TAX TYPE: INCOME TAX
TAX YEAR: 2017
DATE SIGNED: 7/17/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 19-1400 Account No. ##### Tax Type: Income Tax Tax Year: 2017 Judge: Nielson-Larios

Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Utah Attorney General
RESPONDENT, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. On DATE, Respondent ("Division") issued a Notice of Deficiency and Audit Change for the 2017 tax year ("Notice of Deficiency") indicating that the Division increased the federal adjusted gross income reported to Utah from $$$$$$ to $$$$$ and increased the standard or itemized deductions reported to Utah from $$$$$$ to $$$$$. The Notice of Deficiency shows this change resulted in the following amounts owing:

Tax Year	Audit Tax	Audit Interest	Audit Penalty	Audit Total Due
2017	$$$$$$	$$$$$$	$$$$$$	$$$$$$

Audit interest was calculated through DATE, and continues to accrue on any unpaid balance. The $$$$$$ penalty is for "an underpayment . . . due to fraud with intent to evade a tax, fee, or charge" (*see* § 59-1-

401(7)(a)(iv)) ("Fraud Penalty"). The Taxpayer disagrees with the application of the Fraud Penalty for the 2017 tax year.[1] The correctness of the application of the Fraud Penalty is the issue for this appeal.

APPLICABLE LAW

Utah Code Ann. § 59-1-401(7)(a) and (9) (2017-current) provide for certain penalties, as follows:

> (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided in this Subsection (7)(a).
> (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax, fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that is due to negligence.
> (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire underpayment.
> (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge, the penalty is the greater of $500 per period or 50% of the entire underpayment.
> (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of $500 per period or 100% of the entire underpayment.
> . . . .
> (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is $500.
> . . . .

For the instant matter, Utah Code Ann. § 59-1-1417(1) provides the burden of proof, 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.

[1] According to the parties, in DATE, the Taxpayer filed amended 2017 federal and state tax returns. The IRS has not accepted or rejected the amended 2017 federal return. The parties agree that if the IRS accepts that federal return, the Taxpayer may contact the Auditing Division and the Division will review its audit, make any necessary adjustments to the state tax numbers to be consistent with any revised federal numbers, and recalculate the amounts of the interest and Fraud Penalty based on any revised state tax amounts.

DISCUSSION

The Taxpayer filed a zero-income 2017 state tax return on **DATE,** claiming a refund of $$$$$$, which equals the Taxpayer's 2017 W-2 state withholding. As part of the 2017 state tax return, the Taxpayer filed Form TC-40W, on which he reported that the Form W-2 he received showed Utah wages of $$$$$$ and Utah withholding of $$$$$$. The 2017 TC-40 Instructions on page 27 clearly explain that the Taxpayer should have reported on his Form TC-40W, the amount of the wages shown on his Form W-2.[2] As explained later in this order, the IRS records show that the Taxpayer's Form W-2 wages were $$$$$$, not $$$$$$, and that the Taxpayer had other income as well. On **DATE**, the Division issued its Notice of Deficiency for 2017, changing the Taxpayer's federal adjusted gross income as reported on his state return from $$$$$$ to $$$$$$. On or about **DATE**, the Taxpayer filed an amended 2017 state tax return reporting federal adjusted gross income of $$$$$$ and federal itemized deductions of $$$$$$. The Division had not accepted the Taxpayer's amended 2017 state tax return as of the Initial Hearing because the numbers on that return were not consistent with the numbers on the 2017 IRS Account Transcript. According to the IRS Account Transcript, the Taxpayer filed a zero-income 2017 federal tax return on or about **DATE**, the Taxpayer had 2017 W-2 federal withholding of $$$$$$, the IRS froze the Taxpayer's federal refund, and on **DATE**, the IRS issued a CP12 Notice. According to the parties, in **DATE**, the Taxpayer filed an amended 2017 federal tax return. The IRS had not accepted or rejected that federal return as of the date of the Initial Hearing. If the Division learns the IRS has accepted the amended 2017 federal return, the Division will review its 2017 audit and make any necessary adjustments to match the Taxpayer's state information to the revised federal information. At the hearing, the Taxpayer disagreed with the amount of the 2017 state audit tax calculated with the federal adjusted gross income of $$$$$$, but he did not want to challenge the correctness of the audit tax amount through the Initial Hearing. He agreed to contact the Division if the IRS accepts his amended 2017 federal return, then the Division would make any necessary revisions to adjust his state numbers to be consistent with his revised federal numbers.

