

06-0781
Audit
Signed 01/22/2007

BEFORE THE UTAH STATE TAX COMMISSION

| | | | |
|------------------------------|---|--------------|-----------------------|
| PETITIONER 1 & PETITIONER 2, |) | | |
| |) | ORDER | |
| Petitioners, |) | | |
| |) | Appeal No. | 06-0781 |
| v. |) | | |
| |) | Tax Type: | Individual Income Tax |
| AUDITING DIVISION OF THE |) | Account No: | ##### |
| UTAH STATE TAX COMMISSION, |) | Tax Year: | 2002 |
| |) | | |
| Respondent. |) | Judge: | Chapman |

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1
For Respondent: RESPONDENT REPRESENTATIVE, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Telephonic Status Conference on January 18, 2007. Upon the request of PETITIONER 1 and the concurrence of the Auditing Division (“Division”), the conference was converted to an Initial Hearing, which was held pursuant to the provisions of Utah Code Ann. §59-1-502.5.

On May 30, 2006, the Division issued a Statutory Notice of Audit Change (“Statutory Notice”) to the Petitioners, imposing additional Utah income tax for the 2003 tax year. The Division imposed \$\$\$\$ in additional tax, plus \$\$\$\$ in interest, which was calculated back to April 15, 2004, the statutory due date for a 2003 Utah income tax return. The Division did not impose any penalties.

The Petitioner only contests one part of the Division’s assessment, specifically the Division’s assessment of tax and interest associated with \$\$\$\$ in unemployment benefits that PETITIONER 1 received in 2003. The Division determined that the \$\$\$\$ is Utah source income that is subject to Utah income tax. PETITIONER 1 admits that he received the \$\$\$\$ in unemployment benefits in 2003, while he was domiciled

in Utah. But, because the benefits were related to his unemployment in STATE, which occurred prior to his moving to Utah April 2002, PETITIONER 1 contends that it is inequitable for Utah to tax the income.

Before moving to Utah in April 2002, PETITIONER 1 was unemployed in STATE. PETITIONER 1 received unemployment benefits while domiciled in STATE, but the benefits “ran out” prior to his moving to Utah. PETITIONER 1 explains, however, that in 2003, he qualified for the additional \$\$\$\$ in benefits related to his unemployment in STATE, pursuant to the federal government extending unemployment benefits under the Temporary Extended Unemployment Compensation (“TEUC”) Act of 2002. Because the additional \$\$\$\$ in benefits relates to his unemployment in STATE and because STATE does not impose a state tax on such benefits, PETITIONER 1 asks the Commission to reverse that portion of the Division’s audit relating to the \$\$\$\$.

The Division asserts that all income earned by a Utah domiciliary, including income derived from sources in other states, is subject to Utah income tax. Because the Petitioner received the \$\$\$\$ at issue in 2003, while he was a Utah domiciliary, and claimed it as taxable income for federal purposes in 2003, the Division asserts that the income is subject to Utah income tax. For these reasons, the Division asks the Commission to sustain its assessment.

APPLICABLE LAW

Utah Taxation of Income. Pursuant to Utah Code Ann. §59-10-104, Utah imposes a tax “on the state taxable income, as defined in Section 59-10-112, of every resident individual. . . .”

For purposes of Section 59-10-104, “resident individual” is defined in UCA §59-10-103(1)(t)(i) to mean:

- (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
- (B) an individual who is not domiciled in this state but:

- (I) maintains a permanent place of abode in this state; and
- (II) spends in the aggregate 183 or more days of the taxable year in this state.

Also for purposes of Section 59-10-104, UCA §59-10-112 provides that “[s]tate 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”

For purposes of Section 59-10-112, UCA §59-10-111 provides that “[f]ederal taxable income’ means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.”

For purposes of Section 59-10-111 and as defined in the Internal Revenue Code at 26 U.S.C. 63, “taxable income” means “. . . gross income minus the deductions allowed by this chapter (other than the standard deduction).”

