

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 06-1256 Tax Type: Income Tax Tax Years: 1999-2003 Judge: Marshall
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Presiding:

R. Bruce Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Auditing Division
RESPONDENT REPRESENTATIVE 3, Disclosure Officer

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 18, 2008. During the Division's opening statement, Taxpayer voluntarily left the proceedings and refused to participate further. The Division then made a proffer of evidence and testimony in support of its position. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Utah State Tax Commission in this matter is Taxpayer's appeal of income tax, penalty, and interest deficiencies issued for the tax years 1999 through 2003.
2. Taxpayer was a Utah resident and subject to Utah Income Tax laws during all years at issue.
3. For the 1999 tax year, the Division issued a Statutory Notice of Audit Change and second Statutory Notice of Deficiency on October 4, 2006. The statutory notice reflected \$\$\$\$ of Utah taxable income, \$\$\$\$ of tax, and no penalties. For the 2000 and 2001 tax years,

- the Statutory Notice of Estimated Income Tax and Statutory Notice of Deficiency were issued on September 7, 2004. The statutory notice for the 2000 tax year reflected \$\$\$\$ of Utah state income, \$\$\$\$ in tax, and \$\$\$\$ in penalties. The statutory notice for the 2001 tax year shows \$\$\$\$ in Utah state income, \$\$\$\$ in tax, and \$\$\$\$ in penalties.
4. For the 2002 tax year, the Statutory Notice of Estimated Income Tax and Statutory Notice of Deficiency were issued on November 29, 2004. For the 2002 tax year, the statutory notice shows \$\$\$\$ of Utah state income, \$\$\$\$ in tax, and \$\$\$\$ in penalties.
 5. For the 2003 tax year, the Statutory Notice of Estimated Income Tax and Statutory Notice of Deficiency were issued October 4, 2006. The statutory notice reflected \$\$\$\$ of Utah taxable income, \$\$\$\$ in tax, and \$\$\$\$ in penalties.
 6. Taxpayer appealed the 1999, 2000, and 2001 deficiencies in Appeal No. 04-1222. The Commission issued an Order of Default in Appeal No. 04-1222 on January 10, 2005. Taxpayer did not appeal the decision in Appeal No. 04-1222.
 7. On or about June 11, 2005, the Taxpayer filed “zero” returns for all years at issue. The Auditing Division rejected the returns for the 2000, 2001, 2002, and 2003 years as frivolous in a letter dated June 14, 2006.
 8. The “zero” return for the 1999 tax year was mistakenly processed by the Processing Division, prior to the Auditing Division having an opportunity to determine that the return should not have been accepted because Appeal No. 04-1222 involving the 1999 tax year had already been decided.
 9. Taxpayer submitted a letter dated September 25, 2006 in response to the June 14, 2006 letter from the Auditing Division rejecting the “zero” returns filed by Taxpayer for the years at issue. This letter was forwarded to the Appeals Division on or about October 16, 2006, and this appeal was opened as a result.
 10. In the Division’s Post Initial Hearing Brief, dated January 19, 2007, the Division requested the imposition of the \$500 penalty under Utah Code An. §59-1-401(7) for each of the years at issue on the basis that the “zero” returns were frivolous, for a total of \$2,500.
 11. At the hearing, the Division renewed their argument in favor of the imposition of the \$500 frivolous filing penalty for the years at issue.
 12. As of the hearing date, Taxpayer’s outstanding balance, including interest to date, less amounts received through garnishment efforts, and excluding the \$2500 frivolous return penalty, was \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-10-104 provides for the imposition of tax as follows in pertinent part:

[A] tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

Utah Code Ann. §59-10-104 (1999-2003).

“Resident individual” is defined in Utah Code Ann. §59-10-103 as follows:

“Resident individual” means:

- (i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or
- (ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state. For purposes of this Subsection (1)(j)(ii), a fraction of a calendar day shall be counted as a whole day.

Utah Code Ann. §59-10-103(1)(j) (1999)

Utah Code Ann. §59-10-103(1)(k) (2000-2002).

For the 2003 tax year, Utah Code Ann. §59-10-103 was amended as follows:

(q) (i) “Resident individual” means:

(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.

(ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be counted as a whole day.

Utah Code Ann. §59-10-103 (2003).

