

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 09-2468 Tax Type: Income Tax Acct. No. ##### Tax Years: 2006 Judge: Marshall
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Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

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 Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on November 18, 2009. Taxpayer is appealing the audit assessment for the 2006 tax year. The Division assessed additional tax in the amount of \$\$\$\$\$, \$\$\$\$\$ in penalties, and interest in the amount of \$\$\$\$\$, as of July 18, 2009.

APPLICABLE LAW

Utah Code Ann. §59-10-104(1) provides for the imposition of tax as follows in pertinent part:

[A] tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

Utah Code Ann. §59-10-104(1) (2006).

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(t) as follows:

(i) “Resident individual” means:

- (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
- (B) an individual who is not domiciled in this state but:

- (I) maintains a permanent place of abode in this state; and
 - (II) spends in the aggregate 183 or more days of the taxable year in this state.
- (ii) For purposes of Subsection (1)(t)(i)(B), a fraction of a calendar day shall be counted as a whole day.

Utah Code Ann. §59-10-103(1)(t) (2006).

Utah Code Ann. §59-10-112 defines “state taxable income” for purposes of Utah Code Ann. §59-10-104 as follows:

“State taxable income” in the case of a resident individual means the resident individual’s federal taxable income, as defined by Section 59-10-111, with the additions and subtractions required by Section 59-10-114.

Utah Code Ann. §59-10-112 (2006).

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.

Utah Code Ann. §59-10-111 (2006).

“Taxable income” 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...

26 U.S.C. 63 (1986, as amended).

For purposes of determining “taxable income” Section 61 of the Internal Revenue Code defines “gross income” as follows:

- (a) Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
 - (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
 - (2) Gross income derived from business;
 - (3) Gains derived from dealings in property;
 - (4) Interest;
 - (5) Rents;
 - (6) Royalties;
 - (7) Dividends;
 - (8) Alimony and separate maintenance payments;
 - (9) Annuities;

- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

26 U.S.C. 61 (1986, as amended).

Interest is assessed on the underpayment and nonpayment of tax under Utah Code Ann. §59-10-537, below:

- (1) If any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid. Interest under this subsection may not be paid if the amount thereof is less than \$1. If the time for filing of a return of tax withheld by an employer is extended, the employer shall pay interest for the period for which the extension is granted and may not charge such interest to the employee.

Utah Code Ann. §59-10-537 (2006).

Penalties are assessed for the late filing of returns and late payment of tax pursuant to Utah Code Ann. §59-1-401, below in pertinent part:

- (1) (a) The penalty for failure to file a tax return within the time prescribed by law including extensions is the greater of \$20 or 10% of the unpaid tax due on the return...
- (2) The penalty for failure to pay tax due shall be the greater of \$20 or 10% of the unpaid tax for:
 - (b) failure to pay any tax within 90 days of the due date of the return, if there was a late filed return subject to the penalty provided under Subsection (1)(a).

Utah Code Ann. §59-1-401 (2006).

Section 59-1-501(2) of the Utah Code provides that a taxpayer may file a petition for a redetermination of a deficiency:

A person may file a request for agency action, petitioning the commission for redetermination of a deficiency.

Utah Code Ann. §59-1-501(2) (2009).

The burden of proof is on the Petitioner, except in certain instances, as set forth in Utah Code Ann. §59-1-1417, below:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
 - (a) required to be reported; and
 - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

Utah Code Ann. §59-1-1417 (2009).

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.” Utah Code Ann. §59-1-401(13) (2009).

DISCUSSION

Taxpayer contends that the Commission lacks personal jurisdiction over him, as he is not within the class of person upon whom income tax has been imposed. He argued that the Division has the burden of proof to show that Taxpayer is subject to the income tax assessed under Title 59, Chapter 10 of the Utah Code. It is the Taxpayer’s position that the obligation to pay Utah tax is predicated on the requirement to file a federal return, and as he has determined he is not required to file a federal return, he is therefore not required to file a Utah state return.

