

13-1126  
TAX TYPE: INCOME TAX  
TAX YEAR: 2006 and 2008  
DATE SIGNED: 6-2-2015  
COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN  
EXCUSED: R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 13-1126  Account No. ##### Tax Type: Income Tax Tax Year: 2006 and 2008  Judge: Marshall
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Jan Marshall, Administrative Judge

**Appearances:**

For Petitioner: TAXPAYER-1, Pro Se  
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assitant Attorney General  
RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 22, 2015, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Utah State Tax Commission is the Petitioner's ("Taxpayer") appeal of income tax audit deficiencies issued for the 2006 and 2008 tax years.
2. Taxpayers filed resident returns for the years at issue. Taxpayers do not contend that they were not Utah residents during the years at issue, nor did the Taxpayers dispute that they had a tax liability to the State of Utah. (Exhibits 15-26).

3. Taxpayer prepared the returns himself using tax preparation software, and he noted that the software does a “check” and warns of any potential issues, and the returns passed the software “check”.
4. The Respondent (“Division”) issued Notices of Deficiency on March 19, 2013. For the 2006 year, the Taxpayers were assessed tax in the amount of \$\$\$\$ and interest in the amount of \$\$\$\$ through April 18, 2013. For the 2008 tax year, Taxpayers were assessed tax in the amount of \$\$\$\$\$, and interest in the amount of \$\$\$\$ through April 18, 2013. (Exhibits 1-10).
5. For the 2006 tax year, the Division increased the Federal Adjusted Gross Income from \$\$\$\$ to \$\$\$\$\$, reduced itemized deductions from \$\$\$\$ to \$\$\$\$\$, and increased the deduction for one-half of the federal tax from \$\$\$\$ to \$\$\$\$\$. These changes were the result of additional tax assessed by the IRS on May 7, 2012 to the Taxpayers’ federal income tax return. (Exhibits 1-5 and 11-12).
6. For the 2008 tax year, the Division decreased the Taxpayer’s itemized deductions from \$\$\$\$ to \$\$\$\$\$. This change was the result of additional tax assessed by the IRS on May 7, 2012. (Exhibits 6-10 and 13-14).
7. Taxpayers contend that the assessment of additional tax by the IRS was in error, and that the itemized deductions, which were attributable to business expenses, should have been allowed as claimed on their returns.
8. The Taxpayers provided documentation to the IRS, though some of their documentation was unavailable as a hard drive containing some of their records was damaged in a move from STATE to Utah. Taxpayers did not provide any supporting documentation of the claimed itemized expenses at the hearing.
9. Taxpayers’ disputed the IRS assessment for more than two years, had four meetings with an IRS agent, at a cost of \$\$\$\$.
10. The Taxpayers contested the IRS agent’s findings, but eventually ended up paying the IRS assessment based on an agreement, though they believe that they should not owe the tax.
11. Taxpayers did not file amended Utah returns within 90 days of the May 7, 2012 IRS assessment of additional tax, to reflect the increase in federal adjusted gross income by the IRS.
12. Taxpayers argued that the Division’s audit is beyond the statute of limitations. He stated that because they have not owned property or lived in Utah for a number of years, and have no interest in returning to Utah, the audit assessment is not fair.

APPLICABLE LAW

Under Utah Code Ann. §59-10-104, “a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...”<sup>1</sup>

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(t)(i)<sup>2</sup> as follows:

- (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 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.

Utah Code Ann. §59-10-112<sup>3</sup> provides 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.

“Federal taxable income” is defined in Utah Code Ann. §59-10-111 as “taxable income as currently defined in Section 63, Internal Revenue Code of 1986”.

“Taxable income” is defined in §63 of the Internal Revenue Code, 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).

A taxpayer is required to notify the Commission of any changes to their federal return, in accordance with Utah Code Ann. §59-10-536(5), as follows:

- (a) If a change is made in a taxpayer’s net income on his or her federal income tax return, either because the taxpayer has filed an amended return or because of an action by the federal government, the taxpayer must notify the commission within 90 days after the final determination of such change. The taxpayer shall file a copy of the amended federal return and an amended state return which conforms to the changes on the taxpayer’s federal income tax return which do not affect state tax liability.

The Commission is limited in the amount of time to assess a deficiency after changes are made to a taxpayer’s federal return, under Utah Code Ann. §59-10-536(5), below:

- (b) The commission may assess any deficiency in state income taxes within three years after such report or amended return was filed. The amount of such assessment of tax shall not exceed the amount of the increase in Utah tax attributable to such federal change or correction. The provisions of this Subsection (b) do not affect the time within which or the amount for which an assessment may otherwise be made.

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<sup>1</sup> The Commission cites to the 2006 version of the Utah Code, unless otherwise noted.

<sup>2</sup> For the 2008 tax year, this definition is found in Subsection (1)(q).

<sup>3</sup> For the 2008 tax year, this definition was moved to Utah Code Ann. §59-10-103(1)(w) and revised to mean “adjusted gross income” after certain additions and subtractions.

However, if the taxpayer fails to report to the commission the correction specified in this Subsection (b) the assessment may be made at any time within six years after the date of said correction.

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...”

#### CONCLUSIONS OF LAW

- A. The Division’s audit assessment was timely. The Taxpayers did not file an amended Utah return within 90 days of the IRS assessment, as required in Utah Code Ann. §59-10-536(5)(a). The IRS assessed additional tax for the years at issue on May 7, 2012. The Taxpayer should have filed an amended Utah return by August 6, 2012<sup>4</sup>, but failed to do so. Because the Taxpayer failed to file an amended return, the Division had six years to issue a Notice of Deficiency, under Utah Code Ann. §59-10-536(5)(b). The Division issued its Notices of Deficiency on March 19, 2013, well within the six year period allowed.
- B. Taxpayers were properly assessed tax under the audit. Taxpayers filed full-year resident returns, and were “resident individual” subject to tax under Utah Code Ann. §59-10-104 for the years at issue. Taxpayers’ taxable income was increased as a result of the IRS disallowing itemized deductions for the years at issue. Taxpayers disputed the disallowed deductions with the IRS, and met with the IRS agents; however, the IRS determined the Taxpayers were not entitled to the deductions. Taxpayers failed to provide any evidence at the hearing that would support the deductions.
- C. Interest was properly assessed for the 2006 and 2008 tax years. Pursuant to Utah Code Ann. §59-10-537, interest is assessed if tax is not paid on the due date of the return. It has been determined that Taxpayers have a tax liability for both the 2006 and 2008 tax years. 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

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<sup>4</sup> Sunday, August 5, 2012 is 90 days from the May 7, 2012. However, because the 90<sup>th</sup> day fell on a Sunday, the Taxpayer had until Monday, August 6, 2012 to file.

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 Taxpayers did not provide any evidence that a Tax Commission employee provided them with erroneous information, or that the Tax Commission took inappropriate action.

Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessments for the 2006 and 2008 tax years. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.