

08-0515
INCOME TAX
TAX YEARS: 2004, 2005
SIGNED: 05-14-2009
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, D. DIXON
EXCUSED: M. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 08-0515</p> <p>Account No. ##### Tax Type: Income Tax Tax Years: 2004 & 2005</p> <p>Judge: Phan</p>
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Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
PETITIONER'S SPOUSE
For Respondent: RESPONDENT REP., Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Commission pursuant to Utah Code Sec. 59-1-502.5 for an Initial Hearing on March 19, 2009. The matter was before the Commission on Petitioner's appeal of a Utah individual income tax audit deficiency for tax years 2004 & 2005. However, prior to this hearing the issues for the 2005 tax year had been resolved with an amended audit issued on September 22, 2008. The Statutory Notice of Audit Change for the 2004 tax year, which was the subject of this hearing, had been issued on February 13, 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.

APPLICABLE LAW

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Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 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...

State taxable income is defined in Utah Code Sec. 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 . . .

When challenging an audit the burden of proof is on the taxpayer pursuant to Utah Code Sec. 59-10-543 as follows:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . .

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

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 audit change was the result of the Respondent (the "Division") disallowing the one exemption that the Petitioner (the "Taxpayer") had claimed on his Utah Individual Income Tax Return for 2004. The Taxpayer had claimed the one exemption for himself on the Utah return. However, on his federal return for the 2004-year he had claimed no exemptions. The Taxpayer stated that this was just an error on his part, as he had been entitled to claim himself on his own return due to the fact that he received federal taxable income in the amount of \$\$\$\$\$ for that year. He explained that he did try to go back to the IRS and file an amended return there so that he could claim himself as an exemption, but they told him it was too late to make the change for the 2004 tax year. Additionally, he represents that he did check with his parents and they had

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stated that they had not claimed him for that year.

The Taxpayer submitted a copy of a lease for an apartment, which he had moved into on January 8, 2004, to show that he was living on his own during the tax year at issue. As there was an extension for six more months entered into in January 2006, he resided at that apartment for several years. He also used this apartment address on his tax returns for both 2004 and 2005.

The Division did not refute that due to the income the Taxpayer had earned during 2004 he would have been entitled to claim himself for that year. However, the Division stated that it was unable to allow the Taxpayer to claim the exemption because he had claimed no exemptions on the federal return and the IRS had not changed the exemptions.

The Tax Commission reviews the limited information provided by the Taxpayer in this matter. The Taxpayer does have the burden of proof pursuant to Utah Code Sec. 59-10-543. He did provide information to indicate he was living in an apartment during the tax year at issue and he was earning an amount of income sufficient that he would have been entitled to claim himself on his return. He represented that his parents had not claimed him. The Division did not refute any of this information proffered by the Taxpayer.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Taxpayer is entitled to claim himself as an exemption on his Utah Individual Income Tax Return for the tax year 2004. Therefore the audit for that year is abated. 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:

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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 _____, 2009.

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 _____, 2009.

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 be assessed.

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