

05-0358  
Audit  
Signed 09/26/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 05-0358
v.	)	
	)	Acct Nos.      #####
AUDITING DIVISION,	)	
UTAH STATE TAX COMMISSION,	)	Tax Type:  Income Tax
	)	Tax Year:  2002
Respondent.	)	Judge:      Robinson

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**Presiding:**  
    R. Spencer Robinson, Administrative Law Judge

**Appearances:**  
    For Petitioner:  PETITIONER  
    For Respondent:  RESPONDENT REPRESENTATIVE 1, Auditing Division  
                      RESPONDENT REPRESENTATIVE 2, Auditing Division

STATEMENT OF THE CASE

Pursuant to the provisions of Utah Code Ann. §59-1-502.5, this matter came before the Commission for an Initial Hearing on July 21, 2005. Petitioner is appealing the Respondent's adjustment to Petitioner's Utah income tax return. Respondent made the adjustment following receipt of information from the Internal Revenue Service.

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 Section 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 Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 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.

The effect of changes in a person's federal return is governed by Utah Code Ann. §59-10-536 (5) (a), which states,

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 which conforms to the changes on the federal return. No notification is required of changes in the taxpayer's federal income tax return which do not affect state tax liability.

Utah Code Ann. §59-10-536 (5) (b) states,

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 provisions of this Subsection (b) do 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

Sometime in 2003, the Internal Revenue Service notified Petitioner it lacked proof of his filing status as a head of household. In November of 2003 the IRS provided an explanation, stating it had reduced Petitioner's exemptions from two to one. On December 20, 2004, Petitioner received a letter from the IRS stating it was not making any changes to his 2003 return. Petitioner submitted this information to Respondent.

Respondent states that, as of July 20, 2005, the IRS showed his filing status for the 2002 tax year as single, not head of household. Thus, Respondent did not withdraw its March 21, 2005 Statutory Notice of Audit Change for the 2002 tax year.

Petitioner's documents do not establish that the IRS accepted his filing as a head of household in 2002, the tax year in issue. It appears the IRS did accept his filing as head of household in 2003.

DECISION AND ORDER

Based on the foregoing, Petitioner's request that his filing status be returned to head of household for the 2002 tax year is denied. Petitioner is responsible for the additional tax and interest, which was \$\$\$\$ as of July 21, 2005. 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. Petitioner is informed that should he persuade the IRS to accept his 2002 filing as head of household, he should contact the Auditing Division. The Auditing Division can verify this with the IRS.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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R. Spencer Robinson  
Administrative Law Judge

Appeal No. 05-0358

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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