

05-0361
Audit
Signed 02/13/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0361
v.)		
	)	Account No.	#####
AUDITING DIVISION OF	)	Tax Type:	Income Tax
THE UTAH STATE TAX	)	Tax Year:	1999
COMMISSION,	)	Judge:	Chapman
)		
Respondent.)		

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE 1, from Auditing Division
RESPONDENT REPRESENTATIVE 2, 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 February 8, 2006.

On February 22, 2005, Auditing Division (“Division”) issued a Statutory Notice of Estimated Income Tax (“Statutory Notice”) to the Petitioner for the 1999 tax year. The Division claims that the Petitioner failed to file a 1999 Utah individual income tax return. The Division based its assessment on information provided to it by the Internal Revenue Service (“IRS”), which showed the income, deductions, and tax that the Petitioner reported on his 1999 federal return (Exhibit R-1). The Division also assessed interest, a 10% failure to file penalty and a 10% failure to pay penalty.

After the assessment, the Petitioner provided the Division with an IRS Form W-2 for the 1999 tax year that showed that his employer withheld and paid \$\$\$\$ in Utah income tax. With this new

Appeal No. 05-0361

information, the Division agrees that the assessment at issued should be adjusted to reflect the amount of tax previously paid.

The Petitioner states that he believed he filed the state return for the 1999 tax year, but that he has not kept his tax records prior to 2000. The Petitioner did not explain how he obtained the 1999 IRS Form W-2 under these circumstances. At the hearing, the Petitioner states that the tax liability estimated on the statutory notice appears to be correct.

APPLICABLE LAW

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. . . .”

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 mores days of the taxable year in this state....

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”

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.”

UCA §59-10-536(3) provides that the Tax Commission may assess income tax “at any time if: (a) no return is filed” 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.

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.

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.

For purposes of Section 59-10-539, UCA §59-1-401 provides for the imposition of penalties, 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.

....

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

The Division has proffered evidence that supports its assessment of income tax to the Petitioner for the 1999 tax year. The Petitioner has no evidence to show that he filed the 1999 state return when it was due or that he timely paid the 1999 tax liability, except for that portion of tax that his employer withheld and paid on his behalf. For these reasons, the Commission sustains the Division’s assessment. However, given the information provided on the Petitioner’s 1999 Form W-2, the Commission orders the Division to adjust the assessment to reflect that portion of the tax liability already paid.

The Commission finds no cause to waive the interest due because there is no evidence of Tax Commission error. However, concerning the penalties, the Commission notes that the Petitioner’s 1999 failure to file appears to be his first error since 1993. For the 1993 tax year, the Division claims that the Petitioner

Appeal No. 05-0361

also failed to file a return. The Petitioner states that he moved to Utah around that period and did not believe that he was required to file a return for that year. The Commission notes that the Petitioner has timely filed and paid his state income tax liability for the five years prior to the year at issue and the five years afterwards. Accordingly, the Commission finds that the Petitioner's failure to file his 1999 tax return appears to be an anomaly. For these reasons, the Commission finds sufficient good cause to waive the penalties in this matter.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment of income tax minus the credit for taxes previously withheld and paid by the Petitioner's employer, as evidenced on the IRS Form W-2 submitted to the Division. The Commission also sustains the Division's assessment of interest. Although the Commission finds that the Division properly assessed the 10% failure to timely file a return penalty and the 10% failure to pay penalty, the Commission finds reasonable cause to waive the penalties and, accordingly, orders that they be waived. 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 _____, 2006.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 05-0361

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 any remaining balance resulting from this order within thirty (30) days from the date of this order may result in an additional late payment penalty. If you do not plan to request a Formal Hearing but wish to submit an Offer in Compromise due to financial hardship or other reason or wish to discuss payment arrangements, please telephone Collections Section of Taxpayer Services Division at (801) 297-7703.

KRC/05-0361.int