

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 07-1001  Tax Type: Income Tax Tax Years: 2004   Judge: Marshall
--	---

---

**Presiding:**

Marc Johnson, Commissioner  
Jan Marshall, Administrative Law Judge

**Appearances:**

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 21, 2009. 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 2004 tax year.
2. Taxpayer was a Utah resident and subject to Utah Income Tax laws during 2004.
3. The Division issued a Notice of Deficiency and Audit Change on July 6, 2007. The notice reflected additional tax due of \$\$\$\$\$, \$\$\$\$\$ in interest, and no penalties. As of the hearing date, the audit assessment had not been paid.
4. Taxpayer filed a 2004 return dated April 14, 2005. The Taxpayer filled in his social security number, name, address, and telephone number. The remainder of the return was left blank, except near line 33 the Taxpayer wrote "\$\$\$\$\$."

5. With his 2004 tax return, the Taxpayer included a letter indicating that last year his tax due was \$\$\$\$\$, and that there had not been a substantial change in his circumstances, so he was enclosing a payment of \$\$\$\$\$.
6. The Division received information from the IRS reflecting adjusted gross income of \$\$\$\$\$ for the Taxpayer during the 2004 tax year. Taxpayer acknowledged the he received income from ( X ), ( X ), ( X ), ( X ), and ( X ).
7. The information from the IRS shows income in the amount of \$\$\$\$\$ from the ( X ), \$\$\$\$\$ from ( X ), \$\$\$\$\$ from the ( X ), \$\$\$\$\$ from ( X ), and \$\$\$\$\$ from ( X ).
8. Taxpayer is requesting that the lien on his property be removed. The Division has no record of a lien being placed on Taxpayer's property for the 2004 tax year.

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 (2004).<sup>1</sup>

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(q) as follows:

(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.

Utah Code Ann. §59-10-103 (2004).

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 59-10-1141 with the modifications, subtractions, and adjustments provided in Section 59-10-114. The state taxable income of a resident

---

<sup>1</sup> The Commission uses the 2004 Utah Code for the calculation of any income tax deficiency and interest assessment.

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 (2004).

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 (2004).

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

[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).

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 (2004).

“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 (2004).

Interest is assessed on underpayments of tax pursuant to Utah Code Ann. §59-10-537, below in pertinent part:

- (1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

Utah Code Ann. §59-10-537 (2004).

Section 59-1-402(5) of the Utah Code provides for the calculation of interest, as follows:

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

Utah Code Ann. §59-1-402(5) (2004).

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(11) of the Utah Code provides,

Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.

Utah Code Ann. §59-1-401(11) (2004).

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

(2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

- (i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or
- (ii) 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; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

Utah Admin. Code R861-1A-22 (2008).

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 (2008).

CONCLUSIONS OF LAW

Tax is imposed on the “state taxable income” of every “resident individual” under Utah Code Ann. §59-10-104. Taxpayer made no argument that he was not domiciled in the State of Utah for the 2004 tax year. 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 Taxpayer acknowledged he had income from several sources, and the Division provided evidence of the amounts, to show that the Taxpayer had taxable income in the amount of \$\$\$\$ for the 2004 tax year. Therefore, the Commission sustains the Division’s tax assessment for the 2004 tax year.

The Taxpayer requested a waiver of the interest. The Commission has issued Tax Commission Publication 17, available at <http://tax.utah.gov/forms/pubs>, which sets forth the factors the Commission may consider in determining whether “reasonable cause” exists for the waiver of penalties or interest. Publication 17 provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the Tax Commission gave you erroneous information or took inappropriate action that contributed to the error.” Taxpayer did not provide any testimony or other information that would show that there was a Tax Commission error or that a Tax Commission employee provided him with erroneous advice. The Commission finds that there is not reasonable cause to justify the waiver of the outstanding interest.

Taxpayer has requested the Commission remove a lien on his property. The Division’s records show that no lien was placed on Taxpayer’s property for the 2004 tax year. The Division’s representative suggested that the lien may be for another year. It appears that there is not a lien on Taxpayer’s property for the 2004 tax year. The Commission is unable to remove a lien for any other year as a part of this appeal.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment of income tax and interest. The Division is ordered to work with the Taxpayer to determine whether there is currently a Tax Commission lien on his property. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Jan Marshall  
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 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.

*JM/07-1001..fof*