

15-917

TAX TYPE: INCOME TAX

TAX YEAR: 2010

DATE SIGNED: 4/16/2018

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p><b>INITIAL HEARING DECISION</b></p> <p>Appeal No.     15-917</p> <p>Account No.    #####</p> <p>Tax Type:       Individual Income Tax</p> <p>Tax Year:       2010</p> <p>Judge:           Jensen</p>
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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner:            TAXPAYER, Taxpayer

For Respondent:           RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 7, 2018 in accordance with Utah Code Ann. §59-1-502.5.

Petitioner (the “Taxpayer”) is appealing the assessment of Utah individual income tax for the 2010 tax year. On April 28, 2015, the Auditing Division of the Utah State Tax Commission (the “Division”) sent a Statutory Notice of Deficiency. The Statutory Notice indicated that the Taxpayer owed additional tax and interest as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest<sup>1</sup></u>
2010	\$\$\$\$\$	None	\$\$\$\$\$

On March 21, 2016, the Auditing Division of the Utah State Tax Commission (the “Division”) sent a revised Statutory Notice of Deficiency. The Statutory Notice replaced the original figures with amended figures as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>
2010	\$\$\$\$\$	None	\$\$\$\$\$

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<sup>1</sup> The interest figures provided are as of the due dates listed on the Statutory Notices. Those due dates are 30 days after the dates of the respective Statutory Notices. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. Utah Code Ann. §59-10-104(1).

For purposes of state individual income tax, Utah Code Ann. §59-10-103(1) defines “adjusted gross income,” “taxable income” and “state taxable income” as follows in pertinent part:

- (a) "Adjusted gross income":
  - (i) for a resident or nonresident individual, is as defined in Section 62, 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.

Utah Code Ann. §59-1-1417(1) provides guidance concerning the burden of proof for cases before the Commission, as follows:

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.

DISCUSSION

The Division completed an audit as reflected in its Statutory Notice dated April 28, 2015 (the “Original Audit”) based on information from the Internal Revenue Service (“IRS”) indicating an increase in the Taxpayer’s federal adjusted gross income for the 2010 tax year. On May 21, 2015, the Taxpayer timely filed a petition for redetermination to appeal the Original Audit.

Through status conferences on September 23, 2015 and March 3, 2016, the Commission gave the Taxpayer time to work with the IRS as the Taxpayer attempted to persuade the IRS to reverse its increase in federal adjusted gross income. The Taxpayer was successful in causing the IRS to reduce some, but not

all, of its determinations increasing the Taxpayer's federal adjusted gross income. After the IRS revised the Taxpayer's federal adjusted gross income downward, the Division likewise revised its calculations and issued a new Statutory Notice on March 21, 2016 (the "Revised Audit").

After the Division completed its Revised Audit, the Taxpayer made further attempts to cause the IRS to make further reduction in the Taxpayer's 2010 federal adjusted gross income. The Commission held status conferences on August 31, 2016, November 21, 2016, May 22, 2017, August 31, 2017, and November 30, 2017 to allow the Taxpayer additional time in attempts to gain further relief in the form of a reduction in federal adjusted gross income. In connection with the latest status conference on November 30, 2017, the Taxpayer indicated that the IRS refused to accept an amended federal tax filing for 2010 because the Taxpayer had already completed an appeal for that year.

When this matter came to an initial hearing, the Taxpayer argued that the IRS had been wrong on refusing to make further reductions in its federal adjusted gross income figures for the 2010 tax year. The Taxpayer argued that the IRS had failed to follow its own regulations. The Taxpayer cited *Jensen v. Tax Comm'n*, 835 P.2d 965 (Utah 1992) for the proposition that the Commission has the authority to make independent determinations regarding federal adjusted gross income and asked the Commission to make further reductions in federal adjusted gross income and to make corresponding reductions in state tax beyond those that the Division made in its Revised Audit.

The Division acknowledged that there have been cases in which the Commission has independently reviewed a taxpayer's information when the IRS did not do so. However, the Division points out that the cases in which the Commission has made independent determinations involve matters where the IRS does not reach a determination on the merits of a case. The Division points out that the *Jensen* case did not involve Utah tax authorities taking a position contrary to the IRS.

In *Jensen*, the taxpayers did not file Utah returns but did file federal returns. However, the IRS did not have sufficient information to make a determination regarding federal adjusted gross income because the federal tax return that the taxpayer in that case filed had no numbers and limited characters except a notation, "OBJECT: SELF INCRIMINATION." *Jensen v. Tax Comm'n*, 835 P.2d 965, 967 (Utah 1992). Because the Commission had no federal tax return to calculate federal adjusted gross income, it followed Utah Code Ann. §59-14A-52(b) (1974) and Utah Code Ann. §59-10-506(2) (1987), which provided for the Commission to complete missing returns from its own knowledge and from such information as it can obtain through testimony or otherwise. *Jensen*, 835 P.2d at 970.

Applying these principles, the facts presented in the case now before the Commission do not present a situation where the IRS did not reach a determination regarding the merits of the Taxpayer's case. There were no missing returns or other issues to prevent the IRS from reaching a decision regarding the Taxpayer's federal adjusted gross income. Rather, the Taxpayer appealed a 2010 tax case to the IRS

and received a decision on the merits of the appeal. That the IRS would not later reopen or revisit the decision it had already made does not transform this matter to a case where the IRS did not reach a decision on the merits.

The facts, taken as a whole, do not present a basis for the Commission to set a federal adjusted gross income that is different from and contrary to that determined by the IRS. The Division has already revised its audit to reflect changes that the IRS made to the Taxpayer's federal adjusted gross income. There is good cause to sustain the Division's Amended Audit.

Clinton Jensen  
Administrative Law Judge

DECISION AND ORDER

Based on the information presented at the hearing, the Commission sustains the Division's Amended Audit as to the Utah income tax and interest for the 2010 tax year. 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  
  
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 \_\_\_\_\_, 2018.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner