

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. 09-1523</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2005</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER, *Pro Se*
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on May 5, 2010, pursuant to Utah Code Sec. 59-1-502.5. The matter was before the Commission on Taxpayer's appeal of a Utah individual income tax audit deficiency for the 2005 tax year. The Statutory Notice of Deficiency and Audit Change was issued on March 18, 2009. 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

A tax is imposed on the income of individuals who are non-residents of the State of Utah, as set forth below in Utah Code Ann. §59-10-116¹, below in pertinent part:

- (1) For purposes of this section:
 - (c) "state income tax percentage" means a percentage equal to a nonresident individual's federal adjusted gross income for the taxable year received from Utah sources, as determined under Section 59-10-117, divided by the difference between:

¹ 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.

- (i) the nonresident individual's total federal adjusted gross income for that taxable year; and
 - (ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember, the compensation the servicemember receives for military service if the servicemember is serving in compliance with military orders; and
- (d) "unapportioned state tax" means the product of the:
- (i) difference between:
 - (A) a nonresident individual's federal taxable income, as defined in Section 59-10-111, with the modifications, subtractions, and adjustments provided in Section 59-10-114; and
 - (B) if the nonresident individual described in Subsection (1)(d)(i)(A) is a servicemember, compensation the servicemember receives for military service if the servicemember is serving in compliance with military orders; and
 - (ii) tax rate imposed under Section 59-10-104.
- (2) Except as provided in Subsection (3), a tax is imposed on a nonresident individual in an amount equal to the product of the nonresident individual's:
- (a) unapportioned state tax; and
 - (b) state income tax percentage...

Federal adjusted gross income derived from Utah sources is defined in Utah Code Ann. §59-10-117, below in pertinent part:

- (1) For the purpose of Section 59-10-116, federal adjusted gross income derived from Utah sources shall include those items includable in federal "adjusted gross income" (as defined by Section 62 of the Internal Revenue Code) attributable to or resulting from:
 - (b) the carrying on of a business, trade, profession, or occupation in this state...

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.

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...

DISCUSSION

Taxpayer timely filed a non-resident return, reporting his Utah-sourced income. The Division issued a Statutory Notice of Deficiency and Audit Change on March 18, 2009. The Division reduced the Taxpayer's deduction for one-half of the federal tax from \$\$\$\$\$ to \$\$\$\$\$, and increased the Utah Portion of adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$. The increase in

income was attributable to Taxpayer's allocation of the student loan interest and tuition and fees deductions on the TC-40. Taxpayer does not dispute the change to the deduction for one-half of the federal tax; however, he disputes being disallowed an allocation of the student loan interest and tuition and fees deductions.

The Taxpayer stated that the form allows for the deductions, and he should be allowed to claim a portion of the deductions in his allocation. He stated that he pro-rated the deductions based on the percentage of total income that is earned in Utah. Taxpayer stated that he pays the majority of the expenses and believes that he arguably could have allocated the deductions 100% to Utah.

The Division does not dispute that at least a portion of the funds used to pay the student loan interest and tuition and fees was Utah sourced income. However, the Division's representative stated the Division was without a basis to make an allowance for the deduction, and that this was a situation the Division had not seen in the past. The Division's representative also argued that this was an adjustment made to federal adjusted gross income and the deduction already flows through to the state.

At issue is the allocation of that federal adjusted gross income to Utah, as calculated on Form TC-40. Utah Code Ann. §59-10-116 imposes tax on a nonresident individual in an amount equal to the product of the nonresident individual's unapportioned state tax and state income tax percentage. Subsection (d) of §59-10-116 defines "unapportioned state tax" as the product of a nonresident individual's federal taxable income, as defined in Section 59-10-111...and the tax rate imposed under Section 59-10-104. Utah Code Ann. §59-10-111 provides, "[f]ederal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986. Section 63 of the Internal Revenue Code defines "taxable income" as gross income minus the deductions allowed by this chapter..." The student loan interest and tuition and fees deductions are both in Chapter 1 of the Internal Revenue Code², and are included in the calculation of the Taxpayer's "unapportioned state tax". The "state income tax percentage" is defined in Subsection (c) of §59-10-116, as "a percentage equal to a nonresident individual's federal adjusted gross income received from Utah sources...divided by...the nonresident individual's total federal adjusted gross income for the taxable year." There is no provision that allows for an additional deduction for student loan interest and tuition and fees from the "state income tax percentage". The Division's audit should be sustained.

² The student loan interest deduction is provided for in Section 221 of the Internal Revenue Code. The tuition and fees deduction is allowed under Section 222 of the Internal Revenue Code.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit for the 2005 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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty.

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