
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. 07-0637

Account No. #####

Tax Type: Income Tax

Tax Years: 2001

Judge: Phan

Presiding:

R. Bruce Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission pursuant to Utah Code Sec. 59-1-501 and 63G-4-401et seq., for a Formal Hearing, on October 16, 2008. Based upon the evidence and testimony presented at the hearing the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This matter is before the Commission on Petitioner's appeal of Utah individual income tax and interest deficiencies issued against him for tax year 2001. The Statutory Notice of Estimated Income Tax had been issued on April 25, 2007.

2. The amount of the deficiency at issue is as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u> ¹
2001	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

1 Interest calculated to the date of the Statutory Notices. Interest continues to accrue on any unpaid balance.

3. Petitioner had filed a Utah Individual Income Tax Return for the 2001 tax year in October 2002. The return had been mailed on October 15, 2002. On his Utah return he reported just \$\$\$\$ on Line 4, as the federal adjusted gross income from his federal return. He also filed a 2001 federal return during October 2002, on which he had claimed the \$\$\$\$ in federal adjusted gross income on Line 34 of the Form 1040 and \$\$\$\$ as his federal tax due. He reported on the federal return withholding in the amount of \$\$\$\$ and requested that this amount be refunded to him. Petitioner provided the postal receipt that supported his testimony that the federal return had been mailed on October 15, 2002 and had been received by the Internal Revenue Service on October 21, 2002.

4. The Division did not issue this audit until April 25, 2007. The Division based the audit on information provided by the Internal Revenue Service. That information indicated that on May 1, 2006, the IRS had assessed additional tax against Petitioner in the amount of \$\$\$\$\$. Penalties and interest were also assessed by the IRS. The Division submitted at the hearing the Account Transcript that had been obtained from the Internal Revenue Service, which showed the change made to the account for the 2001 tax year. Based on the information obtained from the IRS, the Division had increased the amount of federal adjusted gross income on the Utah return from the \$\$\$\$ claimed on the return to \$\$\$\$ and then determined the amount of Utah Individual Income Tax on that basis.

5. Petitioner did not provide evidence that he had not received the \$\$\$\$ in income for the 2001-year; as it was instead his contention that the Division's audit was beyond the statute of limitations.

6. The Division had sent to Petitioner on August 16, 2007 a letter, which listed the various income sources that totaled the \$\$\$\$\$. The income was from wages, taxable social security and IRA distributions.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104

(2001)² as follows:

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

State taxable income is defined in Utah Code Ann. §59-10-112 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 . . .

Federal taxable income is defined in Utah Code Ann. §59-10-111 as follows:

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

The applicable law places the burden of proof on the taxpayer. 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. . .

There is a limitation period for when the Division may issue an audit, which is set out at Utah Code Sec. 59-10-536 which provides a limitation on assessment and collection as follows:

(1) Except as otherwise provided in this section, the amount of any tax imposed by this chapter shall be assessed within three years after the return was filed (whether or not such return was filed on or after the date prescribed), and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

. . .

(9) The amount of any tax imposed by this chapter may be assessed at any time within six years after the time the return was filed if: (a) a resident individual, estate, or trust omits from gross income as reported for federal income tax purpose an amount properly includable there which is in excess of 25% of the amount of gross income stated in the return; or

. . .

CONCLUSIONS OF LAW

1. The burden of proof in this matter is on the Petitioner. See Utah Code Section. 59-10-543.

2 The Utah Individual Income Tax Act has been revised to some extent and some sections renumbered subsequent to the audit period. The Commission applied the statutes that are in effect during the audit period.

2. Petitioner has failed to provide evidence to refute that he is a Utah “resident individual” for purposes of Utah Code Sec. 59-10-104.

3. As a “resident individual” during 2001, Petitioner is subject to Utah individual income tax on his “state taxable income” pursuant to Utah Code Sec. 59-10-104. Utah Code Sec. 59-10-112 defines “state taxable income” as federal taxable income with some modifications and adjustments.

4. Petitioner did not provide evidence or refute that he received the \$\$\$\$ in income that was the subject of the audit. Nor did he argue that such income was not federal taxable income. Instead Petitioner argued that the audit was barred by the statutory limitations period. He argued that the three-year limitations period set out at Utah Code Sec. 59-10-536 (1) would apply to bar the audit assessment as it clearly had been more than three years from the time that he filed his return and when the audit had been issued. Further, he argued that the provision that would extend the limitation to three years after the Internal Revenue had made a change to the taxable income would not apply on the basis that it was unclear if the IRS had made a “final determination.” Utah Code Sec. 59-10-536(5) does require the taxpayer to file an amended return or notify the Tax Commission after a “final determination” has been made.

5. It was the Division’s position that it had six years to issue the audit on the basis of the provision at Utah Code Sec. 59-10-536(9)(a) because Petitioner had omitted more than 25% of his taxable income on the return that he had filed. Petitioner had reported only \$\$\$\$ in taxable income, the IRS information indicated that the amount he had received during the year had been the \$\$\$\$\$. Therefore, he had reported less than 1% of his income on the return for that year. Further the audit was issued within the six-year period.

6. The Commission agrees with the Division that the Division had six years pursuant to Utah Code Sec. 59-10-536(9) to issue the audit on the basis of the underreporting by more than 25%. Therefore the audit is not barred by the statutory limitations on assessment and collection. There was no evidence offered by

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Petitioner that would indicate the amount of taxable income or the resulting Utah individual income tax liability was incorrect.

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies Petitioner’s appeal in this matter regarding the Utah individual income tax audit for the tax year 2001. It is so ordered.

DATED this ____ day of _____, 2009.

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D’Arcy Dixon Pignanelli
Commissioner

Notice: Failure to pay within thirty days the balance that results from this order may result in additional penalties and interest. 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 Sec. 63G-4-302. 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. & 63G-4-401et seq.

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