

14-1061
TAX TYPE: INCOME TAX
TAX YEAR: 2010
DATE SIGNED: 7-10-2015
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 14-1061 Account No. ##### Tax Type: Income Tax Year: 2010 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-2, Taxpayer
For Respondent: RESPONDENT, 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 16, 2015.

TAXPAYER-1 and TAXPAYER-2 (“Petitioners” or “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of additional Utah individual income tax for the 2010 tax year. On March 13, 2014, the Division issued a Notice of Deficiency and Estimated Income Tax to both taxpayers, in which it imposed additional tax, penalties, and interest (calculated as of April 12, 2014),¹, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue until any tax liability is paid.

On the Statutory Notice, the Division stated that the filing status the taxpayers claimed on their 2010 Utah income tax return was incorrect and that it had changed it to a “married joint” status. The Division proffered an Internal Revenue Service (“IRS”) transcript of the taxpayers’ 2010 account, which showed their filing status for federal purposes to be “married filing joint.”

TAXPAYER-2 explained that she and her husband initially filed their 2010 tax returns with a married filing joint status based on advice she originally received from her “first accountant.” TAXPAYER-2 explained, however, that this accountant subsequently told her she could file her 2010 returns with a head of household status because she and her husband had lived in separate homes during 2010.² TAXPAYER-2 stated that in 2012, pursuant to this advice, she filed amended 2010 returns with a head of household status and that her husband filed amended 2010 returns with a single filing status.

TAXPAYER-2 explained that after she filed her federal amended head of household return, the IRS sent her a letter dated May 14, 2012, in which it asked her to send information in support of her amended return.³ TAXPAYER-2 stated that upon receiving the IRS’s May 14, 2012 letter, she called the IRS and was told that she could not amend a married filing joint return to a head of household return. She stated that upon hearing this verbal claim, she did not send any of supporting information the IRS had requested in the letter.

TAXPAYER-2 stated that a year or two after she and her husband filed 2010 amended returns, she spoke to a “second accountant,” who also advised her that she could file amended 2010 returns with a head of household status. It appears that she contacted the IRS again around early 2014 about this issue, because the IRS sent the taxpayer a letter dated June 6, 2014, in which it stated:

On May 14, 2012, we asked you to send supporting information for your amended tax return for the tax period ending Dec. 31, 2010. We cannot process your claim because we did not

2 TAXPAYER-2 explained that she and her husband lived in separate homes for all of 2010 because he moved out of their home in October 2009.

3 TAXPAYER-2 stated that she could not find a copy of this letter to proffer as evidence. Had this letter been available, it may have shown what supporting information the IRS needed to accept her amended 2010 federal return.

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receive your supporting information. If you wish to use your appeal rights, you must first pay the tax you owe.

TAXPAYER-2 elected not to pay the tax and file an appeal with the IRS.

TAXPAYER-2 stated that in early 2015, she spoke to the second accountant again and told him about the IRS's verbal claim that once she and her husband filed a 2010 federal return with a married filing joint status, she could not submit an amended return with a head of household status. She stated that the second accountant did some research and concluded that the IRS's verbal claim was correct and that she was no longer entitled to file an amended 2010 federal return with a head of household status. TAXPAYER-2 stated, however, that she has no idea what information her second accountant was reviewing when he reached this conclusion. Because of the advice she received from her first accountant, TAXPAYER-2 believes that she qualifies to file her 2010 tax returns with a head of household status separate from her husband. For these reasons, she asks the Commission to reverse the Division's assessment.

The Division contends that the taxpayers' filing status for Utah income tax purposes must match their federal filing status as reflected on IRS records. As previously mentioned, the IRS transcript of the taxpayers' 2010 account still shows their filing status to be "married filing joint." The transcript confirms TAXPAYER-2 statement that in 2012, she filed an amended 2010 return. However, the transcript also shows that the IRS did not accept TAXPAYER-2 amended return that she filed with a head of household status. For these reasons, the Division asks the Commission to sustain its assessment, which is based on the taxpayers' having a married filing joint status for Utah tax purposes.

Nevertheless, the Division stated it is unclear whether TAXPAYER-2 was given correct advice when she telephoned the IRS and was verbally told that she could not file an amended return with a head of household status after first filing an original return with a married filing joint status. On the one hand, the Division proffered that a federal tax regulation provides that "[f]or any taxable year with respect to which a

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joint return has been filed, separate returns shall not be made by the spouses after the time for filing the return of either has expired.” 26 CFR §1.6013-1(a)(1). Given this regulation, the Division stated that it appears that TAXPAYER-2 would have had until April 15, 2014 (i.e., three years after the April 15, 2011 date a 2010 federal return is due) to file an amended federal return with a head of household status. The Division stated that it appears that TAXPAYER-2 met this deadline because the IRS transcript shows that she filed her 2010 amended federal return in March 2012.

On the other hand, the Division refers the Commission to the 2010 version of IRS Publication 501, Exemptions, Standard Deduction, and Filing Information (“Publication 501”). The publication provides guidance concerning filing status. For head of household filing status (page 7), it provides that a taxpayer may be able to file as head of household if he or she meets three 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 (except for temporary absences, such as school). If the “qualifying person” is your dependent parent, he or she does not have to live with you. . . .

The Division points out that the publication provides a list of five tests that must be met in order to meet the first requirement listed above, specifically the requirement of whether a married person is “considered unmarried.” One of these five tests is that “[y]ou file a separate return[.]” The Division stated that this could be interpreted to mean that a person is *not* considered unmarried for purposes of qualifying for head of household status if that person first files a joint return.

