

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 10-0046</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2006</p> <p>Judge: Marshall</p>
---	---

Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

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

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing on August 17, 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 2006 tax year. The Division issued a Statutory Notice of Deficiency and Audit Change on December 24, 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 residents of the State of Utah, set forth below in Utah Code Ann. §59-10-104¹:

...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:

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.

"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.

Taxable income is defined in §63 of the Internal Revenue, set forth below:

Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Section 59-1-402(5) of the Utah Code provides, "[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the 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."

DISCUSSION

The Division issued a Notice of Deficiency and Audit Change on December 24, 2009. The Division made two changes the Taxpayer's 2006 income tax return; the federal adjusted gross income was increased from \$\$\$\$\$ to \$\$\$\$\$, and the deduction for one-half of the federal tax liability was increased from \$\$\$\$\$ to \$\$\$\$\$.

Taxpayer does not dispute the tax liability, but that she should be responsible for the payment of the taxes. She stated that her now ex-husband operated a company building custom homes, and she did not work outside the home. She stated that towards the end of 2006 her ex-husband asked her to take money from her IRA account to pay money he owed to a subcontractor, and promised to pay it back by the end of the year. He also withdrew funds from his IRA account. Taxpayer testified that her husband instead took the money, and moved to STATE 1 with another woman. Taxpayer was unaware that there was any tax liability until notified by the IRS and the Tax Commission. She stated that her home went into foreclosure, and she is now living with her father and going to school full time. She provided her ex-husband's telephone number and P.O. Box, and asked the Commission to collect the amount due from him.

The Division's representative confirmed that the increase in income was from retirement distributions that were not reported. He argued that because the Taxpayer filed a joint return with her husband for the 2006 tax year, that they are jointly and severally liable for any outstanding tax liability.

There is no dispute as to the correctness of the audit assessment. Rather, Taxpayer is arguing that she cannot afford to pay the assessment, she should not be liable for the payment, and further that the liability should be collected from her ex-husband. Pursuant to Utah Code Ann. §59-10-503, the Taxpayer and her ex-husband are jointly and severally liable for the audit assessment because they filed a joint return. Under the circumstances, the Commission sustains the tax deficiency of the audit assessment.

Taxpayer has indicated she is experiencing financial hardship. The Commission generally does not consider financial hardship as grounds for relief from tax liability through the appeals process. However, the Commission has established the "Offer in Compromise" program in the event that a taxpayer is experiencing financial hardship and does not have the ability to pay any unpaid portion of tax, penalty, and interest. The Commission does not know whether Taxpayer qualifies for the Offer in Compromise program, she would need to contact the Taxpayer Services Division directly at (801) 297-7703.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that sufficient cause has not been shown to justify a reduction in tax liability or a waiver of the interest associated with Taxpayer's Income Tax Filing for the 2006 tax year. The Commission sustains the audit assessment. 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

Appeal No. 10-0046

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.

JM/10-0046