

08-1692
AUDIT – INCOME TAX
SIGNED 04-12-09

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-1692 Account No. ##### Tax Type: Income Tax Tax Years: 2004 Judge: Chapman
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Presiding:
 Kerry R. Chapman, Administrative Law Judge

Appearances:
 For Petitioner: PETITIONER REP, Representative
 PETITIONER, Taxpayer
 For Respondent: RESPONDENT REP, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on March 25, 2009.

PETITIONER 1 & PETITIONER 2 (“Petitioners” or “taxpayers”) are appealing the Auditing Division’s (the “Division”) assessment of individual income tax for the 2004 tax year. On July 1, 2008, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest (calculated as of July 31, 2008), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The Division made its assessment after receiving information that the Internal Revenue Service (“IRS”) had made changes to the taxpayers’ 2004 federal adjusted gross income (“FAGI”) for federal

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tax purposes. Specifically, the IRS increased the taxpayers' FAGI by \$\$\$\$ (from \$\$\$\$ to \$\$\$\$) and decreased their itemized deductions by \$\$\$\$ (from \$\$\$\$ to \$\$\$\$).

The taxpayers did not have any information concerning the \$\$\$\$ decrease to their itemized deductions. However, they assert that they believe the \$\$\$\$ of additional income that the IRS and the state have added to their FAGI is incorrect and should be removed. The taxpayers explain that the \$\$\$\$ of income is associated with gains from sales of stocks and bonds in 2004 and that these gains should be negated by a \$\$\$\$ long-term carryforward loss from 2003. The taxpayers explain that the IRS is aware of the carryforward loss and asks the Commission to reverse the portion of the audit assessment concerning the \$\$\$\$ gain.

The Division confirms that the \$\$\$\$ of income is associated with gains from stocks and bonds. However, the Division states that recent information shows that the IRS has not applied any carryforward loss from 2003 to negate these specific gains. As a result, the IRS still includes the \$\$\$\$ of gains in the taxpayers' 2004 FAGI. For these reasons, the Division asks the Commission to sustain its audit assessment.

APPLICABLE LAW

Utah Code Ann. §59-10-104 (2004)¹ provides that “a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual. . . .”

Utah Code Ann. §59-10-112 defines “state taxable income” to mean “federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in §59-10-114.”

UCA §59-10-111 defines “federal taxable income” to mean “taxable income as currently defined in Section 63, Internal Revenue Code of 1986.”

¹ The Commission cites to and applies the Utah Individual Income Tax Act that was in effect in 2004 for the tax year at issue in this appeal. In 2007, the Individual Income Tax Act was revised.

If the IRS makes a change to the Utah resident's federal taxable income, UCA §59-10-536(5) requires the resident to file an amended Utah return, as follows:

- (a) If a change is made in a taxpayer's net income on his or her federal income tax return, either because the taxpayer has filed an amended return or because of an action by the federal government, the taxpayer must notify the commission within 90 days after the final determination of such change. The taxpayer shall file a copy of the amended federal return and an amended state return which conforms to the changes on the federal return. No notification is required of changes in the taxpayer's federal income tax return which do not affect state tax liability.
- (b) The commission may assess any deficiency in state income taxes within three years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Utah tax attributable to such federal change or correction. The provisions of this Subsection (b) do not affect the time within which or the amount for which an assessment may otherwise be made. However, if the taxpayer fails to report to the commission the correction specified in this Subsection (b) the assessment may be made any time within six years after the date of said correction.

UCA §59-10-543 provides that the burden of proof is upon the petitioner in income tax matters before the Commission, with limited exceptions as follows:

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; and
- (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.

DISCUSSION

The taxpayers claim that the \$\$\$\$ of income added to their 2004 FAGI for both federal and state purposes is incorrect. However, the taxpayers have not proffered any evidence to show that they are entitled to a carryforward loss for the 2004 tax year that would negate the \$\$\$\$ of gains. Without such evidence, the Commission finds that the taxpayers have not met their burden of proof to show that any portion

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of the Division's assessment is incorrect. Based on the information available at the Initial Hearing, the Commission denies the taxpayers' appeal.

DECISION AND ORDER

Based upon the foregoing, the Commission denies the taxpayers' appeal and sustains the Division's audit assessment in its entirety for the 2004 tax year. 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 _____, 2009.

Kerry R. Chapman
Administrative Law Judge

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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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