Utah Code Ann. §59-10-112 defines “state taxable income” for purposes of Utah Code Ann. §59-10-104 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. 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.

Utah Code Ann. §59-10-112 (2003).

Utah Code Ann. §59-10-111 defines “[f]ederal taxable income” for purposes of Utah Code Ann. §5-10-112 as follows:

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

Utah Code Ann. §59-10-111 (1999-2003).

For purposes of Utah Code Ann. §59-10-111, and as defined in Section 63 of the Internal Revenue Code, is as follows in pertinent part:

[T]he term “taxable income” means gross income minus the deductions allowed by this chapter...

26 U.S.C. 63 (1986, as amended).

For purposes of determining “taxable income” Section 61 of the Internal Revenue Code defines “gross income” as follows:

- (a) 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 dealings 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.

26 U.S.C. 61 (1986, as amended).

Utah Code Ann. §59-10-539(1) imposes penalties and interest, as follows in pertinent part:

- (1) In case of failure to file an income tax return and pay the tax required under this chapter on or before the date prescribed therefore (determined with regard to any extension of time for filing), unless it is shown that such failure is due to willful neglect, there shall be added to the amount required to be shown as tax on such return a penalty as provided in Section 59-1-401. For the purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.
- (2) If any part of any deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to negligence or intentional disregard of rules, but without intent to defraud, a penalty shall be assessed, collected, and paid as provided in Section 59-1-401 in the same manner as if it were an underpayment.
- (3) If any part of a deficiency in tax imposed by this chapter, as defined by Section 59-10-523, is due to fraud, there shall be added to the tax a penalty as provide in Section 59-1-401. This amount shall be in lieu of any other addition to tax imposed by Subsection (1) or (2).

Utah Code Ann. §59-10-539 (1999-2003).

Utah Code Ann. §59-1-401 sets the penalties as provided for in Utah Code Ann. §59-10-539 as set forth below in relevant part:

- (1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return.

(b) Subsection (1) does not apply to amended returns.
- (2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:
 - (a) failure to pay any tax, as reported on a timely filed return;

- (b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a);
- (c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency;
- (d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been issued under Subsection 63-46b-13(3)(b); and
- (e) failure to pay any tax within 30 days after the date of a final judicial decision resulting from a timely filed petition for judicial review.

Utah Code Ann. §59-1-401 (1999-2003).

With regard to the frivolous filing penalty, Utah Code Ann. §59-1-401(7) provides,

If any taxpayer in furtherance of a frivolous position has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is \$500.

Utah Code Ann. §59-1-401(7) (1999-2003).

Section 59-1-501 of the Utah Code provides that a taxpayer may file a petition for a redetermination of a deficiency:

Any taxpayer may file a request for agency action, petitioning the commission for redetermination of a deficiency.

Utah Code Ann. §59-1-501 (2002).

“Deficiency” is defined in §59-10-523 of the Utah Code, as follows:

- (1) As used in this chapter, “deficiency” means the amount by which the tax imposed by this chapter exceeds the excess of (a) the sum of (i) the amount shown as the tax by the taxpayer upon his return, if the return was made by the taxpayer and if an amount was shown as the tax by the taxpayer thereon plus (ii) the amounts previously assessed (or collected without assessment) as a deficiency over (b) the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

- (2) For purposes of Subsection (1):
 - (a) If no return is filed, or the return does not show any tax, a return shall be considered as having been made by the taxpayer and the amount shown as the tax by the taxpayer upon his return shall be considered to be zero.
 - (b) The tax imposed by this chapter and the tax shown on the return shall both be determined without regard to any amounts, the tax imposed by this chapter exceeds the excess of the amount specified in Subsection (1)(a) over the amount specified in Subsection (1)(b).

Utah Code Ann. §59-10-524 (2002).

Section 59-10-525 sets for the date a notice of deficiency is final, below:

- (1) Except in any case where the taxpayer has earlier filed with the commission a petition for redetermination of the deficiency as provided in Title 59, Chapter 1, Part 5, the notice of deficiency shall constitute a final assessment of the deficiency in tax, including interest thereon and any penalties or other additions to tax:
 - (a) upon the expiration of 30 days, or 90 days if the notice is addressed to a person outside of the states of the union and the District of Columbia, after the date of mailing of the notice of deficiency to the taxpayer; or
 - (b) upon the date, when in writing, the taxpayer agrees with the commission that a deficiency exists in a specified amount and consents to the assessment of such deficiency.
- (2) For purposes of this section and any other relevant provisions of this chapter, a Saturday, Sunday, or a legal holiday in Utah is not counted as the last day of the time for filing petition for redetermination of a deficiency in tax.

