

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 07-0847</p> <p>Account No. #####</p> <p>Tax Type: Income</p> <p>Tax Year: 2002</p> <p>Judge: Chapman</p>
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Presiding:

Marc B. Johnson, Commissioner
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 25, 2008. 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 2002.
3. Auditing Division ("Division") obtained information from the Internal Revenue Service ("IRS") showing that the taxpayer received \$\$\$\$ of federal adjusted gross income ("FAGI") during 2002 (Exhibits R-1 and R-2).
4. On June 12, 2007, the Division issued a Notice of Deficiency and Estimated Income Tax ("Statutory Notice") to the taxpayer for the 2002 tax year, based on the information received from the IRS.

The Division imposed additional tax, penalties and interest, as follows (Exhibit R-3):

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

5. The taxpayer filed a 2002 Utah income tax return with the Tax Commission either in 2005, the date shown on the return, or in 2007, the date the Division claims it received the return (Exhibit R-5). On the return, the taxpayer claimed that his FAGI for 2002 was \$\$\$\$\$.

6. The taxpayer has lived in CITY 1, Utah since 1995. No evidence exists to suggest that the taxpayer is not a Utah resident individual for the 2002 tax year.

7. The taxpayer testified that during 2002, he worked as an auto body repairman at a business in CITY 2, Utah and received a commission from the business for the auto bodywork he performed. He also admitted that the commissions he received during 2002 would approximate the \$\$\$\$\$ of wages reported to the Division by the IRS.

8. The taxpayer asks the Commission, however, to overturn the Division's assessment because he contends that the information the Division received from the IRS is illegal and, as a result, is "null and void." The taxpayer sets forth his arguments in Exhibit P-1. Among the taxpayer's arguments are: 1) that he is not a "person" liable for federal income tax and is not required to file an IRS Form 1040; 2) that the IRS has not issued a Delegation of Authority Order, which he claims to be a prerequisite to the IRS imposing federal tax liability; 3) that the Commissioner of Internal Revenue only has power to impose the federal revenue laws in the Panama Canal Zone, Puerto Rico, the Virgin Islands, and countries with which the United States has tax treaties in place; 4) that Treasury Delegation Order 150-37, which supposedly gives the IRS authority to make assessments, is unenforceable because it has never been published in the Federal Register; and 5) that the IRS information the Division used is invalid because the IRS is not authorized to prepare a

Form 1040, pursuant to Section 6020(b) of the Internal Revenue Code (“IRC”), and because the IRS cannot prepare a return without signing it.

9. The Division asks the Commission to sustain its assessment for 2002 in its entirety because the taxpayer was a Utah resident individual who earned taxable income in 2002 and because the taxpayer failed to timely file and pay his 2002 tax liability.

APPLICABLE LAW

1. Pursuant to Utah Code Ann. §59-10-104(1) (2002),¹ Utah imposes a tax “on the state taxable income, as defined in Section 59-10-112, of every resident individual. . . .”

2. UCA §59-10-112 provides that “[s]tate 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”

3. UCA §59-10-111 provides that “[f]ederal taxable income’ means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.”

4. For purposes of Section 59-10-111 and as defined in the Internal Revenue Code at 26 U.S.C. 63, “taxable income” means “. . . gross income minus the deductions allowed by this chapter (other than the standard deduction).”

5. For purposes of determining “taxable income,” the Internal Revenue Code at 26 U.S.C. 61(a) defines “gross income” to mean:

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 dealing in property;
- (4) Interest;
- (5) Rents;

1 All cites are to the 2002 Utah Code, unless specified otherwise.

- (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.

6. If a taxpayer who is required to file a Utah income tax return fails to do so, 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.

7. Section 6020(b) of the IRC provides, as follows:

b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

8. UCA §59-10-543 provides that the taxpayer bears the burden of proof, with limited exceptions, in proceedings involving individual income tax before the Tax Commission, 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.

CONCLUSIONS OF LAW

1. The commissions that the taxpayer received for performing auto bodywork in 2002 is “gross income” pursuant to Section 61(a)(i) of the IRC. Accordingly, these commissions constitute Utah “state taxable income.” Sections 59-10-111, 112.

2. Because the taxpayer did not timely file a 2002 tax return, the Commission is authorized to make a return from information it has itself or obtains through testimony or otherwise. Section 59-10-506(2). The Division’s assessment is based on reliable evidence it received from the IRS. The IRS information and the Division’s assessment are further supported by the taxpayer’s testimony that the commissions he received in 2002 approximated the \$\$\$\$ of FAGI reported to the Division by the IRS.

3. The taxpayer, who bears the burden of proof, has presented no court cases or other authority to convince the Commission that the information obtained from the IRS is illegal or that the Division could not use the information to determine his tax liability. Furthermore, Section 6020(b) of the IRC provides that the IRS may make a return for a taxpayer who fails to make a return or who files a false or fraudulent return. For these reasons, the Commission finds that there is no merit to any of the taxpayer’s arguments.

4. The Commission finds that the taxpayer has failed to show that the additional tax, penalties, and interest imposed by the Division are incorrect.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission sustains the Division’s assessment for the 2002 tax year in its entirety and denies the taxpayer’s appeal. It is so ordered.

Appeal No. 07-0847

DATED this ____ day of _____, 2008.

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 _____, 2008.

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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