

06-0450  
Income Tax  
Signed 02/12/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	06-0450
v.	)		
	)	Account No.	#####
AUDITING DIVISION OF	)		
THE UTAH STATE TAX	)	Audit Period:	2002
COMMISSION,	)	Tax Type:	Income Tax
	)		
Respondent.	)	Judge:	Robinson

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**Presiding:**  
R. Spencer Robinson, Administrative Law Judge

**Appearances:**  
For Petitioners: PETITIONER, *pro se*, via telephone  
For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on October 12, 2006 pursuant to the provisions of Utah Code Ann. §59-1-502.5. Petitioner requests she be given credit for tuition expenses disallowed on her federal return.

On March 16, 2006, Respondent sent Petitioner a Notice of Audit Change, notifying her that an audit based on information from the IRS found she owed an additional \$\$\$\$ in Utah income tax. The changes in Petitioner's federal return resulted in a net change of \$\$\$\$ to her Utah taxable income. Petitioner filed a Petition for Redetermination on April 15, 2006. She stated the timing of the audit prevented her from filing an amended federal return. She explained tuition credits disallowed on her federal return could have been taken as a deduction on Schedule A. In her Petition, she requested the audit be closed due the timing which prevented her from filing an amended federal return.

Petitioner received notice of the change made by the IRS. At the hearing, Petitioner explained when the IRS made its change, it denied mandatory continuing education expenses she had listed because her income was too high. She decided not to file a new Schedule A, listing those costs on it instead, because doing so would not have conferred enough of a benefit on her federal return. She said she would have owed Utah an additional \$\$\$\$ in tax had she filed an amended federal return.

Respondent sent Petitioner a request for verification on January 19, 2006. Petitioner acknowledged she received it. She had two months to file an amended federal return.

Respondent argues Petitioner was aware of the change made by the IRS, and could have filed, even if it were not convenient. Respondent agreed to review the changes Petitioner could have made, and adjust the audit, if Petitioner supplied supporting documentation and evidence the IRS would have accepted an amended return if one had been timely filed.

Upon receipt of Petitioner's information, Respondent reviewed it. Respondent's position was that Petitioner's 1098-T did not list amounts, and that Petitioner had not provided verification that the IRS would have accepted an amended return had Petitioner timely filed one. Respondent declined to accept Petitioner's 2002 Utah amended return.

Petitioner did not provide the amended return as part of the hearing. She did not file anything counter to Respondent's position after it reviewed her amended return.

#### APPLICABLE LAW

59-10-104. Tax basis - Rates - Exemption.

(1) Except as provided in Subsection (4) for taxable years beginning on or after January 1, 2001, a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual as provided in this section.

59-10-111. Federal taxable income defined.

"Federal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.

59-10-112. State taxable income of resident individual.

“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. The state taxable income of a resident individual who is the beneficiary of an estate or trust shall be modified by the adjustments provided in Section 59-10-209.

59-10-537. Interest on underpayment, nonpayment or extension of time for payment of tax.

(1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

(2) Where a deficiency or any interest or additional amounts assessed in connection therewith under Section 59-10-525 or under Subsection (1), or an addition to the tax in case of delinquency provided for in Section 59-10-539 is not paid in full within ten days from the date of notice and demand from the commission, there shall be collected as part of the tax, interest at the rate and in the manner prescribed in Section 59-1-402 from the date of such notice and demand until it is paid.

(3) If the time for payment of the amount determined as the tax by the taxpayer is extended under the authority of Section 59-10-522, there shall be collected as a part of such amount, interest thereon at the rate and in the manner prescribed in Section 59-1-402.

Utah Code Ann. §59-1-401(11) “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

#### DISCUSSION

Petitioner has not established her federal taxable income, upon which her state taxable income is based, is other than that which Respondent used to compute her tax liability for 2002. The notice she received was delivered in time for her to file an amended federal return. Respondent agreed to allow submission of what would have been an amended federal return, provided Petitioner supplied

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documentation to support the changes to which she contends she would have been entitled. Respondent's assertion that Petitioner did not supply adequate documentation is uncontradicted.

DECISION AND ORDER

The evidence establishes Respondent's adjustment to Petitioner's 2002 state income tax return was made in accordance with the law. The assessment of an additional \$\$\$\$ in state income tax, plus interest, is affirmed.

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

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R. Spencer Robinson  
Administrative Law Judge

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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

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