Regardless of whether TAXPAYER-2 was entitled to file a 2010 amended federal return with a head of household status, the Division states that the IRS has not accepted her amended federal return and still shows both taxpayers’ 2010 status as married filing joint. As a result, the Division asks the Commission to find that TAXPAYER-2 was not entitled to file a separate 2010 amended Utah return with a head of household status and to sustain its assessment.

APPLICABLE LAW

Utah Code Ann. §59-10-103 (2010)⁴ defines “adjusted gross income” and “taxable income” or “state taxable income,” as follows:

- (1) As used in this chapter:
 - (a) "Adjusted gross income":
 - (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or
 -
 - (f) “Federal taxable income”:
 - (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or
 -
 - (w) "Taxable income" or "state taxable income":
 - (i) . . . 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;
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UCA §59-1-1417 (2014) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

- (1) 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:
 - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) 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
 - (c) 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:
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.
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4 The 2010 version of Utah law is cited in the decision, unless otherwise indicated.

DISCUSSION

Pursuant to Section 59-1-1417, the taxpayers have the burden of proof in this matter. As a result, TAXPAYER-2 has the burden to show that she qualifies to file her 2010 Utah return with a head of household status. The Utah Individual Income Tax TC-40 Forms & Instructions booklet for 2010 (p. 5) provides that “[i]f you filed a joint federal return, you must file a joint Utah return.” In addition, the IRS transcript for the taxpayers’ 2010 account shows their status for federal tax purposes to be “married filing joint.” Accordingly, if the taxpayers’ married filing joint status as shown on IRS records is correct, they are required to file a joint Utah return, and TAXPAYER-2 cannot file a separate Utah return with a head of household status.

The Commission generally gives deference to the federal tax determinations made by the IRS as it is the expert in this area. Nevertheless, the Commission has, on occasion, independently reviewed a petitioner’s evidence instead of relying on IRS records where the petitioner was unable to contest the matter at the IRS, generally in situations where a federal deadline had expired and it was too late for the IRS to consider the matter.⁵

However, even if an independent review of TAXPAYER-2 2010 filing status were appropriate in this case, the taxpayers did not provide sufficient information to show that TAXPAYER-2 qualifies for head of

⁵ One such case is *USTC Appeal No. 06-1408* (Initial Hearing Order Nov. 5, 2007). In that case, the petitioner had been told that the IRS considered the federal matter final and closed, and the petitioner proffered documentation showing that the IRS’s revised FAGI was incorrect. Given these circumstances, the Commission reversed the Division’s assessment, stating that:

The Utah Code sections specify that state taxable income is federal taxable income **as defined in the Internal Revenue Code**, (sic) they do not tie the state taxable income to the federal taxable income **as determined by the IRS**. Certainly the Tax Commission will give great deference in the interpretation of the Internal Revenue Code to the IRS, as they are the experts in this area. However, where there is a clear error and the taxpayer was unable to have the merits reviewed by the IRS due to the statute of limitations or for other procedural reasons, the Commission concludes that it is appropriate to give consideration to the definitions provided in the Internal Revenue Code. (emphasis added).

The decision for this appeal, as well as other selected Commission decisions, can be viewed in a redacted format on the Tax Commission’s website at <http://www.tax.utah.gov/commission-office/decisions>.

household status for 2010. TAXPAYER-2 stated that she was told that she qualified for head of household status if she and her husband did not live together in 2010. This, however, is only one of the tests that must be met to qualify for head of household status. Federal law provides that a taxpayer must also meet other tests to qualify for head of household status, and TAXPAYER-2 proffered no information to show whether or not she met these other tests.

For example, federal law provides that a person seeking head of household status must show that he or she provides more than half the cost of keeping up a home for the year at issue. The cost of keeping up a home includes expenses such as rent, mortgage payments, property taxes, property insurance, repairs, utilities, and food consumed on the premises.⁶ IRS Publication 501 provides a worksheet that a taxpayer can fill out to see if he or she meets this test. TAXPAYER-2 proffered no testimony or evidence to show whether she paid 50% or more of the costs to keep up the taxpayers' home for 2010.

In addition, for a taxpayer to qualify for head of household status, a "qualifying person" typically needs to live in that taxpayer's home for more than half the year and can only be certain types of closely-related relatives.⁷ Table 4 of Publication 501 addresses "Who is a Qualifying Person Qualifying You to File as Head of Household." TAXPAYER-2 proffered no testimony or evidence to show whether a qualifying person lived in her home during 2010.

The Division also brought up the possibility that TAXPAYER-2 cannot meet the "considered unmarried" requirement to qualify for head of household status because she and her husband originally filed a 2010 federal married filing joint return. However, Publication 501 does not specifically state that a taxpayer who first files a married filing joint return is disqualified from subsequently submitting an amended return with a head of household status. In addition, Fed. Reg. §1.6013-1 and Publication 501 both indicate that a person who first filed a joint return can file a "separate return" if filed before the due date of the return. Furthermore,

6 26 CFR §1.2-2(d).

when TAXPAYER-2 filed her amended 2010 federal return with the IRS, it appears that the IRS did not reject the return because she and her husband had first filed a joint return. It appears that the IRS rejected TAXPAYER-2 amended return because she did not provide the supporting information it requested. For these reasons, it may be possible that a taxpayer may submit an amended return with a head of household status after first having submitted a married filing joint return.

Regardless, as explained earlier, additional information would also be needed before the Commission could determine whether or not TAXPAYER-2 meets all requirements necessary to qualify for head of household status for the 2010 tax year. Because TAXPAYER-2 has not met her burden to show that she meets all of the requirements necessary to qualify for head of household status, the taxpayers have not shown that the Division's assessment is incorrect. Accordingly, the Commission should sustain the Division's assessment.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment and 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.