

07-1185  
Audit  
Signed 08/14/2008

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 07-1185</p> <p>Tax Type: Income Tax Tax Years: 2002</p> <p>Judge: Marshall</p>
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**Presiding:**

Pam Hendrickson, Commission Chair  
Jan Marshall, Administrative Law Judge

**Appearances:**

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on July 3, 2008. 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 2002 tax year.
2. On March 15, 2006, a 2002 Utah Individual Income Tax Return was received from the Taxpayer. The return was completed with mostly zeroes. All income was reported as zero. The only portion of the return with an amount other than zero was the \$\$\$\$ withheld for Utah State tax, and the same amount claimed as a refund. (Exhibit R-4).
3. Submitted with the "zero" return was a Form 4852, Substitute Form W-2. On the Form 4852, the Taxpayer reported that he received zero wages. (Exhibit R-4).

4. A Notice of Deficiency and Audit Change dated September 4, 2007 was sent to the Taxpayer. The Notice of Deficiency calculated a \$\$\$\$ tax deficiency, assessed a \$500 frivolous filing penalty, and \$\$\$\$ in interest, which continues to accrue. (Exhibit R-3). The Division calculated the deficiency based on W-2 information and an account transcript received from the IRS in the ordinary course of business.
5. Taxpayer was a Utah resident and subject to Utah Income Tax laws during the 2002 tax year. At the hearing, the Taxpayer testified that he moved to CITY 1, Utah in 2002, and last year he moved to CITY 2, Utah.
6. Taxpayer testified that he is an automation tech for COMPANY, and has worked there since moving to Utah in 2002. Taxpayer acknowledged that he received \$\$\$\$ in wages as reported on the W-2 prepared by COMPANY for the 2002 tax year. (Exhibit R-1).
7. COMPANY withheld state income tax in the amount of \$\$\$\$ for the 2002 tax year. (Exhibit R-1).
8. Taxpayer disputes that this income was taxable. It is his position that an exchange of his time for money is not taxable. The Taxpayer submitted a fifty-page brief on his position (Exhibit P-1) which sets forth his argument that the Internal Revenue Code does not “plainly and clearly” impose a tax on his revenue and that no federal income tax is owed. He concludes that because Utah law relies on the federal income, it is subject to the same limitations. Taxpayer also argues that his income is exempt from taxation as they are derived from his own labor in the pursuit of his chosen profession, which he argues is a natural right.
9. Taxpayer also argued that the frivolous filing penalty is improper, as he does not believe his position is frivolous.

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 (2002).

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

“Resident individual” means:

- (i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or

- (ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state. For purposes of this Subsection (1)(j)(ii), a fraction of a calendar day shall be counted as a whole day.

Utah Code Ann. §59-10-103(1)(k) (2002).

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 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114. The state taxable income of a resident 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 (2002).

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 (2002).

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

[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).

The assessment of interest on unpaid tax liability is set forth in 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(1) (2002).

Section 59-1-402(5) of the Utah Code provides, “[i]nterest 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) (2002).

With regard to the frivolous filing penalty, Utah Code Ann. §59-1-401(7) provides,

If any taxpayer in furtherance of a frivolous position has a prima facie intent to delay or impede administration of the tax law and files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect, the penalty is \$500.

Utah Code Ann. §59-1-401(7) (2002).

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 (2002).

“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 (2002).

The burden of proof is on the Taxpayer, 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 (2002).

CONCLUSIONS OF LAW

- A. Tax is imposed on the “state taxable income” of every “resident individual” under Utah Code Ann. §59-10-104. Taxpayer has made no argument that he was not domiciled in the State of Utah during the years at issue, in fact he acknowledged that he was a resident of Utah during the 2002 tax year. 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 Division provided evidence, including a copy of the Taxpayer’s W-2, which shows that the Taxpayer had Utah taxable income for the 2002 tax year. The Taxpayer provided no evidence to the contrary, and the Commission sustains the Division’s tax assessment for the 2002 tax year.
- B. Interest is required to be assessed under Utah Code Ann. §59-10-537 for the non-payment of a tax deficiency. Under Utah Code Ann. §59-1-402(5), interest is calculated from the due date of the return, and continues to accumulate until the deficiency amount is paid. Interest was assessed on Taxpayer’s outstanding tax liability from April 15, 2003, the due date of the return for the 2002 tax year, and continues to accrue. The Commission finds that the Division properly assessed interest on the Taxpayer’s deficiency balance, and that the Taxpayer has not shown reasonable cause that would justify a waiver of that interest.
- C. The Division assessed a \$500 frivolous filing penalty on the September 4, 2007 notice of deficiency, thus the burden of proof is on the taxpayer to show the assessment was incorrect. Utah Code Ann. §59-1-401(7) provides for the assessment of the \$500 frivolous filing penalty if a taxpayer takes action that includes the following three elements (1) the action is in furtherance of a frivolous position; (2) there exists a prima facie intent to delay or impede administration of the tax law; and (3) the taxpayer files a purported return that fails to contain information from which the correctness of reported tax liability can be determined or that clearly indicates that the tax liability shown must be substantially incorrect.

Furtherance of a frivolous position. Courts have generally found that the filing of a “zero return” is frivolous and have upheld frivolous filing penalties. See *Little v. United States*, 2005 WL 2989696; *Schultz v. United States*, 2005 WL 1155203; *Yuen v. United States*, 290 F. Supp 1220 (D. Nev. 2003); *Gillett v. United States*, 233 F. Supp.2d 874 (W.D. Mich. 2002); and *Bonaccorso v. Commissioner*, T.C. Memo. 2005-278. The Commission finds that the filing of a zero return in the instant case is a frivolous position. The Division has presented sufficient evidence to show that Taxpayer did have taxable income for the years at issue.

Prima facie intent to delay or impede administration of the tax law. The Taxpayer filed a frivolous tax return that required time and effort by the Tax Commission to properly analyze and address. By purposefully filing a tax return that asserts this frivolous position, the Taxpayer has delayed and impeded the administration of tax laws. The Commission also finds that the Taxpayer’s delay or impediment of tax law administration was intentional. The evidence shows that the Taxpayer filed the return on March 15, 2006, nearly three years after it was due; in addition, he submitted a Federal Form 4852, a substitute W-2 form, that reports all compensation as zero. It has long been held by the Courts that wages and compensation for services are taxable income.<sup>1</sup> For these reasons, the Commission finds that the Taxpayer has acted in an intentional manner to delay or impede tax law administration.

Return has insufficient information to determine liability or clearly indicates that the liability shown is incorrect. The “zero” return filed by the Taxpayer for the 2002 tax year contains a frivolous position, asserting that the Taxpayer had no income. The Taxpayer also included IRS Form 4852, a substitute W-2 form claiming no wages or compensation were earned by the Taxpayer. The Division received information in the regular course of business that indicated the Taxpayer had received Utah taxable income in the amount of \$\$\$\$ during the 2002 tax year. Accordingly, the Commission finds that the return filed by the Taxpayer clearly indicates that the liability shown was incorrect.

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<sup>1</sup> The 5th Circuit stated "it is clear beyond peradventure that the income tax on wages is constitutional." **Stelly v. Commissioner**, 761 F.2d 1113, 115 (1985). See also **Granzow v. C.I.R.**, 739 F.2d 265, 267 (1984) in which the Seventh Circuit stated, "It is well settled that wages received by taxpayers constitute gross income within the meaning of Section 61 (a) of the Internal Revenue Code . . . and that such gross income is subject to taxation." In **United States v. Koliboski**, 732 F.2d 1328, 1329 fn 1 (1984), the Seventh Circuit stated "the defendant’s entire case at trial rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us already are aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME." See also **United States v. Mann**, 884 F.2d 532 (10th Cir. 1989).

The Commission finds that the Division has shown all elements required for it to impose the \$500 penalty in this manner, and imposes the \$500 frivolous filing penalty for the 2002 tax year.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the assessment of income tax, interest, and penalties for the 2002 tax year. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
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 \_\_\_\_\_, 2008.

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/07-1185.fof*