

05-1105
Audit
Signed 05/30/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-1105
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF THE	)	Tax Years:	2001
UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE, 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 May 17, 2006.

The Petitioner is appealing an individual income tax assessment imposed by the Auditing Division ("Division") for the 2001 tax year. The Division imposed the assessment in a Statutory Notice of Audit Change dated July 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.

The Petitioner states that the \$\$\$\$ of income for which the Division imposed additional tax is associated with a debt that he paid off. He further states that it is his understanding that the debt amount should be considered a gift, not income. When asked if he appealed the action of the IRS to increase his federal adjusted gross income by this amount, the Petitioner stated that he did not remember if he filed an appeal, but that if he did, the IRS has not contacted him with a decision.

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.

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.

DISCUSSION

The Division has proffered that it imposed the additional income tax at issue based on information received from the IRS. The IRS information shows that the IRS increased the Petitioner's federal adjusted gross income by \$\$\$\$ for the 2001 year. Because Utah taxable income is based on federal gross adjusted income, the Division's assessment is consistent with the IRS increase. Although the Petitioner has the burden of proof to show that Division's assessment is incorrect or that the IRS has reversed its prior action, he has not done so. Accordingly, the Commission sustains the Division's assessment.

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

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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

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 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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