

05-1654  
INCOME  
TAX YEAR: 2002  
SIGNED: 04-10-2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
	)	<b>OF LAW AND FINAL DECISION</b>
Petitioner,	)	
v.	)	Appeal No.    05-1654
	)	Account No.   #####
	)	
AUDITING DIVISION OF THE	)	Tax Type:     Income Tax
UTAH STATE TAX COMMISSION,	)	Tax Year:     2002
	)	
Respondent.	)	Judge:        Robinson

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**Presiding:**  
Commissioner Bruce Johnson  
R. Spencer Robinson, Administrative Law Judge

**Appearances:**  
For Petitioner:    Ms. PETITIONER, *pro se*  
For Respondent:    Mr. RESPONDENT REP. 1, Assistant Attorney General  
                    Mr. RESPONDENT REP. 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 13, 2006.

At issue is the Auditing Division's (the "Division") assessment of Utah individual income tax to the Petitioner for the 2002 tax year. Petitioner argued her preparer erred, listing discretionary income on the wrong line of her federal return. She also argued the sick pay she received was disability pay, and that unemployment compensation should not be taxed. Petitioner later agreed her unemployment compensation was Utah income.

The parties agreed Petitioner abandoned her domicile in Utah and was domiciled in STATE 1 for the 2002 tax year. Based on the evidence presented, the Commission makes its:

FINDINGS OF FACT

1. The tax at issue is Utah income tax.
2. The tax year is the 2002 tax year.
3. Petitioner abandoned her Utah domicile in November of 2001. She became a domiciliary of STATE 1. She did perform work in Utah for COMPANY 1 during 2002.
4. A W-2 issued to Petitioner by COMPANY 1 for 2002 shows wages, tips or other compensation of \$\$\$\$with \$\$\$\$as federal withholding, \$\$\$\$as social security tax withheld, and \$\$\$\$as Medicare tax withheld. It shows the wages are Utah source income and shows \$\$\$\$withheld for Utah income tax. The wages were paid for work done by Petitioner in Utah.
5. Another W-2, issued by COMPANY 2, shows wages, tips or other compensation in the amount of \$\$\$\$\$. The W-2 shows this amount as Utah wages, though no amount is listed as federal or Utah withholding. The W-2 also shows the amount paid is third party sick pay. It lists only \$\$\$\$as social security and Medicare wages and tips, with \$\$\$\$listed as social security tax withheld, and \$\$\$\$as Medicare tax withheld. Petitioner testified she received checks from an insurance company, which was later reimbursed by her employer, COMPANY 1.
6. A Form 1099 shows the State of Utah paid \$\$\$\$to Petitioner as unemployment compensation. An amount of \$\$\$\$was withheld for federal income tax, and \$\$\$\$ was withheld for State income tax.
7. All of the above amounts listed as wages, tips or other compensation were included as part of Petitioner's federal adjusted gross income on her 2002 federal tax return. The total is \$\$\$\$.
8. Petitioner offered no evidence that she paid the premiums for an insurance policy providing her the \$\$\$reported on one of her W-2's, or that contributions made by COMPANY 1 were included in her gross income. She testified COMPANY 1 reimbursed the insurance company.

APPLICABLE LAW

Title 26 USC Section 104. Compensation for injuries or sickness

(a) In general

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include –

.....

(3) amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

59-10-116. Definitions - Tax on nonresident individual - Calculation - Exemption.

(1) For purposes of this section:

.....

(c) "state income tax percentage" means a percentage equal to a nonresident individual's federal adjusted gross income for the taxable year received from Utah sources, as determined under Section 59-10-117, divided by the difference between:

(i) the nonresident individual's total federal adjusted gross income for that taxable year; and

(ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember, the compensation the servicemember receives for military service if the servicemember is serving in compliance with military orders; and

(d) "unapportioned state tax" means the product of the:

(i) difference between:

(A) a nonresident individual's federal taxable income, as defined in Section 59-10-111, with the modifications, subtractions, and adjustments provided for in Section 59-10-114;

59-10-117. Federal adjusted gross income derived from Utah sources.

(1) For the purpose of Section 59-10-116, federal adjusted gross income derived from Utah sources shall include those items includable in federal "adjusted gross income" (as defined by Section 62 of the Internal Revenue Code) attributable to or resulting from:

.....

(b) the carrying on of a business, trade, profession, or occupation in this state.

59-10-543. Burden of proof.

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.

#### CONCLUSIONS OF LAW

1. The Petitioner bears the burden of proof in this case. See §59-10-543.
2. To prevail, Petitioner must prove that the income at issue was not attributable to the carrying on of a trade, business, or profession in Utah. Absent such proof, the income at issue is Utah source income within the provisions of §59-10-117 and subject to Utah individual income tax under §59-10-116.
3. Accident or health insurance benefits paid to an employee are included in taxable income if (a) they are attributable to contributions by the employer which were not includible in the gross

income of the employee, or (b) they are paid by the employer. The benefits are included in taxable income if they meet either of these two tests.

4. Utah computes state income tax based on federal adjusted gross income.

#### DISCUSSION

The parties agree Petitioner was not a Utah resident in 2002. They disagree on whether the \$\$\$\$ was taxable Utah source income. Of the \$\$\$\$\$, \$\$\$\$ was wages paid for work done by Petitioner for COMPANY 1 in Utah. This is Utah source income. By the end of the hearing, Petitioner agreed the \$\$\$\$ in unemployment compensation was Utah source income.

The \$\$\$\$ is third party sick pay. Such pay is exempt from adjusted gross income as compensation for injuries or sickness unless it is attributable to contributions by the employer which were not includible in the gross income of the employee, or the benefit is paid by the employer. Petitioner offered no evidence that the insurance premiums paid by COMPANY 1, her employer, were included in her gross income. Thus, the benefit payments are taxable income under the first test. Petitioner testified that her employer reimbursed the insurance company, which appears to be a third party administrator acting on behalf of COMPANY 1. In essence, the benefit was paid by COMPANY 1. Thus, the payments are also taxable income under the second test. The benefit payments are, therefore, subject to Utah individual income tax under §59-10-116.

#### DECISION AND ORDER

The Commission finds the \$\$\$\$ paid Petitioner during 2002 is attributable or resulting from the carrying on of a business, trade, profession or occupation, and, as a result, is subject to Utah income tax. The Commission sustains the audit. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_

Appeal No. 06-1654

R. Spencer Robinson  
Administrative Law Judge

Appeal No. 06-1654

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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

*RSR/03-1678/tof*