For purposes of determining “taxable income,” the Internal Revenue Code at 26 U.S.C. 61(a) defines “gross income” to mean:

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;
- (2) Gross income derived from business;
- (3) Gains derived from dealing in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

Tax Credits. For the 2003 tax year, Utah Code Ann. §59-10-106¹ provided that a taxpayer could claim, under certain circumstances, a credit against his or her Utah liability for taxes paid to other states, as follows in pertinent part:

(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter equal to the amount of the tax imposed on him for the taxable year by another state of the United States, the District of Columbia, or a possession of the United States, on income derived from sources therein which is also subject to tax under this chapter.

....

Equitable Adjustments. For the 2003 tax year, UCA §59-10-115² specified three instances where a taxpayer's Utah taxable income could be adjusted for equitable purposes. In addition, Subsection 59-10-115(4) provided that the Commission could specify in rule other circumstances allowing for equitable adjustment, as follows in pertinent part:

The commission shall by rule prescribe for adjustments to state taxable income of the taxpayer in circumstances other than those specified by Subsection (1), (2), and (3) of this section where, solely by reason of the enactment of this chapter, the taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. . . .

The Commission adopted Utah Admin. Rule R865-9I-4 ("Rule 4") to address other amounts of income that may qualify as an equitable adjustment to Utah taxable income, as follows:

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing

1 Section 59-10-106 was amended and renumbered to UCA §59-10-1003 in 2006.

2 This section was also amended in 2006.

the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

Burden of Proof. 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

Interest. In addition to any amount of tax due under the Utah Individual Income Tax Act, UCA §59-10-539(8) provides that “ there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.”

UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

DISCUSSION

At issue is whether the \$\$\$\$ in unemployment benefits that PETITIONER 1 received in 2003 is subject to Utah taxation. When PETITIONER 1 received the benefits, he was a Utah domiciliary. Furthermore, the benefits were included in his 2003 federal taxable income. Pursuant to Sections 59-10-104 and 59-10-112, a Utah domiciliary’s federal taxable income is subject to Utah state taxation, unless an adjustment or subtraction exists in Section 59-10-114. No adjustment or subtraction from state taxable

income, as found in Section 59-10-114, pertains to unemployment benefits received by a taxpayer while he or she is Utah domiciliary, but which were received because the taxpayer was unemployed in another state prior to moving to Utah. For these reasons, the \$\$\$\$ at issue qualifies as Utah taxable income.

In 2003, Section 59-10-106(1) provided that a “resident individual shall be allowed a credit against the tax otherwise due under this chapter equal to the amount of the tax imposed on him for the taxable year by another state . . . from sources therein which is also subject to tax under this chapter.” However, the Petitioners did not pay STATE income taxes on the \$\$\$\$ because STATE does not tax unemployment benefits. Accordingly, this statute does not provide for any credit or exemption from the Utah taxes imposed on the \$\$\$\$.

Lastly, Section 59-10-115 and Rule 4 provide for an “equitable adjustment” to Utah taxable income under certain circumstances. None of the specific circumstances listed in Section 59-10-115 relate to the circumstances at issue. Furthermore, the general equitable adjustment provisions of subsection 59-10-115(4) and Rule 4 provide for adjustments to prevent the double taxation of income. Because Utah is the only state to impose state income tax on the \$\$\$\$ at issue, there is no double taxation of this income. Accordingly, the equitable adjustments provided in Utah law do not apply to these circumstances.

The Commission notes that pursuant to Section 59-10-543, the Petitioners bear the burden to prove that the \$\$\$\$ is not subject to Utah taxation. Based on the information and arguments proffered at the Initial Hearing, the Commission finds that such proof has not been shown. Accordingly, the \$\$\$\$ at issue is 2003 Utah taxable income, and the Commission sustains the Division’s assessment of additional income tax, as imposed in its Statutory Notice.

Appeal No. 06-0781

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's imposition of additional income tax and interest for the 2003 tax year. The Petitioners' appeal is denied. 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 _____, 2007.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 06-0781

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: If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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