

06-0782
Income Tax
Signed 06/29/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
Petitioner,)	
)	Appeal No. 06-0782
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Years: 2003
UTAH STATE TAX COMMISSION,)	Tax Type: Income Tax
)	
Respondent.)	Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 28, 2007. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is individual income tax.
2. The tax year at issue is 2003.
3. On May 16, 2006, Auditing Division (“Division”) issued a Statutory Notice of Audit

Change (“Statutory Notice”) to the Petitioner for the 2003 tax year, in which it assessed additional tax and interest, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

4. The Petitioner was a full-year resident of Utah during 2003, while his wife was a full-

year nonresident of Utah during 2003.

5. Because the Petitioner and his wife were residents of different states for the entirety of 2003, the Petitioner chose to file a Utah return as a married taxpayer filing separately, pursuant to the “Special Instructions” provided in Utah State Tax Commission Publication 49 (“Publication 49”).

6. The Division agrees that the Petitioner qualifies to file his 2003 Utah tax returns using the Special Instructions provided in Publication 49.

7. The Division determined, however, that the Petitioner did not calculate his Utah taxable income in compliance with the instructions provided in statute, rule, and Publication 49. The primary change the Division made in its assessment related to the Petitioner’s portion of the couple’s total federal adjusted gross income (“FAGI”). The Petitioner determined that his portion of the couple’s FAGI is \$\$\$\$\$, while the Division states that it is \$\$\$\$\$.

8. In the Statutory Notice, the Division determined that the Petitioner’s portion of FAGI is \$\$\$\$\$, which is \$\$\$\$\$ higher than the \$\$\$\$\$ amount it proposed at the hearing. The additional \$\$\$\$\$ in FAGI resulted from the Division allocating 100% of the couple’s interest and dividend income to the Petitioner in its assessment. The Division asks that the Commission to revise its assessment, as shown in the Statutory Notice, to reflect the Petitioner’s FAGI at \$\$\$\$\$.

9. At the hearing, the Petitioner stated that he now understood the changes the Division made and no longer contested the Division’s approach.

APPLICABLE LAW

1. UCA §59-10-119 sets forth the filing requirements for a husband and wife when one or both of the spouses is a Utah nonresident, as follows:

- (1) If the federal taxable income of husband and wife (both nonresidents of this state) is reported or determined on separate federal returns, their state taxable incomes in this state shall be separately determined.
- (2) If the federal taxable income of husband and wife (both nonresidents) is reported or determined on a joint return their tax shall be reported or determined in this state on a joint return.
- (3) If either husband or wife is a nonresident and the other a resident, separate taxes shall be determined on their separate state taxable incomes on such forms as the commission shall prescribe, unless both elect to determine their state taxable income as if both were residents. If a husband and wife (one being a resident, the other a nonresident) file a joint federal income tax return, but determine their state taxable income separately, they shall compute their taxable incomes in this state as if their federal taxable incomes had been determined separately.

2. Utah Administrative Rule R865-9I-6 ("Rule 6") provides guidance concerning the filing requirements for a husband and wife when one is a Utah resident and the other is not, as follows:

- A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:
 1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of the spouses.
 2. Next, each spouse is allocated a portion of each deduction and add back item.
 - a) To determine this allocation, each spouse shall:
 - (1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and
 - (2) multiply the resulting percentage by the deductions and add back items.
 - b) The deductions and add back items allowed are as follows:
 - (1) state income tax deducted as an itemized deduction on federal Schedule A;
 - (2) other items that must be added back to FAGI on the state income tax return;
 - (3) itemized or standard deduction;
 - (4) state exemption for dependents;
 - (5) one-half of the federal tax liability;
 - (6) state income tax refund included on line 10 of the federal income tax return; and
 - (7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.
 4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.
- B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

DISCUSSION AND CONCLUSIONS OF LAW

The Parties are in agreement that the additional tax the Division imposed is correct when the Petitioner's portion of FAGI is revised to be \$\$\$\$ instead of the \$\$\$\$ amount shown on the Statutory Notice. The change the Division proposes and to which the Petitioner agrees appears reasonable, assuming that the interest and dividend income should be allocated equally to the Petitioner and his wife. As there is no evidence to the contrary, the Commission will accept the Division's conclusion that the Petitioner and his wife earned the interest and dividend income equally. Accordingly, the Commission sustains the Division's assessment, with the exception to the revision to the Petitioner's portion of FAGI.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the assessment imposed by the Division in its Statutory Notice, with the exception that the Petitioner's portion of FAGI should be revised to \$\$. It is so ordered.

DATED this ____ day of _____, 2007.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 06-0782

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: Failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty. 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. §§99-1-601 and 63-46b-13 et seq.

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