

10-1214
INCOME
TAX YEAR: 2005
SIGNED: 03-21-2011

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. 10-1214 Account No. ##### Tax Type: Income Tax Year: 2005 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2, Taxpayer
For Respondent: RESPONDENT REP., from 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 14, 2011.

Jason and PETITIONER 2 (“Petitioners” or “taxpayers”) have appealed Auditing Division’s (the “Division”) assessment of individual income tax for the 2005 tax year. On March 18, 2010, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) for the 2005 tax year, in which it imposed additional taxes and interest (as of April 17, 2010), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$\$	\$\$\$\$\$

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The Division imposed its assessment based on information showing that the Internal Revenue Service (“IRS”) increased the taxpayer’s 2005 federal adjusted gross income (“FAGI”) by \$\$\$\$\$. The \$\$\$\$\$ relates to income that COMPANY 1 reported for 2005 that was omitted from the taxpayers’ federal return.

The taxpayers explain that they hired COMPANY 2 to prepare their 2005 tax returns. They state that COMPANY 2 made a mistake by leaving the COMPANY 1 income off of their 2005 federal and Utah returns. They assert that COMPANY 2 fixed the mistake on the federal level. They also assert that COMPANY 2 paid the federal assessment because they had purchased a plan where COMPANY 2 would be financially responsible for any additional taxes due to mistakes made by COMPANY 2. The taxpayers state that they have alerted COMPANY 2 of the need to correct the mistake on the state level and to pay the Division’s assessment, but that COMPANY 2 has refused to do so. For these reasons, the taxpayers do not believe that they should be responsible to pay the state assessment. As they have already paid the Division’s assessment for 2005, they ask the Commission to refund the amounts they paid.

APPLICABLE LAW

Utah Code Ann. §59-10-112 (2005)¹ 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 (2005) defines “federal taxable income” to mean “taxable income as currently defined in Section 63, Internal Revenue Code of 1986.”

UCA §59-1-1417 (2010) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

- 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;

¹ UCA §§59-10-111 and 59-10-112 were repealed in 2007. The definitions in these sections are now found in UCA §59-10-103. The 2005 version of the Utah law is cited, unless otherwise indicated.

- (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.

DISCUSSION

The Division has proffered evidence showing that the IRS increased the taxpayers' 2005 FAGI by \$\$\$\$\$, which led to the Division's assessment. The taxpayers have provided no evidence to show that the IRS's action to increase their 2005 FAGI is incorrect. In fact, they admit that the income was erroneously left off of their federal and state returns and that their state return has not been amended to correct the problem. Even if the taxpayers have a cause of action against COMPANY 2 to pay the state assessment, it would not change the fact that the Division's assessment is correct. Accordingly, the Division's assessment should be sustained in its entirety.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment in its entirety. 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

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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

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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