

08-0405
INCOME TAX
TAX YEAR: 2004
SIGNED: 11-06-2008
COMMISSIONERS: P. HENDRICKS, R. JOHNSON, M. JOHNSON, D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 08-0405</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2004</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP., Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to Utah Code Sec. 59-1-502.5, on August 11, 2008. The matter was before the Commission on Petitioner's appeal of a Utah individual income tax audit deficiency for tax year 2004. The Statutory Notice of Audit Change had been issued on February 11, 2008. The amount of the deficiency was \$\$\$\$ in tax and \$\$\$\$ in interest as of the date of the notice. Interest continues to accrue on the unpaid balance. No penalties were assessed with the audit.

APPLICABLE LAW

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During the tax year at issue, Utah imposed income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104 (2004)¹ 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 Sec. 59-10-112 (2004) 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 Sec. 59-10-111 (2004) 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).

Limitations on spouses filing a joint return are found at Utah Code Sec. 59-10-503(1)(a), which provides the following:

No joint return shall be made if the husband and wife are not permitted to file a joint return for federal income tax purposes.

For purposes of determining if an individual is exempt from taxation, personal exemptions are defined at Utah Code Sec. 59-1-104.1(1)(a) as:

For purposes of this section: (1)(a) "personal exemptions" means the total exemption amount an individual is allowed to claim for the taxable year under Section 151, Internal Revenue Code, for: (i) the individual; (ii) the individual's spouse; and (iii) the individual's dependents. . . .

Interest is assessed pursuant to Utah Code Sec. 59-1-402(5) as follows:

¹ There have been subsequent revisions and renumbering of provisions to the Utah Individual Income Tax Act. The Commission applies the act as it was in effect for the tax year at issue and cites to the provisions as they were

Interest on any underpayment, deficiency or delinquency of any tax or fee administered by the tax 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.

DISCUSSION

The facts were not in dispute between the two parties. The issue before the Commission was an interpretation of law. The Taxpayer was working and residing in Utah during 2004. However, he was not a resident of the United States for immigration purposes. He was legally in the country under a Student Visa (F-1), which allowed him to attend school and work in this country. Petitioner's wife and children also resided in Utah with him. His wife was legally in the United States on an F-2 Visa, which allowed her to stay in this country, but did not allow her to work.

As the Taxpayer was a nonresident of this country for federal immigration purposes he was required by federal tax law to file a 1040-NR (Nonresident Federal Return). Since his wife was not a citizen or permanent resident, federal tax law prohibited the Taxpayer from claiming her as a dependent on his federal 1040-NR. Because she did not earn income of her own during the year, she was not required to file a 1040-NR.

Since his wife was residing in Utah with him as a dependant during all of 2004, the Taxpayer had called the Utah Tax Commission to determine if he could claim her as a dependent on his Utah individual income tax return. He states that he did speak with someone over the telephone about the issue, that the person he spoke with went to ask a supervisor and then came back and told him that he could file as head of household, essentially obtaining a deduction for her as a dependent on the return that way. Petitioner filed the Utah return in that manner.

Later the IRS audited the return and there was an issue with a deduction for student loan

numbered during that period.

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interest. The Utah audit then made the same change regarding the student loan interest and also the fact that the state exemptions did not match the federal exemptions was discovered. The audit disallowed the head of household status because it did not match with the federal filing.

Upon review of the law the Commission concludes that the Division's position is correct. The law provides that "state taxable income" is "federal taxable income" with certain modifications or adjustments. See Utah Code Sec. 59-10-112. The modifications or adjustments at Utah Code Sec. 59-10-114 do not provide for the extra exemption requested by Petitioner but do require an add back of 25% of the personal exemptions claimed on the federal return. Although, it is federal adjusted gross income that is carried over from the federal return to the state return, after the modifications are made on the state return, the result is consistent with starting with federal taxable income and then making the adjustments provided by statute. On the federal return, federal taxable income is derived by taking the federal adjusted gross income and subtracting out itemized deductions and the federal exemptions. Therefore, the law specifically requires that a taxpayer claim the same exemptions for Utah individual income tax as claimed on the federal return.

On the issue of the student loan interest, although Petitioner had thought the Utah audit was inconsistent with the final federal numbers, it appears from the latest IRS transcript that the Utah audit was consistent and the Commission has no basis to make an additional change on this matter.

Interest was assessed with the audit as is provided by law. Interest may be waived pursuant to Utah Code Sec. 59-10-401 upon a showing of reasonable cause and is generally waived only in the event a Tax Commission employee error causes the underpayment. In this matter the Division did not refute that the Taxpayer had been given incorrect advice by a Tax Commission employee regarding the number of exemptions he could claim on his Utah return. Therefore, Tax Commission error is shown and the interest arising from the additional tax assessed due to the Taxpayer claiming head of household is waived.

DECISION AND ORDER

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Based upon the foregoing, the Commission sustains the tax deficiency indicated in the audit for the Taxpayer's 2004 Utah individual income tax. Interest resulting from the head of household error is waived. The remainder of the interest is sustained. 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 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.

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: Unless a party requests a Formal Hearing, the balance of tax and interest resulting from this decision must be paid within thirty days from the date this decision is issued or an additional late payment penalty may

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be assessed.

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