

06-1416
Individual Income
Signed 10/09/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION
OF THE UTAH STATE
TAX COMMISSION,

Respondent.

ORDER

Appeal No. 06-1416

Account No. #####

Tax Type: Individual Income

Tax Years: 2003 & 2004

Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)

For Respondent: RESPONDENT REPRESENTATIVE, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on September 27, 2007.

The Petitioner is appealing Auditing Division's (the "Division") assessment of individual income tax for the 2003 and 2004 tax years. On October 10, 2006, the Division issued Statutory Notices of Estimated Income Tax ("Statutory Notices") to the Petitioner for the two years at issue because the Petitioner had not filed income tax returns for these years. The amounts of additional tax, penalties, and interest assessed by the Division are, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	<u>\$\$\$\$\$</u>
				\$\$\$\$\$

At the hearing, the Division stated that subsequent to its assessments, the Petitioner has submitted a 2004 tax return, which it has accepted and which shows that the Petitioner owes \$\$\$\$ in additional tax, penalty and interest as of the hearing date. The Petitioner does not disagree with this amount. Accordingly, the only issue before the Commission is the amount due for the 2003 tax year. The Division asks the Commission to sustain its assessment for the 2003 tax year, while the Petitioner states that she does not know how much is due.

APPLICABLE LAW

UCA §59-10-536(3) provides that the Tax Commission may assess income tax “at any time if:

(a) no return is filed” For situations where a taxpayer fails to file a Utah individual income tax return,

UCA §59-10-506(2) provides, as follows in pertinent part:

. . . .

(2) (a) If any person fails to make and file any return required by this chapter at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the commission shall make such return from its own knowledge and from such information as it can obtain through testimony or otherwise.

(b) Any return so made and subscribed by the commission shall be prima facie good and sufficient for all legal purposes.

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.

DISCUSSION

The parties agree that as of the hearing date, the Petitioner owes \$\$\$\$ in additional tax, penalty, and interest for the 2004 tax year. For the 2003 tax year, the Petitioner does not know if she agrees with the Division's assessment. The Petitioner believes that she has a 2003 tax return to file, but has not done so. Under these circumstances, the Petitioner has not met her burden of proof to show that the Division's assessment for the 2003 tax year is incorrect. Accordingly, the Commission sustains the Division's assessment for the 2003 tax year.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Petitioner owes \$\$\$\$ in additional tax, penalties, and interest for the 2004 tax year, as of the hearing date. In addition, the Commission sustains the Division's assessment for the 2003 tax year. 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.

Appeal No. 06-1416

DATED this _____ day of _____, 2007.

Kerry R. Chapman
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 _____, 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 an additional late payment penalty.

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