

13-1837

TAX TYPE: INCOME TAX

TAX YEAR: 2005

DATE SIGNED: 10-27-2014

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

vs.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 13-1837

Tax Type: Income Tax

Tax Year: 2005

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 29, 2014 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Taxpayer”) is appealing an audit deficiency assessed against her for the 2005 tax year. The Notice of Deficiency and Audit Change had been issued by Respondent (“Division”) on July 9, 2013. In the audit, the Division had changed the Taxpayer’s filing status from “Head of “Household” to “Married Separate” and increased the Taxpayer’s federal adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$. This resulted in additional tax in the amount of \$\$\$\$\$ and interest as of the date of the Notice of Deficiency in the amount of \$\$\$\$\$.¹ No penalties were assessed with the audit.

APPLICABLE LAW

Under Utah Code §59-10-104 (2005),² “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 Interest continues to accrue on the unpaid balance.

² The Code has been revised and renumbered since the tax years at issue. The Commission applies the substantive provisions that were in effect during the audit years.

Federal taxable income is defined in Utah Code Sec. 59-10-111 (2004) as follows:

"Federal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.

Relevant provisions for spouses filing joint or separate returns are found at Utah Code Sec. 59-10-503(1)(b), which provides the following:

If the federal income tax liability of husband or wife is determined on a separate return for federal income tax purposes, the income tax liability of each spouse shall be determined on a separate return under this chapter.

Interest is assessed pursuant to Utah Code Sec. 59-1-402(5) as follows:

Interest on any underpayment, deficiency or delinquency of any tax or fee administered by the tax 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.

In a hearing before the Commission the burden of proof is set by Utah Code Sec. 59-1-1417(1) as follows:

In a proceeding before the Commission, the burden of proof is on the petitioner . . .

DISCUSSION

The Taxpayer is appealing the Division's action to change her Utah filing status from "Head of Household" to "Married Separate". It was her position that she was entitled to file as "Head of Household" for 2005. She and her spouse had separated in April 2005. She says her spouse had lost his job, their house was foreclosed and he moved out of state at that time. They had two children and she proffered that the younger one stayed with her in Utah and she provided the support for herself and this child. She had claimed this child as an exemption on her federal return for 2005. The older child had moved out of state with his father. The Taxpayer provided the following definition of "Head of Household" which she cited as being from Internal Revenue Code Sec 7703(b), Publication 501.

A Taxpayer may be considered as if he or she is unmarried for the purpose of qualifying for head of household status. To be considered unmarried, the taxpayer needs to be legally married and has lived in a separate residence from

his or her spouse for at least the last six months of the year (July through December). Furthermore, the taxpayer would need to file a tax return separate from his or her spouse, would need to provide for more than half the cost of maintaining a home for himself or herself, and would need to have a child, stepchild or foster-child residing at his or her home for more than half the year.

It was the Taxpayer's position that she met all the requirements for head of household. She states that after the home was foreclosed on she moved in the spring of 2005 into the APARTMENTS at ADDRESS, CITY and was the sole provider, maintaining a household for herself and child for more than the last half of 2005. The Taxpayer explained that she had not filed state or federal income tax returns timely for the 2005 tax year due to it being such a tough year. When she did get her federal return filed it was not until 2009 and she ended up getting a federal refund in the amount of \$\$\$\$\$, even though she had filed "Married Separate." She states that she thought she would not owe any taxes to the state of Utah and so did not prepare a Utah return until 2010 or 2011. At that time she realized she could have claimed Head of Household on her filing, so that is how she filed her Utah Return. After the audit, in November 2013, the Taxpayer did try to file an amended federal return for 2005 to claim Head of Household on that return. The IRS sent her a notification dated January 27, 2014, stating that it disallowed her filing. The reason stated by the IRS was, "You filed your claim more than 3 years after you filed your tax return." The Taxpayer did provide documentation of a Decree of Divorce being entered on May 15, 2006.

The Division argued that because her filing with the IRS had been "Married Separate" the status on her state filing should be the same. Because the IRS had not changed the status, the Division requested that the audit be upheld. The Division's representative also questioned whether the Taxpayer would have qualified under Federal Law, but he provided no information to contradict the Taxpayer's facts and representation of Federal Law. He did note that the Taxpayer had filed federal returns as "Head of Household" for the years 2006 and 2007. It was the Division's position that the Taxpayer had the burden of proof in this matter under Utah Code Sec. 59-1-1417 and had not met that burden.

The Commission has previously made an independent review separate from the IRS of a taxpayer's filing status.³ Although, the Commission generally gives deference to IRS audit decisions, this is a different situation because the Taxpayer's filing status did not result from a federal audit, it was instead a filing on her part, which she concluded later she had made in error.

³ See *Utah State Tax Commission Initial Hearing Order, Appeal No. 08-0515* (May 2009). These and other decisions from the Tax Commission may be found in a redacted format at tax.utah.gov/commission-office/decisions.

The Taxpayer has been unable to have the matter reviewed by the IRS because of statute of limitations. These facts make it similar to those in prior Tax Commission decisions where the Tax Commission reviewed the information independently from what was shown on the IRS transcripts.⁴

Neither side provided a copy of IRS Publication 501 from the 2005 tax year. This publication is available on line at www.irs.gov. Qualifications for “Head of Household” status are found at pages 7-8 of that publication. The publication provides, “You may be able to file as head of household if you meet all of the following requirements. 1. You are unmarried or “considered unmarried” on the last day of the year. 2. You paid more than half the cost of keeping up a home for the year. 3. A “qualifying person” lived with you in the home for more than half the year . . .” It goes on to explain what “considered unmarried” meant as well as “qualifying person.” Based on these definitions and the facts as explained by the Taxpayer, despite that she was not yet divorced, she met the definition of “considered unmarried” because she filed a separate return, paid more than half the cost of keeping up her home, the spouse did not live with her for the last 6 months of the year, the home was the main home of herself and child and she could claim the child as an exemption. Additionally the child would appear to be a “qualifying person.”

The Taxpayer did not provide much documentary evidence at the Initial Hearing, but she did proffer testimony that was unrefuted. The testimony was also corroborated by the Divorce Decree entered about one year after the Taxpayer stated she and her spouse had separated, as well as the fact that she had filed as “Head of Household” for the two subsequent years. Additionally, the evidence did show that she tried to file an amended federal return to claim “Head of Household” and it was denied by the IRS because it had been filed after the limitations period. The information is sufficient to meet the Taxpayer’s burden of proof regarding the Head of Household status.

Jane Phan
Administrative Law Judge

⁴ See *Utah State Tax Commission Initial Hearing Order, Appeal No. 11-827* (July 2012); *Utah State Tax Commission Initial Hearing Order, Appeal No. 08-1313* (March 2009); and *Utah State Tax Commission Order, Appeal No. 06-1408* (November 2007).

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayer qualified as “Head of Household” for the 2005 tax year and orders the audit to be adjusted on that basis. 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.

John L. Valentine
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.