According to the 2017 state records and/or the 2017 IRS Wage and Income Transcript, the Taxpayer had the following income/loss amounts:

- W-2 wages of $$$$$$ from COMPANY 1, located in STATE 1
- K-1 dividend income of $$$$$$
- K-1 interest income of $$$$$$
- K-1 ordinary loss of $$$$$$
- K-1 ordinary income of $$$$$$
- 1099-INT interest income of $$$$$$ and $$$$$$
- State tax refunds from the State of Utah of $$$$$$ for 2013, $$$$$$ for 2014, and $$$$$$ for 2016

[2] Previous years' forms and instructions are available at https://tax.utah.gov/forms-pubs/previousyears.

The $$$$$$ of federal adjusted gross income used for the 2017 audit assessment includes the following income amounts:

- W-2 wages of $$$$$$ from COMPANY 1, located in STATE 1
- K-1 dividend income of $$$$$$
- K-1 interest income of $$$$$$$
- K-1 ordinary income of $$$$$$
- 1099-INT interest income of $$$$$$ and $$$$$$

Thus, the $$$$$$ used for the audit assessment does not include the following items:

- K-1 ordinary loss of $$$$$$
- State tax refunds from the State of Utah of $$$$$$ for 2013, $$$$$$ for 2014, and $$$$$$ for 2016

The Division did not allow the K-1 ordinary loss of $$$$$$ because that type of loss can be subject to federal limitations, such as those for passive activities.

The Taxpayer made no claim that he is not domiciled in Utah.

The Taxpayer explained that he had a prior appeal concerning other tax years and that he was currently fixing the returns for those tax years as well as for the 2017 tax year. Following the Initial Hearing, the Judge looked in the Appeals Unit's computer system for the other tax years that the Taxpayer mentioned. Appeal Nos. 18-1170 and 18-1171 are for open appeals for the Taxpayer's 2013-2016 tax years.[3] The Division issued notices of deficiency for those tax years on **DATE**, changing the Taxpayer's federal adjusted gross income as reported on his state returns from $$$$$$ to various income amounts for each of the tax years.[4] For those years, the Division assessed audit tax, audit interest, and § 59-1-401(9) penalties. For the § 59-1-401(9) penalties, the notices of deficiency stated the following, "If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee or charge liability shown is substantially incorrect, the penalty is $500." The Taxpayer filed timely appeals in **DATE.**

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[3] Through the internet, the Judge found that the Taxpayer also had case(s) concerning his federal tax liability for the 2013-2017 tax years. The Taxpayer filed a federal tax suit in U.S. District Court for the District of Utah on DATE, against the IRS concerning his federal taxes for the 2013-2017 tax years. On DATE, Judge Ted Stewart issued a Memorandum Decision and Order Granting the United States' Motion to Dismiss. Judge Stewart found that that Taxpayer's "justifications for the [Taxpayer's] zero-income returns . . . [were] legal conclusions that are unsupported by legal reasoning or a factual basis, and therefore are insufficient to apprise the Treasury Commissioner of Howell's legal theories and factual bases." Judge Stewart concluded, "Howell has not complied with Treasury Reg. 301.6402-2(b)(1) and 26 U.S.C. § 7422(a), and therefore this Court lacks jurisdiction to address the merits of Howell's claims." *See* https://casetext.com/case/howell-v-dept-of-treasury, https://www.govinfo.gov/app/details/USCOURTS-utd-1_19-cv-00036/context, and www.pacermonitor.com (search "Samuel Howell" for date case filed).

[4] The audit notices for the 2013-2016 tax years also made other changes, including to the state tax refund deduction (2013, and 2014); filing status, number of exemptions, and personal exemptions deduction (2015); and whether the Taxpayer was a qualified taxpayer exempt from Utah income tax (2015 and 2016).

