

12-2967
TAX TYPE: INCOME TAX
TAX YEAR: 2008
DATE SIGNED: 3-31-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2, Petitioners, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2967</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2008</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, By Telephone Conference Call
For Respondent: RESPONDENT-1, Manger, Income Tax Auditing
RESPONDENT-2, Senior Auditing
RESPONDENT-3, Bankruptcy Department, Taxpayer Services
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 7, 2014 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) are appealing Respondent’s (“Division”) decision to disallow a 2008 Amended Utah Individual Income Tax Return. The Division had disallowed the return by letter dated November 16, 2012. The Division explains in the letter that the amended return cannot be accepted as it does not include the adjustments on a previous Notice of Deficiency and Audit Change. The Division had previously, on June 8, 2011, issued a Notice of Deficiency and Audit Change for the 2008 tax year. The Taxpayers had not filed an appeal of the Notice of Deficiency and so that became the final determination for the 2008 tax year.

APPLICABLE LAW

State taxable income is defined in Utah Code §59-10-104(1) (2008)¹ as follows:

For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.

State taxable income is defined in Utah Code Sec. 59-10-103(1)(w) (2008) as follows:

“Taxable income” or “State taxable income”: (i) subject to Section 59-10-1404(3), for a resident individual, means the resident individual’s adjusted gross income after making the: (A) additions and subtractions required by Section 59-10-114; and (B) adjustments required by Section 59-10-115 . . .

“Adjusted gross income” is defined in Utah Code Sec. 59-10-103(1)(a) (2008) as follows:

“Adjusted gross income”: (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(13) 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.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

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

DISCUSSION

Although there had been an audit and a tax deficiency issued for the Taxpayers’ 2008 Utah Individual Income Tax, the audit itself is not the subject of this appeal. The audit was issued on June 8, 2011, and was not appealed by the Taxpayer. In the audit, the Division disallowed a medical savings account credit in the amount of \$\$\$\$ claimed by the Taxpayers on

1 The Commission applies the law in effect during the audit.

the return that they had filed. There were a few additional minor changes including increasing the federal adjusted gross income from \$\$\$\$\$, the amount claimed by the Taxpayers on their return, to \$\$\$\$\$. The audit resulted in increased tax of \$\$\$\$\$ plus interest, mostly due to the disallowance of the credit. The Taxpayers did not appeal the audit and at this hearing agree that the \$\$\$\$\$ credit was claimed in error on their part.

The Taxpayers' had claimed \$\$\$\$\$ in federal adjusted gross income on their Utah return for the 2008 year. After the audit and realizing the error with the \$\$\$\$\$ credit, the Taxpayers filed an amended Utah return on July 29, 2011. On this return they claimed \$\$\$\$\$ in federal adjusted gross income. The Division did not accept this return as it disagreed with the audit as well as the federal transcripts reporting what the IRS had shown as federal adjusted gross income. It is unclear whether the Taxpayers filed an amended federal return at this time, which would have been within the statute of limitations for filing an amended 2008 return for both state and federal purposes. However, the federal transcripts which were provided by the Division at this hearing show a "Duplicate return filed" on August 8, 2011. The Taxpayers filed another amended Utah return on June 14, 2012, which was denied by the Division by letter that is the subject of this appeal. The Taxpayers also filed another amended Utah return on September 21, 2013, this one claiming \$\$\$\$\$ in federal adjusted gross income.

The Taxpayer explained at the hearing that he did submit amended federal returns. He provided a copy of an amended federal return which was not signed or dated so it is unclear when it was submitted. This return indicated \$\$\$\$\$ in federal adjusted gross income. The IRS transcripts show in addition to the "duplicate return" an amended return filed on February 26, 2012 and March 30, 2012, which the Division thought would have been within the IRS's statute of limitations. The transcripts then show an amended return filed on June 18, 2012. The Taxpayers did provide a copy of a letter from the Internal Revenue Service, dated August 24, 2012. In this letter it indicates a 1040X was filed on June 18, 2012 for the 2008 tax year. The letter stated the IRS had disallowed this claim and the reason provided was that it had been filed more than 3 years after the Taxpayers had filed their tax return.

The Division provided a copy of the current IRS transcripts and on the transcripts it showed federal adjusted gross income of \$\$\$\$\$, the amount the Division had used for its audit. This indicated that the IRS had not accepted the lower federal adjusted gross income claimed by the Taxpayers on the amended returns.

At this hearing the Taxpayer argued that their federal adjusted gross income should be reduced to \$\$\$\$\$ for purposes of determining their state tax liability. This was \$\$\$\$\$ less than the amount the IRS has on its transcripts. It was also a different amount than what had been

claimed on the various amended Utah returns. The Taxpayer argued the difference was due to an increase by \$\$\$\$\$ in the itemized deductions, a \$\$\$\$\$ rollover of funds from a 401K to an IRA and futures contracts, an amount of \$\$\$\$\$ deduced from bad debt removed by a bankruptcy and \$\$\$\$\$ added in additional debt relief. The Taxpayer did not provide at the hearing receipts of evidence to support that the \$\$\$\$\$ was a qualified rollover of funds or to the debt relief reduction.

Reviewing what was submitted by the parties, the Taxpayers did not provide evidence at the hearing to support the lower federal adjusted gross income. Further, it is apparent that the Taxpayer had filed several amended returns with the IRS prior to the expiration of the statute of limitations and the IRS never reduced the federal adjusted gross income based on those filings. The letter from the IRS indicating the filing was past the statute of limitations for amended returns applied to the final filing on June 18, 2012.

It was the Division's position that the Utah taxable income is based on the federal taxable income as defined at Utah Code Sec. 59-10-103. The Division's representative pointed out that the audit was based on the same federal adjusted gross income as indicated in the current IRS transcripts. It was the Division's position that, based on the federal transcripts, the IRS had not accepted the amended federal returns filed by the Taxpayer. The Division argued that the Commission should not accept the Taxpayers' amended state returns with a lower federal adjusted gross income.

The Tax Commission generally gives deference to the IRS in determining federal taxable income for purposes of the Utah income tax filing which is based on the federal taxable income by statute. The Commission has found in limited circumstances that it would consider making an independent determination regarding a person's federal taxable income.² Generally, this occurs if the person had failed to appeal an IRS audit administratively or with amended filings, due to failing to meet deadlines or other procedural issues, and if it was clear that the IRS' determination was in error. In this case it is apparent that the Taxpayer had filed amended returns within the statute of limitations but the returns were not accepted by the IRS. Therefore, it appears the matter was reviewed and rejected by the IRS.

The Taxpayers have the burden of proof under Utah Code Sec. 59-1-1417(1). Given that it appears the Taxpayers filed amended returns with the lowered federal adjusted gross income and the IRS did not accept the Taxpayers' amended returns, it is not sufficient for the Taxpayers to assert a different federal adjusted gross income as it is not clear that the IRS'

² See Tax Commission decisions issued in *Utah State Tax Commission Appeal Nos. 07-0365, 06-1408, 07-1036, 03-0510 & 03-0586*. These and other Tax Commission decisions are available in a redacted format at tax.utah.gov/commission-office/decisions.

determination was in error. The Taxpayers have not shown that the federal adjusted gross income determined by the IRS was erroneous and the Taxpayers' appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayers' appeal. 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.