Utah Code Ann. §59-10-525 (2002).

The time for filing an appeal is governed by Rule R861-1A-20 of the Utah Administrative Rules, as follows in pertinent part:

- B. A petition for redetermination must be received in the Commission offices no later than 30 days from the date of a notice that creates rights to appeal. The petition is deemed to be timely if:

1. the petition is received in the Tax Commission offices on or before the close of business of the last day of the 30 day period; or
2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30 day period.

Utah Admin. Code R861-1A-20 (2002).

The burden of proof is on the Petitioner, except in certain instances, as set forth in Utah Code Ann. §59-10-543, below:

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;
- (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.

Utah Code Ann. §59-10-543 (1999-2003).

CONCLUSIONS OF LAW

A. 1999 Tax Year

The Commission previously entered a Default against the taxpayer for the 1999 tax year in Appeal No. 04-1222. However, Petitioner subsequently filed a “zero” tax return, which was processed by the Processing Division resulting in a new Statutory Notice of Audit Change and Deficiency being issued by the Auditing Division, re-opening the 1999 tax year for appeal.

The 1999 notice of deficiency was sent to Taxpayer on October 4, 2006. The instant appeal was opened on October 16, 2006, well within the 30 day period allowed by Utah Admin. Code R861-1A-20. The Commission finds that the Taxpayers appeal of the 1999 notice of

deficiency was timely. Utah Code Ann. §59-10-543 places the burden of proof on the taxpayer in this matter to show that the deficiency is incorrect.

Tax is imposed on the “state taxable income” of every “resident individual” under Utah Code Ann. §59-10-104. Taxpayer has made no argument that he was not domiciled in the State of Utah during the years at issue. As all correspondence from the Taxpayer indicates his residence is in CITY, Utah, the Commission concludes that Taxpayer is a “resident individual” as defined in Utah Code Ann. §59-10-103. “State taxable income” is determined from an individual’s federal taxable income less certain adjustments, and is defined as “federal taxable income” as defined in I.R.C. §63. *See* Utah Code Ann. §59-10-112 and §59-10-111. Section 63 of the Internal Revenue Code defines “taxable income” as “gross income” minus certain deductions. “Gross income” is defined as “all income from whatever source derived” and provides a list of examples, including compensation for services. *See* 26 U.S.C. §61 (1986, as amended). The Division provided evidence, including W-2 compensation income, which shows that the Taxpayer had Utah taxable income for the 1999 tax year. The Taxpayer provided no evidence to the contrary, and the Commission sustains the Division’s tax assessment for the 1999 tax year.

The October 4, 2006 notice of deficiency for the 1999 tax year did not assess additional penalties on the Taxpayer; however interest was assessed. As the Taxpayer voluntarily left the proceeding during opening statements, he did not offer any evidence that would support a waiver of the interest assessed; therefore, the Commission sustains the Division’s assessment of interest for the 1999 tax year.

B. 2000 and 2001 Tax Years

The Commission previously entered a Default against the Taxpayer for the 2000 and 2001 tax years in Appeal No. 04-1222. Although the Commission liberally grants relief from default, it will not provide relief when none is requested and no reasons are provided to support relief from a default. The taxpayer offered no explanation for his default, and did not ask the Commission to set aside the default entered in Appeal No. 04-1222. On that basis, the Commission sustains the Division’s audit assessments, including tax, penalties, and interest for the 2000 and 2001 tax year.

C. 2002 Tax Year

The Statutory Notice of Estimated Income Tax and Statutory Notice of Deficiency for the 2002 tax year were issued on November 29, 2004. The notice indicates that to contest the audit, and appeal must be filed within 30 days. The Division maintains that Taxpayer did not file a written Petition for Redetermination for the 2002 tax year until the instant appeal was opened in

October of 2006. As the Taxpayer voluntarily left the proceedings during opening statements, he offered no evidence to the contrary. Taxpayer's appeal of the 2002 tax year deficiency was filed nearly two years after the statutory notice was issued, far in excess of the 30 day period provided for by Rule R861-1A-22. As Taxpayer's appeal was untimely, the Commission dismisses the appeal for the 2002 tax year, and sustains the deficiencies, including tax, penalties and interest as provided in the November 29, 2004 notice of deficiency.

