

05-0625
Audit
Signed 12/05/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	ORDER
Petitioner,)	
)	Appeal No. 05-0625
v.)	Account No. #####
)	Tax Type: Income Tax
AUDITING DIVISION OF THE)	Tax Years: 2001 & 2003
UTAH STATE TAX COMMISSION,)	
)	Judge: Chapman
Respondent.)	

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Representative (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE 1, Auditing Division
RESPONDENT REPRESENTATIVE 2, 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 November 22, 2005.

Petitioner is appealing an audit deficiency of additional Utah individual income tax and interest for the 2001 and 2003 tax years. Auditing Division (“Division”) imposed the assessments in Statutory Notices of Audit Change dated April 12, 2005, after it received information from the Internal Revenue Service (“IRS”) that the IRS had increased the Petitioner’s federal adjusted gross income for the 2001 tax year and it had determined that the Petitioner claimed one too many dependents on his 2003 Utah tax return. Although the Division did not charge penalties, it did charge interest on the unpaid income taxes.

The Petitioner's representative explains that he is not challenging the legal correctness of the Division's assessments. He explains, however, that the Petitioner, his brother, has disabilities and did not know about the W-2 form that resulted in the additional income for 2001 when he filed his returns for that year. He also explains that, by 2003, his brother had married a woman who also had disabilities and that they believed they qualified for an extra exemption and did not know of or understand the law on this matter. Although the Petitioner's representative is not challenging the correctness of the assessments, he is asking the Commission for relief for his brother from the tax and interest that is due because his brother and his wife would have difficulty paying the assessments because of their disabilities and relatively low income.

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 §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 §59-10-111) with the modifications, subtractions, and adjustments provided in §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 Utah Legislature has required that the taxpayer file an amended Utah return in the event the Internal Revenue Service adjusts the amount of federal taxable income in Utah Code Ann. §59-10-536(5) as follows:

- (a) 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 that conforms to the changes on the federal return. No notification is required of changes in the taxpayer's federal income tax return that do not affect state tax liability.
- (b) 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 provision of this Subsection (b) does 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.

UCA §59-10-114(2)(f) provides that that there shall be subtracted from the federal taxable income of a Utah resident or nonresident individual "75% of the amount of the personal exemption, as defined and calculated in the Internal Revenue Code, for each dependent child with a disability who is claimed as a dependent on a taxpayer's return."

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.

In those situations where penalty and interest have been properly imposed, the Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. Utah Code Ann. §59-1-401(10).

DISCUSSION

The Petitioner has not challenged the legal correctness of the Division's assessments. For this reason and because the Petitioner has the burden of proof to show the assessments to be incorrect, the Division finds that the Division properly and legally imposed the assessments. The Petitioner's brother has asked the Commission, however, for relief for his brother from the assessments due to the financial difficulty that would arise from his brother having to pay the amounts due. Although the Commission is authorized to waive penalties and interest upon a showing a good cause, the Commission is not authorized to waive a properly imposed tax. In addition, reasonable cause to waive interest is only found when it is shown that a Tax Commission employee has contributed to or caused the tax deficiency. As such circumstances are not present in

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this matter, the Commission finds that it cannot waive the tax or interest that is due. Accordingly, the Commission sustains the Division's assessments.

Should it be determined that the assessments are legally imposed and may not be waived under Section 59-1-401(10), the Tax Commission will consider a taxpayer's financial situation in its collection efforts, either by setting up a payment schedule or determining whether the taxpayer qualifies for other relief due to financial hardship. To discuss how to qualify for such consideration, the Petitioner may contact TAX COMMISSION EMPLOYEE at ##### in the Offer in Compromise Section of the Taxpayer Services Division.

DECISION AND ORDER

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

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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.

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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