

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING DECISION</p> <p>Appeal No. 06-1572</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 1999</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on June 25, 2007. Petitioner is appealing an audit deficiency of Utah individual income tax and interest for the year 1999. The Statutory Notice of Estimated Income Tax was issued on November 16, 2006. The amount at issue is \$\$\$\$ in additional tax, \$\$\$\$ in penalties and \$\$\$\$ in interest as of the date the Statutory Notice.¹

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. (Utah Code Sec. 59-10-104).

State taxable income is defined as federal taxable income with some modifications, subtractions and adjustments. (Utah Code Sec. 59-10-112.)

¹ Interest continues to accrue on the unpaid balance.

For the purposes of determining state taxable income, federal taxable income means taxable income as defined in Section 63, of the Internal Revenue Code. (Utah Code Sec. 59-10-111.)

Except as provided in subsection (b), for purposes of this subtitle, the term “taxable income” means gross income minus the deductions allowed by this chapter (other than the standard deduction). (Internal Revenue Code at 26 USC 63.)

The Utah Legislature has specifically provided that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code Sec. 59-10-543 provides the following:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner. . . .

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon showing of reasonable cause. (Utah Code Sec. 59-1-401(10).)

DISCUSSION

Petitioner did not file a Utah Individual Income Tax Return for tax year 1999. Eventually Respondent obtained information from the Internal Revenue Service that Petitioner had received taxable income during the 1999 tax year and Respondent determined a deficiency pursuant to Utah Code Sec. 59-10-523. Respondent issued its Statutory Notice of Estimated Tax and Petitioner timely filed his appeal.

From the IRS information Respondent concluded that Petitioner had \$\$\$\$ in taxable income during 1999. Of the sources of income, the largest amount was a 1099-R from COMPANY that indicated a gross distribution of \$\$\$\$\$. The 1099-R also indicated there had been federal income tax withheld on this amount of \$\$\$\$\$. In addition to this income there was a W-2 for a small amount of wage income and a 1099-G from the Utah Department of Workforces Services, apparently unemployment insurance. Petitioner explained that he had been laid-off from his job during 1999 and was also coping with the death of a parent. He states the for him it was a terrible year personally and he had been unable to deal with tax filings. He states

that he knew he had withdrawn funds from his 401K, he just did not think that he had received as much as the 1099-R indicated. However, he was unable to find any bank records or other information that supported his contention the amount had been something less. He had no statements to indicate what amount was in his 401-K. The Commission would note that Petitioner would not have received the gross amount indicated on the 1099-R, but instead that amount minus the federal withholding.

Petitioner does have the burden of proof in this matter. The Commission recognizes that it does become more difficult to obtain tax information as time passes, but in this instance the situation is a result of Petitioner not filing an income tax return. Petitioner could have filed the return years prior to the audit. Additionally, 1099-R's are generally very reliable sources of information and Petitioner simply has not provided evidence that would refute the amount claimed.

However, in regards to the penalties, Respondent acknowledged that his failure to file a return appeared to be a first time error on the part of Petitioner who had a good account history prior to this year. The fact that much of his income for that year was from unemployment insurance and the withdrawal of the 401K substantiates Petitioner's position that he had been laid off during the year. In addition he had indicated he was coping with the death of a parent. From all these factors combined the Commission finds reasonable cause for waiver of the penalties. Interest is waived only in the event there had been a Tax Commission or Tax Commission employee error that gave rise to the late filing or late payment. There was no indication of these types of factors. Therefore, there is no basis for waiver of interest.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission sustains the audit deficiency of additional individual income tax for tax year 1999 and the interest accrued thereon. The Commission waives the penalties. It is so ordered.

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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.

Jane Phan
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, failure to pay the balance due as determined by this order within thirty days of the date hereon, may result in a late payment penalty.

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