

05-1715
Audit
Signed 09/15/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioners,)		
)		
v.	)	Appeal No.	05-1715
)		
AUDITING DIVISION OF THE	)	Account No.	#####
UTAH STATE TAX COMMISSION,	)	Tax Type:	Income Tax
	)	Tax Year(s):	2002
Respondent.	)	Judge:	Phan
)		

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1
For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephone Status Conference on June 26, 2006. At the conference Petitioner indicated that he would like to have a decision made on this matter based on the written submissions that were in the file and argument made at the Status Conference. Petitioners were appealing an assessment of additional individual income tax and interest for tax year 2002. Upon review of the file and submissions at that time it became apparent that the Commission had insufficient information to make a determination. An Interim Order was issued on August 14, 2006, requiring the Respondent to provide additional information. The requested information was provided on August 24, 2006.

DISCUSSION

The Utah tax audit indicated an additional \$\$\$\$\$ in unreported income for tax year 2002. Respondent states that the state tax audit was based on information from the Internal Revenue Service. The

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IRS had increased Petitioners' federal taxable income by \$\$\$\$\$, from the \$\$\$\$\$ that Petitioners claimed on their federal income tax return to the amount of \$\$\$\$\$. Petitioners have paid the IRS the resulting increase in federal income tax.

Petitioner acknowledged that they had made an unintended error on their original 2002 state and federal returns in that they did not claim a withdrawal from a 401K in the amount of \$\$\$\$\$. They concede they would owe tax on this amount. They did not know why the increase was then \$\$\$\$\$. They provided evidence that the amount withdrawn was only \$\$\$\$\$ and this was also confirmed by the information submitted by Respondent.

Respondent argued that the state audit was based on the federal audit amount. The information provided clearly indicated that the federal increase in taxable income had been the \$\$\$\$\$. Respondent made other adjustments to the state income tax that resulted from the increase in federal adjusted gross income. Because this increased Petitioners' income, it resulted in a lower retirement deduction. However, as Petitioners had paid a higher amount of federal income tax than as claimed on their return, Respondent increased the adjustment they were allowed for the federal income tax.

After review of the information provided in response to the Interim Order and comparing the income amounts Petitioners had claimed on their original federal return with the revised amount indicated by the IRS as a result of the audit, the audit does not appear to be in error. The difference in amount may have resulted from the fact that when Petitioner's income increased by the \$\$\$\$\$, this increased the amount of social security income that was includable in their federal taxable income, even assuming the original return was correct on its calculation. There also may be some other smaller differences when in total result in the increase determined by the IRS.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Ann. §59-10-104

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as follows:

...a tax is imposed on the state taxable income, as defined in Section 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 Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114 . . .

Section 59-10-114(2) provides an adjustment for federal taxes paid and retirement income as follows:

(b)(i) except as provided in Subsection (2)(b)(ii), $\frac{1}{2}$ of the net amount of any income tax paid or payable to the United States after all allowable credits as reported on the United States individual income tax return of the taxpayer for the same taxable year; . . .

(e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500 personal retirement exemption;

However, Section 59-10-114(3)(b), reduces the amount of the retirement exemption provided for in subsection (2)(e) as follows in pertinent part:

For purposes of Subsection (2)(e), the amount of the personal retirement exemption shall be further reduced according the following schedule: (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50 cents; . . .

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).

ORDER

Based upon the foregoing, Respondent's audit deficiency of tax and the interest accrued thereon for tax year 2002 is sustained. 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.

Jane Phan
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, failure to pay the balance due as determined by this order within thirty days of the date hereon, may result in a late payment penalty.