

05-1565
Audit
Signed 10/06/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-1565
v.	)	Account No.	#####
)		
AUDITING DIVISION OF	)	Tax Type:	Income Tax
THE UTAH STATE TAX	)	Tax Years:	1998, 1999, 2000, 2001, 2002
COMMISSION,)		
)		
Respondent.	)	Judge:	Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Income Tax Auditor

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 April 11, 2006.

Petitioner is appealing individual income tax audit deficiencies for the tax years 1998 through 2002 which are the years at issue in this appeal. The Statutory Notice of Estimated Income Tax for the tax years 1998, 1999, 2001, and 2002 was issued on August 8 2000. For the tax year 2000, the notice was issued on August 3 2005. The penalties assessed were a 10% failure to file penalty and a 10% failure to pay penalty.

Interest continues to accrue on the unpaid balance. The amounts of the deficiencies for each year are as follows:

Year	Tax	Penalty	Interest as of Notice Date
1998	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2000	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

2001	\$\$\$\$	\$\$\$\$	\$\$\$\$
2002	\$\$\$\$	\$\$\$\$	\$\$\$\$

DISCUSSION

The audit deficiencies were based on information obtained from the Internal Revenue Service ("IRS"), Utah Job Service, and from employers and a retirement plan, which indicated that Petitioner's employers and retirement plan had paid to Petitioner wages and retirement benefits for each of the years at issue, and also the amount of the wages and benefits.

It was Petitioner's argument he had constitutional convictions that he does not have to file income tax returns. He argued that the federal government could not deal with natural persons and could only deal with a fictitious entity. He went on to argue that since a fictitious entity cannot fill out tax returns, no governmental body could require that an entity pay taxes.

Petitioner's arguments are without merit. The statutes and case law clearly support individual income tax.¹ The Utah State Tax Commission does not agree with the Petitioner's arguments regarding the federal government or the IRS. However, for state tax purposes, the Petitioner's conclusions about the IRS are largely irrelevant to Utah individual income tax. Utah individual income tax is governed by Utah state statute. Utah

¹See **United States v. Mann**, 884 F.2d 532 (10th Cir. 1989). In that case, Mann offered many theories as to why he was not required to file income tax returns. The court stated, "His many theories include the asserted beliefs that 1) the United States Supreme Court has declared that the sixteenth amendment applies only to corporations, 2) the Internal Revenue Service (IRS) has no jurisdiction over him, 3) he is not a "person" within the meaning of 26 I.R.C. §7203, 4) wages are not income, 5) federal reserve notes are not legal tender, and 6) the income tax is voluntary." The court in **Mann** responded to these assertions as follows, ". . . each of the views offered by Mann, whether found in his published materials or articulated additionally at trial, falls somewhere on a continuum between untrue and absurd." See also **United States v. Collins**, 920 F.2d 619 (10th Cir. 1990), **cert. denied**, 500 U.S. 920, (1991); **United States v. Lonsdale**, 919 F.2d 1440 (10th Cir. 1990); **United States v. Hanson**, 2 F.3d 942,945 (9th Cir. 1993); **United States v. Studley**, 783 F.2d 934, 937, n. 3 (9th Cir. 1986); **United States v. Sloan**, 939 F.2d 499, 501 (7th Cir. 1991), **cert. den.** 112 S.Ct. 940 (1992); **United States v. Kruger**, 923 F.2d 587, 587-588 (8th Cir. 1991); **United States v. Gerads**, 999 F.2d 1255 (8th Cir. 1993); **United States v. Slater**, 96 F.R.D. 53, 55-56 (D. Del. 1982); and **United States v. Mundt**, 29 F.3d 233,237 (6th Cir. 1994). **Cox V. Commissioner of Internal Revenue**, 99 F.3d 1149 (10th Cir. 1996); **Baker v. Towns**, 849 F. Supp. 775 (D.Utah 1993);and **United States v. Hanson**, 2 F.3d 942 (9th Cir. 1993);

Code Ann. §59-10-104 imposes a tax on every "resident individual." "Resident individual" is defined at Utah Code Ann. §59-10-103(1)(k) as an individual who is domiciled in this state for any period of time during the taxable year or 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 more days of the taxable year in this state. There have been a number of cases in Utah that have gone before the Utah Supreme Court or Utah Court of Appeals determining whether someone is a "resident individual" for state tax purposes.² Petitioner clearly was domiciled in this state throughout the years at issue and is therefore a "resident individual" whose state taxable income is subject to state income tax.