D. 2003 Tax Year

The notice of deficiency for the 2003 tax year was sent to the Taxpayer on October 4, 2006. The instant appeal was opened on October 16, 2006, within the 30 day period allowed by Utah Admin. Code R861-1A-20. Utah Code Ann. §59-10-543 places the burden of proof on the taxpayer in this matter to show that the deficiency is incorrect.

Tax is imposed on the "state taxable income" of every "resident individual" under Utah Code Ann. §59-10-104. Taxpayer has made no argument that he was not domiciled in the State of Utah during the years at issue. As all correspondence from the Taxpayer indicates his residence is in CITY, Utah, the Commission concludes that Taxpayer is a "resident individual" as defined in Utah Code Ann. §59-10-103. "State taxable income" is determined from an individual's federal taxable income less certain adjustments, and is defined as "federal taxable income" as defined in I.R.C. §63. *See* Utah Code Ann. §59-10-112 and §59-10-111. Section 63 of the Internal Revenue Code defines "taxable income" as "gross income" minus certain deductions. "Gross income" is defined as "all income from whatever source derived" and provides a list of examples, including compensation for services. *See* 26 U.S.C. §61 (1986, as amended). The Division provided evidence, including W-2 compensation income, which shows that the Taxpayer had Utah taxable income for the 2003 tax year. The Taxpayer provided no evidence to the contrary, and the Commission sustains the Division's tax assessment for the 2003 tax year.

Pursuant to Utah Code Ann. §59-10-539, penalties and interest are imposed for the failure to file an income tax return. Taxpayer failed to timely file a return or pay the tax due for the 2003 tax year. The Commission finds that the Division properly assessed the 10% failure to file penalty under Utah Code Ann. §59-1-401(1) and the 10% failure to pay penalty under Utah Code Ann. §59-1-401(2). As the Taxpayer had voluntarily left the proceeding, he did not offer any evidence that would support a reasonable cause waiver of the penalties and interest, therefore, the Commission sustains the Division's assessment of penalties and interest for the 2003 tax year.

E. Frivolous Return Penalty

At the hearing, the Division asked for the imposition of the \$500 frivolous filing penalty under Utah Code Ann. §59-1-401(7) for all years at issue. The Taxpayer was first put on notice in January of 2007 of the Division's assertion of the frivolous filing penalty as it was requested in the Division's Post Initial Hearing Brief. Utah Code Ann. §59-10-543(3) provides that the burden of proof rests with the Division when the following issue arises:

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 petitioner 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

Utah Code Ann. §59-10-543 (1999-2003).

The Division is asking for the imposition of the \$500 penalty after the notices of deficiency were mailed and the Petitioner had filed a Petition for Redetermination. Under such circumstances, the Division bears the burden to prove an increase in deficiency, except where a change or correction of federal taxable income was required to be reported, which has not occurred in this matter. Under the circumstances present in this matter, the Commission finds that the burden of proof lies with the Division to prove that the Taxpayer is liable for the \$500 penalty.

Utah Code Ann. §59-1-401(7) provides for the assessment of the \$500 frivolous filing penalty if a taxpayer takes action that includes the following three elements (1) the action is in furtherance of a frivolous position; (2) there exists a prima facie intent to delay or impede administration of the tax law; and (3) the taxpayer files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect.

Furtherance of a frivolous position. Courts have generally found that returns with the filing of a zero return is frivolous and have upheld the frivolous filing penalties. *See Little v. United States*, 2005 WL 2989696; *Schultz v. United States*, 2005 WL 1155203; *Yuen v. United States*, 290 F. Supp 1220 (D. Nev. 2003); *Gillett v. United States*, 233 F. Supp.2d 874 (W.D. Mich. 2002); and *Bonaccorso v. Commissioner*, T.C. Memo. 2005-278. The Commission finds that the filing of a zero return in the instant case is a frivolous position. The Division has presented sufficient evidence to show that Taxpayer did have taxable income for the years at issue.

