

10-0481
INCOME
TAX YEAR: 2006
SIGNED: 05-11-2011
COMMISSIONERS: B. JOHNSON, D.DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-0481 Account No. ##### Tax Type: Income Tax Tax Year: 2006 Judge: Marshall
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Presiding:
 Jan Marshall, Administrative Judge

Appearances:
 For Petitioner: PETITIONER 1 *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 in accordance with Utah Code Ann. §59-1-502.5, on November 17, 2010. 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 February 9, 2010. The amount of the deficiency was \$\$\$\$ in tax and \$\$\$\$ in interest through March 11, 2010. 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 as provided in this section

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.

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 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. §59-10-111 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, as defined in §63 of the Internal Revenue Code, is 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.”

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The facts in this matter are not in dispute. In 2005 Taxpayer received a relocation bonus in the amount of \$\$\$\$\$, which he reported as income on his return for the 2005 tax year. In 2006 Taxpayer was required to repay \$\$\$\$\$ of that bonus. Taxpayer followed the instructions in IRS Publication 525, and claimed a credit of \$\$\$\$\$ on his federal return for the repayment. On his Utah return, the Taxpayer took an equitable adjustment on Line 13, \$\$\$\$\$ of which was attributable to the repayment. The Division audited the Taxpayer’s 2006 income tax return, disallowing the equitable adjustment amount of \$\$\$\$\$.

The Taxpayer argued that he should not be required to pay income tax on money that he had not earned. He provided copies of documentation showing that he was required to repay the \$\$\$\$\$, the cancelled check, his state and federal returns for the 2006 tax year, and calculations for the credit taken on his 2006 federal income tax return. The Taxpayer also stated that in taking the equitable adjustment, he was following the advice given to him by a Tax Commission employee. He indicated that he called the Tax Commission prior to filing his return for the 2006 tax year and was told to claim an equitable adjustment. The Taxpayer noted this on his explanation attached to his Utah individual income tax return.

The Division's representative argued that because of Taxpayer's treatment of the repayment on his federal return, he is not entitled to an equitable adjustment on his state return. He stated that Utah Code Ann. §59-10-115 allows for an equitable adjustment if a taxpayer received a double tax benefit or suffered a double tax detriment. The Division's representative stated, and Taxpayer agrees, that he is not being taxed twice on the same income. The Division's representative argued that under statute, Utah income tax is based on a taxpayer's federal adjusted gross income, and that by taking a credit rather than a deduction on his federal return, the Taxpayer gave up his option of reducing his state income. He cited to a prior Commission decision (Appeal no. 09-2968) that disallowed an equitable adjustment under similar circumstances. With regard to the Taxpayer's assertion he was given erroneous information from the Tax Commission, the Division's representative stated they had nothing to dispute that claim. He argued that even if the information was given, it was incorrect and Taxpayer owes the tax liability.

Taxpayer is asking for an equitable adjustment on his Utah return of the amount he repaid in 2006. Utah Code Ann. §59-10-115 allows for "an adjustment to federal taxable income of a taxpayer if the taxpayer would otherwise: (a) receive a double tax benefit under this part; or (b) suffer a double tax detriment under this part." Upon review of the facts in this matter, the income was included in the Taxpayer's federal adjusted gross income and taxed only once, in 2005. Taxpayer repaid the money in 2006, and is thus being taxed on income he was not able to retain. Taxpayer argues it is unfair to tax him on funds he had to repay. However, Taxpayer is not being taxed twice on the income, even if he paid the audit deficiency, and thus does not qualify for an equitable adjustment under Utah Code Ann. §59-10-115. "State taxable income" is specifically defined in Utah Code Ann. §59-10-112 as federal taxable income with certain statutory adjustments. The Taxpayer had the option, under federal law, to itemize his deductions and claim the repayment. Had he done so, it would have flowed through to the state return. Instead, Taxpayer elected to take the credit because it was more advantageous on his federal return. The statutory provisions do not allow the Taxpayer to pick different approaches on his state and federal returns to provide for the most advantageous treatment on each. The tax treatment must be consistent between the federal and state returns, thus the tax assessed as part of the audit should be sustained.

Taxpayer has argued that he was provided erroneous information by a Tax Commission employee regarding the ability to claim an equitable adjustment. While this is not grounds for relief from the tax liability, it may be grounds for a waiver of the assessed interest. With regard to the waiver of interest, Rule R861-1A-42 specifically provides, "[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." In order to be granted a waiver based on a verbal communication, a taxpayer must clearly document the date, time, and name of the employee who provided the

erroneous information. Taxpayer did not have the name of the employee he spoke with, the “explanation” attached to his return dated February 12, 2007 indicates he spoke with an employee that morning. It is unclear what information the Taxpayer provided to the Tax Commission employee when asking about the equitable adjustment. However, the Division acknowledged that it appeared the Taxpayer was given erroneous information, and they had nothing to dispute that. Under the circumstances, it appears to be reasonable to waive the interest assessed on the audit.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the tax assessment, and waives the interest assessed on the audit through the date this order becomes final. 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 _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner