

14-1063
TAX TYPE: INCOME TAX
TAX YEAR: 2010 AND 2011
DATE SIGNED: 7/8/2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 14-1063</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2010 and 2011</p> <p>Judge: Marshall</p>
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Presiding:

Rebecca Rockwell, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, Petitioner, via telephone
For Respondent: RESPONDENT-1, Income Tax Audit Manager
RESPONDENT-2, Senior Income Tax Auditor
RESPONDENT-3, Income Tax Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 12, 2016, 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 Petitioner's ("Taxpayer") appeal of income tax and interest deficiencies issued by the Respondent ("Division") for the 2010 and 2011 tax years.

2. The Division issued a Notice of Deficiency and Audit Change for the 2010 tax year on March 14, 2014. The notice reflected audit tax due of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$ through April 13, 2014.¹ No penalties were assessed. (Exhibit R-1).
3. The Division issued a Notice of Deficiency and Audit Change for the 2011 tax year on March 14, 2014. The notice reflected audit tax due of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$ through April 13, 2014.² No penalties were assessed. (Exhibit R-1).
4. Taxpayer filed a part-year or nonresident return for the 2010 tax year. He reported \$\$\$\$\$ Utah income, and claimed withholding tax credit of \$\$\$\$\$. The Division increased the Utah income to \$\$\$\$\$ and the withholding credit to \$\$\$\$\$. (Exhibits R-1 and R-6).
5. For the 2010 tax year, the Taxpayer received income in the amount of \$\$\$\$\$ from COLLEGE, which was designated as Utah sourced income on the W-2. (Exhibit R-6).
6. For the 2010 tax year, the Taxpayer received unemployment compensation from the Utah Department of Workforce Services in the amount of \$\$\$\$\$. (Exhibit R-4).
7. Taxpayer did not file a return with the State of Utah for the 2011 tax year.
8. For the 2011 tax year, the Taxpayer received income in the amount of \$\$\$\$\$ from COLLEGE. (Exhibit R-6).
9. The Division determined that \$\$\$\$\$ of the \$\$\$\$\$ was Utah sourced income. (Exhibit R-1). The Division's representative testified that the 2011 W-2 indicated \$\$\$\$\$ was Utah income.
10. The Taxpayer stated there was a mistake on the part of his tax preparer. He argued that there was no way he could have been aware of the law, and does not see how he could reasonably be expected to comply with the law.

APPLICABLE LAW

Utah Code §59-10-120³ provides for the filing of part-year resident returns as follows:

- (1) If an individual changes the individual's status during the taxable year from resident to nonresident or from nonresident to resident, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require the individual to file one return for the portion of the taxable year during which the individual is a resident and another return for the portion of the taxable year during which the individual is a nonresident.
- (2) The taxable income of the individual described in Subsection (1) shall be determined as provided in this chapter for residents and for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of the individual's resident and nonresident status respectively.

¹ Interest continues to accrue on any unpaid balance.

² Interest continues to accrue on any unpaid balance.

³ The Commission applies the substantive law in effect during the tax year and for ease of reference cites to the 2010 statutes. The law was substantially the same for the 2011 tax year.

For the nonresident portion of the return, Utah Code 59-10-116 provides:

- (1) Except as provided in Subsection (2), a tax is imposed on a nonresident individual in an amount equal to the product of the: (a) nonresident individual's state taxable income; and (b) percentage listed in Subsection 59-10-104(2).
- (2) This section does not apply to a nonresident individual exempt from taxation under Section 59-10-104.1.

Utah Code Ann. §59-10-117 provides items included in state taxable income, as follows, in pertinent part:

- (1) For purposes of Section 59-10-116, state taxable income includes those items includable in state taxable income attributable to or resulting from...
 - (b) the carrying on of a business, trade, profession, or occupation in this state.
- (2) For the purposes of Subsection (1)...
 - (c) a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources...
 - (f) If a trade, business, profession, or occupation is carried on partly within and partly without this state, an item of income, gain, loss, or a deduction derived from or connected with Utah sources shall be determined in accordance with Section 59-10-118...

The Tax Commission has adopted Administrative Rule R865-9I-7 regarding the change of status as a resident or nonresident pursuant Utah Code Ann. §59-10-120. Subsection C of Rule R865-9I-7 provides, in pertinent part:

- (2) All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

Utah Code Ann. §59-1-1417 places the burden of proof in this proceeding on the taxpayer as follows:

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

CONCLUSIONS OF LAW

- A. The unemployment compensation received by the Taxpayer is Utah sourced income and is taxable for the 2010 tax year. In Appeal No. 12-939⁴, the Commission held that unemployment benefits, even though paid to a taxpayer who was now a resident of a different state, are "income attributable to or resulting from" the taxpayer carrying on a trade, profession, or occupation in Utah, and as such, are Utah source income. Appeal No. 12-939 is factually similar to this case, and the unemployment compensation is taxable as Utah source income.
- B. The wages from COLLEGE in the amount of \$\$\$\$ for the 2010 tax year and \$\$\$\$ for the 2011 tax year are Utah sourced income. The evidence indicates that these amounts were Utah sourced.

⁴ Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.

Administrative Rule R865-9I-7 provides that federal adjusted gross income derived from Utah sources while in nonresident status shall be included in the Utah portion of federal adjusted gross income. The Taxpayer has the burden of proof in this matter and did not provide any evidence at the hearing to show that the income was not Utah sourced. Thus, the income attributable to Utah sources from COLLEGE is taxable for the years at issue.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments of audit tax and interest for the 2010 and 2011 tax years. It is so ordered.

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.