Prima facie intent to delay or impede administration of the tax law. The Taxpayer filed tax returns that are frivolous, and that have required time and effort by the Tax Commission to

properly analyze and address the Taxpayer's frivolous action. By purposefully filing tax returns that assert this frivolous position, the Taxpayer has delayed and impeded the administration of the tax laws. The Commission also finds that the Taxpayer's delay or impediment of tax law administration was intentional. The evidence shows that the Taxpayer filed Federal Form 4852, a substitute W-2 form, that reports all compensation as "0" as well as "corrected" 1099 forms with a statement that the original 1099 erroneously alleges payment of gains, profits or income. It has long been held by the Courts that wages and compensation for services are taxable income.¹ For these reasons, the Commission finds that the Taxpayer has acted in an intentional manner to delay or impede tax law administration.

Return has insufficient information to determine liability or clearly indicates that the liability shown is incorrect. The "zero" returns filed by the Taxpayer for the years at issue contain a frivolous position, by asserting that the Taxpayer had no income. The documents accompanying the returns included IRS Form 4852 and seemingly self-corrected IRS Form 1099, but failed to include the original W-2 and 1099 they were intended to replace, even though the Taxpayer had access to them. Prior to the Taxpayer filing the "zero" returns, the Division had received information in the regular course of business that indicated the Taxpayer had received Utah taxable income for the years at issue, and had issued statutory notices of deficiency for the 1999, 2000, 2001, and 2002 tax years. Accordingly, the Commission finds that the return clearly indicated that the liability shown was incorrect.

The Commission finds that the Division has shown all elements required for it to impose the \$500 penalty in this manner, and imposes the \$500 frivolous filing penalty for the 1999 and 2003 tax years.

The Commission finds that the Division is prevented from raising the issue for the 2000 and 2001 tax years under the doctrine of *res judicata*. "[T]he doctrine of *res judicata* 'precludes the relitigation of all issues [and claims] that could have been litigated as well as those that were, in fact, litigated in the prior action.'" *State v. Garner*, 106 P.3d 729, 731 (Utah 2005) quoting *Buckner v. Kennard*, 299 P.3d 842. The Commission finds that the Division should have raised

¹ The 5th Circuit stated "it is clear beyond peradventure that the income tax on wages is constitutional." **Stelly v. Commissioner**, 761 F.2d 1113, 115 (1985). See also **Granzow v. C.I.R.**, 739 F.2d 265, 267 (1984) in which the Seventh Circuit stated, "It is well settled that wages received by taxpayers constitute gross income within the meaning of Section 61 (a) of the Internal Revenue Code . . . and that such gross income is subject to taxation." In **United States v. Koliboski**, 732 F.2d 1328, 1329 fn 1 (1984), the Seventh Circuit stated "the defendant's entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us already are aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME." See also **United States v. Mann**, 884 F.2d 532 (10th Cir. 1989).

the frivolous filing penalty for the 2000, and 2001 tax years in Appeal No. 04-1222, and is precluded from doing so now. The Commission notes that although the 1999 tax year was also addressed in Appeal No. 04-1222, that year was re-opened for appeal when Taxpayer Services Division processed the amended return and the Auditing Division issued a second statutory notice of deficiency.

The Commission finds that the Division is precluded from asserting the \$500 frivolous filing penalty for 2002 tax year, as the appeal for that year was dismissed by the Commission as being untimely. Under Utah Code Ann. §59-10-525, the notice of deficiency became “a final assessment of the deficiency in tax, including interest thereon and any penalties or other additions to tax” 30 days after the date of the notice, which was November 29, 2004 for the 2002 tax year.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the assessment of income tax, interest, and penalties for failure to timely file and pay, as well as for frivolous filings, in the following amounts:

Year	Tax	Late File/Pay Penalties	Frivolous Filing	Interest as of Notice Date
1999	\$\$\$\$\$		\$500	\$\$\$\$\$
2000	\$\$\$\$\$	\$\$\$\$\$		\$\$\$\$\$
2001	\$\$\$\$\$	\$\$\$\$\$		\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$		\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$500	\$\$\$\$\$

Together with interest accruing at the statutory rate after the date of applicable notices. It is so ordered.

DATED this _____ day of _____, 2008.

Jan Marshall
Administrative Law Judge

Appeal No. 06-1256

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 _____, 2008.

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. Sec. 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 Sec. 59-1-601 et seq. and 63-46b-13 et seq.

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