

05-0469
Audit
Signed 02/28/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	ORDER
Petitioners,)	
)	Appeal No. 05-0469
v.)	
)	Acct Nos. #####
)	#####
AUDITING DIVISION,)	
UTAH STATE TAX COMMISSION,)	Tax Type: Income Tax
)	Tax Years: 2000-2003 ¹
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER 2

For Respondent: Assistant Attorney General RESPONDENT REPRESENTATIVE 1
 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 October 17, 2005. Petitioners are appealing the Respondent's adjustment to Petitioners' Utah income tax returns for the years 2000 through 2003. Respondent made the adjustments 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:

¹ Petitioners also provided information regarding their 1998 tax return. The 1998 tax return is not part of this case.

...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.

Utah Code Ann. §59-10-536 (9) states,

The amount of any tax imposed by this chapter may be assessed at any time within six years after the time the return was filed if:

(a) a resident individual, estate, or trust omits from gross income as reported for federal income tax purposes an amount properly includable therein which is in excess of 25% of the amount of

gross income stated in the return;

DISCUSSION

Petitioners are retired. Prior to retirement, they lived in several different states. They have always filed returns and paid taxes. Some of the States in which they resided or worked did not have a State income tax. Petitioners were residents of the State of Utah during the tax years in issue. Not all of Petitioners income during those years was Utah source income.

In 2000, on line four of their Utah Individual Income Tax Return, Petitioners listed their federal adjusted gross income as \$\$\$\$\$. They noted on their 2000 Utah return that there were 99 days spent in the State of STATE. Petitioners believed income derived from activity in STATE was not taxable by the State of Utah.

The Respondent received information from the Internal Revenue Service regarding the tax years at issue. Based on IRS information for the 2000 tax year, the Respondent revised Petitioners' federal adjusted gross income upward from \$\$\$\$\$ to \$\$\$\$\$. The difference is \$\$\$\$\$. This exceeds 25% of Petitioners' statement of gross income in their 2000 return.

The documents regarding retirement income do not show any retirement income flowing to Petitioner PETITIONER 2. Respondent also revised Petitioners' retirement income deduction downward from \$\$\$\$\$ to \$\$\$\$\$. The difference is \$\$\$\$\$. Respondent revised Petitioners' State income tax from Federal Schedule A upward from \$\$\$\$\$ to \$\$\$\$\$. Respondent made this adjustment on the grounds Petitioners had listed their State income tax as a deduction on their federal return, but had not properly entered in on their Utah tax return. See §59-10-114 (1)(a). The difference is \$\$\$\$\$. The total adjustment made by Respondent to Petitioners' 2000 Utah tax return is an increase in taxable income of \$\$\$\$\$. The increase in tax due is \$\$\$\$\$. Interest, as of March 31, 2005, was \$\$\$\$\$. The Respondent did not impose a penalty.

Petitioners assert Respondent has erred. They refer to the Uniform Commercial Code provisions on ordinary care and negligence. They argue Utah cannot tax income that is not Utah source income. They argue the State initially sent them a refund without an explanation, and that the State should be bound by its actions. They also argue that the 2000 tax year is beyond the period of limitations.

On March 12, 2001, the IRS mailed notice to Petitioners that it had changed Petitioners federal return. It lists Petitioners' adjusted gross income as \$\$\$\$\$. Petitioners sent an additional payment of \$\$\$\$\$ to the IRS.

In January of 2005, Respondent sent Petitioners a request for verification. It asked Petitioners to verify unreported income for the 2000 tax year of \$\$\$\$\$. Petitioners replied that they had \$\$\$\$\$ of unreported income in 2000. The total of Petitioners' adjusted gross income for the 2000 tax year, and the unreported income, is \$\$\$\$\$.

Petitioners used the same approach to their 2001 Utah tax return that they employed on their 2000 return. They did not include income that was not Utah source income. They did not adjust their retirement deduction. Respondent revised Petitioners federal adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$. Respondent revised Petitioners' retirement income deduction from \$\$\$\$\$ to \$\$\$\$\$. Petitioners also listed a deduction for health care insurance premiums in the amount of \$\$\$\$\$. Respondent revised this to \$\$\$\$\$.

Respondent also revised Petitioners' 2002 Utah tax return. Respondent revised federal adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$. Respondent revised Petitioners' federal income tax deduction from \$\$\$\$\$ to \$\$\$\$\$. Respondent revised Petitioners' retirement income deduction from \$\$\$\$\$ to \$\$\$\$\$. Respondent revised Petitioners' State income tax on Schedule A from \$\$\$\$\$ to \$\$\$\$\$.

Respondent revised Petitioners' 2003 return. Respondent revised Petitioners' federal adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$. Respondent revised Petitioners' retirement income deduction from \$\$\$\$\$ to \$\$\$\$\$.

DECISION AND ORDER

Respondent's revisions are supported by information from the IRS. Petitioners erred when they did not include income that was not Utah source income on their Utah income tax return. Their STATE source income was part of their federal taxable income as defined under §59-10-111, and is taxable under §59-10-112.

Unless taxes were paid to another jurisdiction, in which case Petitioners would be entitled to a credit for the income tax paid to the other jurisdiction, Petitioners are liable for Utah income tax on their Federal adjusted gross income. Because the change in 2000 gross income exceeds 25%, Respondent was within the six-year period of limitations, allowing assessment of additional taxes for the 2000 tax year.

Petitioners did not properly calculate their retirement income deduction. Respondent made the proper calculations. Respondent also properly calculated Petitioners' federal income tax deduction. As for Petitioners' calculation of their Utah income tax deduction, they failed to bring the amount deducted on the Federal return back on the State return.

Based on the foregoing, Petitioners' Petition for Redetermination is denied. 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

Appeal No. 05-0469

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.

R. Spencer Robinson
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