

08-1644
INCOME
TAX YEAR: 2001
SIGNED: 06-21-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, vs. AUDITING DIVISION, OF THE UTAH STATE TAX COMMISSION Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-1644</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2001</p> <p>Judge: Phan</p>
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Presiding:

Michael Cragun, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Manager, Income Tax Auditing
RESPONDENT REP. 3, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 22, 2011, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et al. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Respondent (the "Division") originally issued a non-filing audit against Petitioner (the "Taxpayer") for the 2001 year. The audit had been issued by a Statutory Notice of Deficiency and Estimated Income tax, mailed on June 27, 2008 ("Original Audit"). The amount due in the Original Audit was tax of \$\$\$\$\$, interest of \$\$\$\$\$, and penalties of \$\$\$\$\$, for a total of \$\$\$\$\$.

2. The Division's Original Audit had been based on information from the Internal Revenue Service. The Division had calculated the tax using a filing status of Head of Household with two exemptions. The Division used the federal adjusted gross income, itemized and other deductions as reported by the IRS to calculate the Taxpayer's liability for 2001. As listed on the Statutory Notice, the tax was based on the following:

Federal Adjusted Gross Income	\$\$\$\$\$
State Tax Deducted on Federal Schedule A	\$\$\$\$\$
Standard/Itemized Deductions	\$\$\$\$\$
Personal Exemptions Deduction	\$\$\$\$\$
One-Half of Federal Tax Deduction	\$\$\$\$\$
Interest From U.S. Government Obligations	\$\$\$\$\$

3. The Taxpayer timely appealed the audit and then later filed a tax return for the 2001 tax year. The Taxpayer's return was signed and dated by the Taxpayer on October 16, 2008 ("Original Return"). Based on the documentation presented by the Division, this return had been mailed to the Tax Commission in an envelope postmarked January 12, 2009. With the Original Return, the Taxpayer provided a W-2 for that year. The W-2 indicated that there had been withholding from his wages in the amount of \$\$\$\$\$. On the return he claimed himself and one dependant and filed as Head of Household. However, on the return he claimed amounts for federal adjusted gross income, standard/itemized deductions and the deduction for one-half of the federal tax paid that were in disagreement with the Original Audit. On the Original Return he claimed a refund in the amount of \$\$\$\$\$. This refund was not paid out to the Taxpayer.

4. The Division audited the 2001 Original Return filed by the Petitioner. The Division representatives concluded it was inconsistent with IRS information. After audit of the return the Division issued a Notice of Deficiency and Audit Change on July 29, 2009 ("Amended Audit"). The only changes to the return listed in the Amended Audit were to federal adjusted gross income, standard/itemized deductions and the deduction for one-half of the federal tax. All three of these items were changed back to the same amounts that the Division had used in the Original Audit. Although credit was given for the withholding claimed by the Taxpayer on the Original Return, which had been \$\$\$\$\$, the amount of the tax portion due in the amended audit had been \$\$\$\$\$, with interest of \$\$\$\$\$ and a total due as of the date of that audit being \$\$\$\$\$. However, in a post hearing submission, the Division corrected the tax portion to \$\$\$\$\$. Interest

would need to be recalculated on this lower amount and continues to accrue on the unpaid balance.

5. Prior to the Formal Hearing in this matter, the Taxpayer filed an amended Utah Individual Income Tax Return for tax year 2001 (“Amended Return”). On this return he did concede to federal adjusted gross income in the amount of \$\$\$\$\$, the same amount used by the Division in both audits.¹ Another difference between the Taxpayer’s Amended Return and his Original Return was that on the Amended Return he claimed himself and five other dependants as personal exemptions. Based on the additional exemptions, it was his calculation in the Amended Return that he should receive a refund of \$\$\$\$\$.

6. At the Formal Hearing, the Taxpayer claimed that he was entitled to claim himself and five other dependents as personal exemptions because during 2001 both of his CHILDREN and three of their friends lived with him. He asserted that he was entitled to claim them under federal law, but at this point in time it was too late to file an amended federal return to change the number of exemptions.

7. In the audits, based on federal information, the Division had allowed as a dependent CHILD 1, one of the Taxpayer’s CHILDREN. The Taxpayer’s other child was CHILD 2. The Taxpayer testified that his ex-wife should not have claimed either of their children based on the divorce decree, representing that she could only claim them until they graduated from high school. He stated that CHILD 1 had graduated in 2000 and CHILD 2 in 1998. The Taxpayer did not provide CHILD 2’s social security number and argued that he was not required to provide it on the Utah return. When questioned he was unsure whether CHILD 2 had a job or if he had filed his own return for that year. It was the Taxpayer’s testimony that CHILD 2 would have been in college and he was unsure exactly when CHILD 2 had moved out of his house.

8. Taxpayer claimed the three additional dependants were friends of his children and that they lived with the Taxpayer more than half the time. He offered as the reason he had not originally claimed all these individuals on his federal return was that he had been in a major accident and had been unable to file his 2001 federal return on his own when it came due. Someone had filed the federal return for him in 2002, but not the state return. The Taxpayer testified that he provided food for these individuals and that they generally lived with him during the week. He also testified that these friends were 17 or 18 years old during 2001, but also that they had graduated from high school. He acknowledged that they all had parents who lived

1 On the Taxpayer’s Amended Return, there was an error in the calculation of the amount listed on Line 9-Total Adjusted Gross Income. To calculate Line 9, Line 5 should have been added to Line 4, not subtracted from it.

nearby and that he did not know if the parents claimed them on their own returns. His recollection was unclear whether all three had been working during 2001. He did not know if these young men filed their own individual tax returns and claimed themselves as an exemption. The Taxpayer did not have the social security numbers any of the three friends and could not recall the last name of one of the boys. He argued that he did not have to provide this information on the Utah return.