On **DATE**, the Division explained through its Answers to Petitions for Redetermination for Appeal Nos. 18-1170 and 18-1171, the following: "Pursuant to Utah Code Annotated §59-1-401(9) petitioner has been assessed a $500 penalty for filing a frivolous Utah return with zero federal adjusted gross income when in fact Petitioner received substantial income." An initial hearing was held on **DATE**, and a combined initial hearing order was issued on **DATE**. The Taxpayer appealed to a formal hearing, which was held on **DATE**. No formal hearing order has been issued as of **DATE**. The Division's evidence for the formal hearing for Appeal Nos. 18-1170 and 18-1171 includes, in part, the amended 2013 federal and state returns signed by the Taxpayer on **DATE**, amending the previously reported income to $$$$$$.[5]

At the hearing, the Taxpayer agreed that he filed zero-income 2017 federal and state tax returns based on his claim that his W-2 wages were not income and thus not subject to income taxes. He now agrees that this claim is frivolous and that his zero-income 2017 returns filed in DATE are incorrect. He agrees that he owes Utah tax for 2017. During the Initial Hearing, the Taxpayer specifically affirmed to the Division that he filed zero-income returns because he did not think he met the definition of "employee" under the Internal Revenue Code.

COMPANY 1, his employer for DATE, is a STATE 1, BUSINESS. The Taxpayer explained that although he worked for a BUSINESS.

A. The Taxpayer argues that he lacks the required intent to be liable for the Fraud Penalty.

The Taxpayer argues that he did not have the required intent to be found liable for the Fraud Penalty. For that penalty, "the underpayment [must be] due to fraud with intent to evade the tax." The Taxpayer argues that he made an honest mistake when he filed zero-income 2017 tax returns in **DATE**. He asserted that he has voluntarily taken active steps since then to fix his mistake, making changes as the Division expects. He said that he has offered to make payments for his state tax liability and has filed amended returns for 2017 and prior tax years. He explained he is comfortable waiting for the IRS to accept his amended 2017 federal tax return before the Division makes any further changes to his 2017 state tax information.

Regarding the "voluntary" nature of his corrective actions, the Taxpayer noted that tax assessments are not final until an appeal is closed and that he has taken steps to correct his tax returns before any state assessment against him for prior tax years has become final. The initial hearing for Appeal Nos. 18-1170 and 18-1171 was held on **DATE,** and the combined initial hearing order for those appeals was issued on **DATE**. Both of these dates are after **DATE**, when the Taxpayer filed his original 2017 federal and state tax returns. Formal hearing order(s) for Appeal Nos. 18-1170 and 18-1171 have not been issued as of

[5] The evidence also includes unsigned, amended federal and state returns for the 2014 tax year, amending the previously reported income to $$$$$$.

DATE. Thus, the Taxpayer filed his amended 2017 state return in **DATE** before the state assessments for his 2013-2016 tax years will become final.

B. Division argues that the Taxpayer should be found liable for the Fraud Penalty.

The Division argued that the Fraud Penalty should apply to the Taxpayer's 2017 tax year. The Fraud Penalty, found in § 59-1-401(7)(a)(iv), states the following:

> If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of $500 per period or 100% of the entire underpayment.

The Taxpayer filed the zero-income 2017 state return on **DATE**, based on a frivolous position, requesting a refund of all of the state W-2 withholding. The Division argued that the Taxpayer did so with the intent to evade state income taxes. The Division explained that the Taxpayer's frivolous position was that he is not an employee under the Internal Revenue Code, so he did not have wages under the Internal Revenue Code, so there is no tax on any of his income. The Division explained that by taking this frivolous position for the 2017 tax year and prior tax years, the Taxpayer needlessly forced the Division to audit the Taxpayer's tax returns and defend its audits. The Division asserted that if the Division had not noticed the Taxpayer's zero-income 2017 state tax return, the Taxpayer would not have ever paid the state income tax.

The Division asserted that the Taxpayer took this same frivolous position for the 2013-2016 tax years. For those years, the Division assessed a different penalty, one under § 59-1-401(9) instead of under § 59-1-401(7)(a)(iv). The § 59-1-401(9) penalty is stated as follows:

> If a person, in furtherance of a frivolous position, has a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge and files a purported return that fails to contain information from which the correctness of reported tax, fee, or charge liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is substantially incorrect, the penalty is $500.