The state tax provisions are clear. They are not difficult or ambiguous. Utah "resident individuals" are subject to state income tax on their state taxable income. "State taxable income" is defined at Utah Code Ann. §59-10-112 and Utah Code Ann. §59-10-111 as "federal taxable income" (with some modifications and adjustments) as defined in Section 63, Internal Revenue Code of 1986. When the definitional links are followed, state taxable income is income from whatever source derived and specifically includes compensation for services. See Internal Revenue Code at 26 U.S.C. 63 and 61(a). The Internal Revenue Code is relevant to Utah tax purposes to the extent that Utah state taxable income is based on federal taxable income as defined at the specified code section. However, it should be noted that Utah has the authority to make a state individual income tax assessment regardless of whether an assessment has been made by the IRS.³ In addition, the courts

²The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals in the following cases: **Lassche v. State Tax Comm'n** 866 P.2d 618 (Utah Ct. App. 1993); **Clements v. State Tax Comm'n**, 839 P.2d 1078 (Utah Ct. App. 1995), **O'Rourke v. State Tax Comm'n**, 830 P.2d 230 (Utah 1992), and **Orton v. State Tax Comm'n**, 864 P.2d 904 (Utah Ct. App. 1993).

³The Utah Supreme Court has addressed this issue in **Nelson v. Auditing Div.**, 903 P.2d 939 (Utah 1995) and **Jensen v. State Tax Commission**, 835 P.2d 965 (Utah 1992).

have specifically considered the issue of whether wages are included in federal taxable income and have clearly concluded that wages are taxable income.⁴

Petitioner argues that he has the right to life, liberty and the pursuit of happiness and all the rights listed in the Declaration of Independence and the Constitution of the United States and yet he has a constitutional right not to pay income tax. Petitioners' argument that the individual income tax is unconstitutional is both frivolous and lacking merit because the 16th Amendment directly provides for an individual income tax without apportionment between the states.⁵ In short, the income tax is constitutional, and Petitioner's argument that he has a constitutional right to be free of tax on his wage income is baseless. To borrow from the United States Supreme Court, "Taxes are what we pay for civilized society." **Cohn v. Graves**, 300 U.S. 308 (1937).

Turning to the issue the burden of proof, Utah Code Ann. 59-10-543 places the burden of proof in this matter on Petitioner. Petitioner did not provide any evidence that the dollar amount Respondent had relied on as income was incorrect. In fact, Petitioner acknowledged that he received income from his employers but

⁴The 5th Circuit stated "it is clear beyond peradventure that the income tax on wages is constitutional." **Stelly v. Commissioner**, 761 F.2d 1113, 115 (1985). See also **Granzow v. C.I.R.**, 739 F.2d 265, 267 (1984) in which the Seventh Circuit stated, "It is well settled that wages received by taxpayers constitute gross income within the meaning of Section 61 (a) of the Internal Revenue Code . . . and that such gross income is subject to taxation." In **United States v. Koliboski**, 732 F.2d 1328, 1329 fn 1 (1984), the Seventh Circuit stated "the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us already are aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME." See also **United States v. Mann**, 884 F.2d 532 (10th Cir. 1989).

⁵The constitutional right to tax income has never been invalidated. Rather, the tax had previously been held unconstitutional because it was a direct tax that was not apportioned among the states according to their population, as required by Article I, Section 2. The Sixteenth Amendment authorized a direct tax on incomes without apportionment among the states according to population. In **Stanton v. Baltic Mining Co.**, at 240 U.S. 103, 112, the Supreme Court states that Congress' power of income taxation was "complete and plenary . . . from the beginning."

Appeal No. 05-1565

stated that he did not know how much he earned during the years in question. Respondent's information came from a reliable source and from records which were kept in the regular course of business. Certainly Petitioner presented no evidence that the amount of wages received was incorrect.

Petitioner was assessed both failure to pay and failure to file timely penalties in this matter pursuant to Utah Code Ann. Section 59-1-401. There is no intent element to these penalties. Petitioner did not file or pay his taxes timely and these penalties were appropriately assessed.

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 Section 59-10-112, of every resident individual...

"Resident individual" is defined in Utah Code Ann. §59-10-103(1)(k) as:

(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 more days of the taxable year in this state. For purposes of this Subsection (1)(k)(ii), a fraction of a calendar day shall be counted as a whole day.

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.

Taxable income is defined in the Internal Revenue Code at 26 U.S.C. 63 as:

Except as provided in subsection (b), for purposes of this subtitle, the term “taxable income” means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Gross income is defined in the Internal Revenue Code at 26 U.S.C. 61(a) as:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; ...

The Utah Legislature has specifically provided that the taxpayer bear the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-10-543 provides the following:

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 . . .

Utah Code Ann. §59-1-401 in relevant part states:

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 on the return. (Utah Code Ann. §59-1-401(1)(a).)

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); (Utah Code Ann. §59-1-401(2)(a)-(b).)

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the assessment of additional income tax, penalties and interest against Petitioner for the tax years 1998 through 2002 as stated on the Statutory Notices of Estimated Income Tax. 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.

Clinton Jensen
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