

07-1017
Audit
Signed 07/15/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 07-1017

Account No. #####

Tax Type: Income

Tax Years: 1999, 2000, 2001, 2002, 2003,
2004

Judge: Jensen

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on April 14, 2008 in accordance with Utah Code Ann. §59-1-502.5.

Petitioner is appealing individual income tax audit deficiencies, penalties, and interest for tax years 1999 through 2004, which are the years at issue in this appeal. On July 5, 2007, the Division issued Statutory Notices of Deficiency and Estimated Income Tax for tax years 1999, 2000, 2001, 2002, 2003, and 2004. The notices indicated deficiencies for each year as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest as of Notice Date</u> ¹
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2000	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2001	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on any unpaid balance.

Petitioner did not file Utah Individual Income Tax Returns for any of the years at issue. The Division made investigation regarding Petitioner's residency and income for these years and determined that Petitioner was a Utah resident and owed income tax for all years at issue. On the basis of the information it gained in its investigation, the Division calculated Petitioner's estimated tax liability for the years from 1999 through 2004.

Petitioner does not dispute that he was a Utah resident at all relevant times or that he had income in the amounts as claimed by the Division. Instead, Petitioner argues that the Division's investigation was illegal because it relied on information from the Internal Revenue Service (the "IRS"). Petitioner also argues that the Division relied on IRS documents that were not signed, and that it is illegal for the Division to rely on information in unsigned IRS documents.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Ann. §59-10-104 as follows:

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

"Resident individual" is defined in Utah Code Ann. §59-10-103. Although the language and paragraph numbers varied slightly for each of the years at issue, the meaning is the same for all of the years.

The 2004 codification provided as follows:

(s)(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.

(ii) For purposes of Subsection (1)(s)(i)(B), a fraction of a calendar day shall be counted as a whole day.

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.

Taxable income is defined in the Internal Revenue Code at 26 U.S.C. 63 as:

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).

Gross income is defined in the Internal Revenue Code at 26 U.S.C. 61(a) as:

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; ...

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

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 . . .

Utah Code Ann. §59-1-401(2004) provides that penalties are imposed for failure to file returns, filing frivolous returns and failure to pay taxes. In relevant part, Utah Code Ann. §59-1-401 states:

(1)(a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return. (b) This subsection (1) does not apply to amended returns. (2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for: (a) failure to pay any tax, as reported on a timely filed return; (b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a); (c) failure to pay any tax within 30 days of the date of mailing any notice of deficiency of tax unless a petition for redetermination or a request for agency action is filed within 30 days of the date of mailing the notice of deficiency; (d) failure to pay any tax within 30 days after the date the commission's order constituting final agency action resulting from a timely filed petition for redetermination or request for agency action is issued or is considered to have been denied under Subsection 63-46b-13(3)(b). . .

These penalty provisions remain in the current codification of Section 59-1-401, although the paragraph numbering has changed.

Under 26 U.S.C. § 6103(d)(1), states may receive taxpayer information from the IRS by making a written request to the IRS.

26 U.S.C. § 6065 requires that documents such as tax returns, declarations, and statements filed with the IRS need to be signed. However, this provision applies only to documents that taxpayers submit and is not intended to apply to IRS documents. *See Thompson v. I.R.S.*, 23 F.Supp.2d 923, 925 (N.D. Ind. 1998).

DISCUSSION

In response to Petitioner's argument that the Division impermissibly received documents from the IRS without making a written request for those documents under 26 U.S.C. § 6103(d)(1), the Division produced evidence of a written master agreement between the State of Utah and the IRS. The Division argued that this document satisfies the requirement of a written request because all IRS documents on which the Division relied were produced under that written master agreement. The Commission agrees. The evidence suggests that the agreement between the state and the IRS is comprehensive and detailed. It addresses specifically the subject of documents produced by the IRS and provides for delivery of those documents from the IRS to the state. Therefore, there is no merit to Petitioner's position that the Division cannot rely on information that it received from the IRS under its written master agreement.

As for the argument that a taxing entity cannot rely on IRS documents that are not signed, at least one federal court reviewing this argument has found it to be "completely meritless." *See Thompson v. I.R.S.*, 23 F.Supp.2d 923, 925 (N.D. Ind. 1998). The *Thompson* court specifically found that the provisions of 26 U.S.C. § 6065 that required signed tax returns did not apply to IRS documents such as notices issued by IRS agents. *Id.* The Commission finds this statement of law to be well-reasoned and persuasive. While tax returns may require a signature, Petitioner has provided no law that would require that every document used in a tax investigation be signed.

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the assessment of additional income tax, penalties and interest against Petitioner for the tax years 1999, 2000, 2001, 2002, 2003, and 2004 as stated on the Statutory Notices of Deficiency and Estimated Income Tax. 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

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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 _____, 2008.

Clinton Jensen
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

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