Through the Affidavit of Material Facts submitted by Taxpayer with his Petition for Redetermination, and upon questioning from the Division, Taxpayer acknowledged that he is a resident of Utah, and was a resident of Utah in 2006. In 2006 the Taxpayer owned a home in Utah, registered his vehicles in the State of Utah, held a Utah driver license, and worked for both COMPANY A and the State of Utah. Taxpayer testified that he did not recall receiving W-2s, but believed the wages reported on the W-2s from COMPANY A and the State of Utah approximate the wages he received for his labor. Taxpayer further testified that the 1099-DIV from COMPANY B and the 1099-INT from the CREDIT UNION approximate other funds he received in 2006.

The Division provided copies of the following documents: Notice of Deficiency and Estimated Income Tax for the 2006 tax year, dated June 18, 2009; W-2 from COMPANY A showing \$\$\$\$\$ in wages; W-2 from the State of Utah showing \$\$\$\$\$ in wages; 1099-DIV from COMPANY B reflecting \$\$\$\$\$ in dividends; 1099-INT from the CREDIT UNION reflecting \$\$\$\$\$ in interest income; and Taxpayer's Petition for Redetermination.

The Division's representative argued that the State of Utah has authority to tax independently from the federal government. He stated that Utah Code Ann. §59-10-104 imposes a tax on resident individuals, and that Taxpayer was domiciled in the State of Utah during the tax year at issue. He argued that the Taxpayer is in the class of persons subject to tax under the authority of the Utah Constitution, enacted in Utah Code Ann. §59-10-104.

Tax Liability

Taxpayer contends he is not in the class of persons subject to tax under federal law; however, when questioned, he was unable to cite to specific authority. The State of Utah has independent taxing authority. Tax is imposed on the "state taxable income" of every "resident individual" under Utah Code Ann. §59-10-104. Taxpayer acknowledged that he was domiciled in the State of Utah during the 2006 tax year. It is reasonable to conclude that Taxpayer was a "resident individual" as defined in Utah Code Ann. §59-10-103 for the years at issue. "State taxable income" is determined from an individual's federal taxable income, less certain adjustments, and is defined as "federal taxable income" as defined in I.R.C. §63. *See* Utah Code Ann. §59-10-112 and §59-10-111. Section 63 of the Internal Revenue Code defines "taxable income" as "gross income" minus certain deductions. "Gross income" is defined as "all income from whatever source derived" and provides a list of examples, including compensation for services. *See* 26 U.S.C. §61 (1986, as amended). Taxpayer acknowledged that he received monetary compensation for services during the 2006 tax year. The Division provided evidence, including copies of W-2s and 1099s which show that the Taxpayer had income in the amount of \$\$\$\$\$ for 2006. Taxpayer had state taxable income for the 2006 tax year, and the tax deficiencies determined by the Division's audit should be sustained.

Penalties

Pursuant to Utah Code Ann. §59-1-401, penalties are assessed for the late filing of returns and late payment of tax, in the amount of 10% of the unpaid tax. According to the Division's audit, the Taxpayer had unpaid tax in the amount of \$\$\$\$\$ for the 2006 tax year. He was properly assessed penalties totaling \$\$\$\$\$. The Commission is granted the authority under Utah Code Ann. 59-1-401(13) to waive penalties upon a showing of reasonable cause. The Commission has promulgated Administrative Rule R861-1A-42, which outlines the

circumstances the Commission considers reasonable cause. As Taxpayer has not made any showing that reasonable cause exists for a waiver, the penalties assessed by the Division's audit should be sustained.

Interest

Pursuant to Utah Code Ann. §59-10-537, interest is assessed if tax is not paid on the due date. It has been determined that Taxpayer has a tax liability for the 2006 tax year. The Commission is granted the authority under Utah Code Ann. 59-1-401(13) to waive interest upon a showing of reasonable cause. The Commission has promulgated Administrative Rule R861-1A-42, which provides that for a waiver of interest, a taxpayer must show either a Tax Commission error, or that a Tax Commission employee provided erroneous information that resulted in the tax liability. The Taxpayer offered no testimony or other evidence that would support a waiver of interest; therefore, the interest assessed for the 2006 tax year should be sustained.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

The Commission sustains the audit assessment of income tax, interest, and penalties for the 2006 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

Michael J. Cragun

Appeal No. 09-2468

Commissioner

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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