9. The Taxpayer did not provide any receipts or verification to support the itemized deduction amount of \$\$\$\$ that he had claimed on the Utah Original Return and the Amended Return. Further, he did not provide support that one half of his federal tax for 2001 had been the \$\$\$\$ he had claimed on his return.

10. At the hearing the Division submitted the federal account transcript from the IRS. That transcript supported the Division's audit conclusions regarding federal adjusted gross income, itemized deductions, and federal tax amount. The federal account transcripts show that the IRS had assessed additional tax to what he had claimed on his federal return in the amount of \$\$\$\$ on February 9, 2004. However, this amount was abated in April 19, 2004 and there was a further tax abatement of \$\$\$\$ on June 21, 2004. After these changes had been made the Taxpayer's federal tax liability had been \$\$\$\$ and the proper amount for one-half of the federal tax \$\$\$\$\$. The amount for federal adjusted gross income of \$\$\$\$ is also supported by the federal account transcripts.

APPLICABLE LAW

A tax is imposed on the income of individuals who are residents of the State of Utah, set forth below in Utah Code Ann. §59-10-104²:

...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 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 . . .

Utah Code Ann. §59-10-111 defines "federal taxable income" as follows:

"Federal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.

² The Commission cites to, and applies, the Utah Individual Income Tax Act that was in effect during the audit period at issue in this matter. In 2007 the Individual Income Tax Act was revised.

For purposes of determining if an individual is exempt from taxation, personal exemptions are defined at Utah Code Sec. 59-10-104.1(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:

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.

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) 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.”

The burden of proof is on the Taxpayer, as provided in Utah Code Ann. §59-1-1417, below in pertinent part:

In proceedings before the commission, the burden of proof is on the petitioner...

DISCUSSION

The Taxpayer argues that he is entitled to claim himself and five other individuals as exemptions on his Utah return. Further he argues that he does not need to provide the full names of these individuals or their social security numbers because there is no place on the Utah return to fill in this information. He argues that although he did not claim these individuals on his federal return, he would have been entitled to claim them. He points out that it is now too late to file an amended federal return to change the number of exemptions.

After review of these arguments, the Taxpayer’s position is contrary to law. Although there is no dispute that the IRS would not now process an amended federal return for the 2001 tax year, the Taxpayer has not provided sufficient evidence to claim the four individuals as exemptions on his state return. On the Utah Individual Income Tax Return for 2001, Line 2-Exemptions states “enter the same number claimed on the federal return.” The Taxpayer had not claimed these four individuals on his federal return. Utah Code Sec. 59-10-104.1(1)(a) provides

that the personal exemptions means the total exemption amount “an individual is allowed to claim” under Section 151, Internal Revenue Code. The Taxpayer’s limited testimony about these individuals is insufficient to support the position that he would have been allowed to claim any of the four individuals by the IRS. If he had claimed these individuals on his federal return, he would have been required to provide full names and social security numbers on that return. These would be subject to review by the IRS to determine if these individuals were claimed as exemptions on other returns, including their own returns. Further, had these individuals actually been claimed on his federal return for 2001, and the IRS subsequently disallowed the personal exemption for any of the individuals, Utah would generally be provided this information and then would disallow the individuals as personal exemptions on the Utah return based on Sec. 59-10-104.1(1).

Based on the statutory provisions, the Taxpayer has the burden of proof in this matter. See Utah Code §59-1-1417. The Taxpayer has failed to provide evidence that he would have been allowed to claim the four individuals as personal exemptions under Section 151 of the Internal Revenue Code. The Taxpayer is not entitled to claim personal exemptions on his Utah return that would not be allowed by the IRS under the Internal Revenue Code. Additionally, the Taxpayer has not met his burden of proof in regards to the standard or itemized deductions or the deduction for one-half of the federal tax. The evidence submitted in this matter supports the Division’s audits regarding these amounts.

CONCLUSIONS OF LAW

1. The Taxpayer may not claim as personal exemptions individuals he did not claim on his federal return without providing an evidentiary basis that the individuals meet the provisions of Utah Code Sec. 59-10-104.1(1).

2. The Taxpayer has the burden of proof in this matter under Utah Code §59-1-1417. The Taxpayer has failed to meet this burden to establish that he would have been allowed to claim the four individuals as personal exemptions under Section 151 of the Internal Revenue Code or to support his claimed amount for itemized deductions and one-half the federal tax.

After review of the evidence that has been submitted in this matter by the parties and the applicable law, and subject to the correction reducing the tax amount in the Amended Audit from \$\$\$\$\$ to \$\$\$\$\$, the Taxpayer’s appeal should be denied. Interest should be recalculated based on the corrected tax amount.

Jane Phan

Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal in this matter. However, the Commission reduces and tax balance as noted above and orders the Division to recalculate the interest. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. §63G-4-302. 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 Ann. §59-1-601 et seq. and §63G-4-401 et seq.