 63-46b-13 et. seq.

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