

05-1337
Audit
Signed 10/30/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	ORDER
Petitioners,)	
)	Appeal No. 05-1337
v.)	Account No. #####
)	Tax Type: 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 1 (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 October 25, 2006.

The Petitioners are appealing an audit deficiency of additional Utah individual income tax and interest for the 2001 tax year. Auditing Division (“Division”) imposed the assessment in a Statutory Notice of Audit Change dated August 9, 2005, based upon information it received from the Internal Revenue Service (“IRS”). The Division imposed \$\$\$\$\$ in additional tax and \$\$\$\$\$ in interest. The Division did not impose any penalties.

PETITIONER 1, who is domiciled in STATE 1, worked for the COMPANY A (“COMPANY A”) at (X) in Utah for a portion of the 2001 tax year and filed a 2001 Utah non-resident return.

The Division proffered evidence received from the IRS that the IRS had compiled under the Petitioner’s name and social security number. This evidence shows that on May 17, 2004, the IRS imposed additional tax on the Petitioners for the 2001 tax year. The Division asserted that the additional tax was related to approximately \$\$\$\$\$ in income that PETITIONER 1 received from the COMPANY A but did not report on his federal and Utah tax returns. The IRS documents also included information from those W-2’s on which the IRS relied to tax the Petitioners. Included were two W-2’s where the payer was the COMPANY A: 1) a W-2 showing \$\$\$\$\$ in wages paid by the “(X)” in CITY, STATE 2 to **PETITIONER 1** in CITY 2, Utah; and 2) a W-2 showing \$\$\$\$\$ in wages paid by the “(X)” in CITY 3, STATE 3 to **(UNRELATED THIRD PARTY WITH SIMILAR NAME)** (with no address listed).

PETITIONER 1 stated that he reported all income that he received from the COMPANY A on both his 2001 federal and Utah returns and that he only received one W-2 from the COMPANY A. He further stated that in 2001, he only worked for the COMPANY A at (X) in Utah. In addition, he stated that he was unaware that the IRS had increased his taxes for the 2001 tax year. The Division confirmed that it is likely that IRS did not contact the Petitioners concerning its increase of 2001 taxes as these additional federal taxes were deducted from a refund due the Petitioners in 2004.

Although the Commission has held several status conferences with the Petitioners and their accountant to allow them time to contact the IRS and the COMPANY A to correct any erroneously issued W-2's and federal assessments, PETITIONER 1 stated that they not yet been successful in resolving the issue.

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

Pursuant to Utah law, a person's Utah taxable income is dependent on his or her FAGI. The IRS has increased the Petitioners' FAGI for the 2001 tax year, apparently to account for a W-2 showing \$\$\$\$\$ in wages paid to "UNRELATED THIRD PARTY WITH SIMILAR NAME."

The Commission notes that the W-2 issued to UNRELATED THIRD PARTY WITH SIMILAR NAME may have been issued to a person other than the Petitioner PETITIONER 1 for several reasons: 1) it was issued to a person with a different middle initial than the Petitioner; 2) it was issued by a payer in STATE 3, while the W-2 issued to Petitioner PETITIONER 1 was issued out of a STATE 2 office, which is closer in proximity to Utah where the Petitioner worked; and 3) it does not show an address for UNRELATED THIRD PARTY WITH SIMILAR NAME, while the W-2 issued to the Petitioner PETITIONER 1 shows his address to be in Utah.

Nevertheless, the Petitioners have not yet taken steps for the IRS to disregard the UNRELATED THIRD PARTY WITH SIMILAR NAME W-2 and to remove the wages shown on it from the Petitioners' 2001 FAGI. Nor have the Petitioners shown that they are precluded from having the error corrected, if it exists. For these reasons and based on the evidence proffered at the Initial Hearing, the Commission finds that the Division's assessment is consistent with the Petitioners' FAGI, as recognized by the IRS. Accordingly, the Commission sustains the Division's assessment and denies the Petitioners' appeal.

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

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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

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting

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from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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