The Division explained that it assessed the § 59-1-401(9) penalty for the 2013-2016 tax years because, for those years, the Taxpayer took the frivolous position explained previously in this order, which is the same position he took for his original 2017 state tax return, and he filed zero-income tax returns for 2013-2016 with the purpose of avoiding paying his state income taxes.[6]

The Division asserted that the Division could have applied the Fraud Penalty instead of the § 59-1-401(9) penalty to the 2013-2016 tax years. The Division further explained that for this Taxpayer, the Division applied the Fraud Penalty instead of the § 59-1-401(7)(a)(iv) penalty for the 2017 tax year because there is obvious evidence that the Taxpayer was filing zero-income returns to avoid state income taxes. Specifically, the Taxpayer filed zero-income returns for 2013-2016, and he was notified on **DATE**, through

[6] As of DATE, the formal hearing order for Appeal Nos. 18-1170 and 18-1171, for the 2013-2016 tax years, has yet to be issued.

notices of deficiency, that his position about his income was frivolous and that his zero-income returns were wrong. Despite the notifications, the Taxpayer filed the zero-income 2017 state and federal returns in **DATE.**[7]

The Division disagreed with the Taxpayer's characterization of his current corrective actions as being "voluntary." The Division noted that the audits and the initial hearing for the Taxpayer's 2013-2016 tax years took place before he filed his amended 2017 tax returns in **DATE**. The initial hearing for 2013-2016 was held on **DATE**, and the initial hearing order was issued on **DATE**.

The Division asserted that the Fraud Penalty should remain even if the Division later accepts the Taxpayer's amended 2017 state tax return.[8] The Division asserted that upholding the Fraud Penalty will discourage taxpayers from filing zero-income returns based on frivolous positions.

C. The Taxpayer argued against the Division's position.

The Taxpayer disagreed with the Division's characterization of the evidence as being "obvious" in showing that the Taxpayer was filing the zero-income returns to avoid state income taxes. The Taxpayer noted that for the § 59-1-401(9) penalty, a person must have "a prima facie intent to delay or impede administration of a law relating to a tax, fee, or charge," but for the Fraud Penalty, the underpayment must be due to "fraud with intent to evade a tax, fee, or charge." The Taxpayer asserted that the Fraud Penalty requires a higher level of evidence, which was not presented. The Taxpayer noted that he is currently correcting his tax problems by amending his tax returns to be consistent with what the Division expects. He asserted he never intended to evade taxes.

The Taxpayer asserted that his appealing of the tax assessments for the 2013-2017 tax years should not be held against him. He asserted that the Division should have to defend its audit each time a taxpayer appeals.

The Taxpayer asserted that the Division was incorrect to say that if the Division had not caught the Taxpayer's zero-income 2017 state return, the Taxpayer would not have ever paid the state income tax. The Taxpayer explained he was working with the IRS for the 2017 tax year, so the final result would have been the same.

D. The 2017 audit tax of $$$$$$ and the related interest should be sustained.

[7] Additionally, the Division also explained that there has been a broader shift in the Division's enforcement actions in regards to applying the Fraud Penalty versus the § 59 1-401(9) penalty.

[8] If the Division accepts the Taxpayer's amended 2017 state tax return in the future, the Division will recalculate the amount of the Fraud Penalty based on any change in the state tax amount.

Under § 59-1-1417(1), the burden of proof is on the Taxpayer to show that the audit tax amount is incorrect. The Taxpayer chose not to dispute the 2017 audit tax amount during the Initial Hearing; thus, the audit tax and related interest should be sustained.

E. The 2017 Fraud Penalty should be sustained.

Under § 59-1-1417(1)(a), the burden of proof is on the Division to show that the Fraud Penalty is correct. As explained previously in this order, the Fraud Penalty is found in § 59-1-401(7)(a)(iv), which states the following:

> If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or charge, the penalty is the greater of $500 per period or 100% of the entire underpayment.

The Fraud Penalty requires an "underpayment." The information presented shows the Taxpayer has been a Utah resident, living at the same Utah address, since at least 2013 through the present. The information also shows the Taxpayer has 2017 Utah taxable income and he incurred 2017 Utah income taxes. The Division assessed audit tax of $$$$$$ and related interest for the 2017 tax year. The Taxpayer did not dispute the audit tax of $$$$$$ and related interest during the Initial Hearing. No information was presented to show that the Taxpayer did not have an underpayment for the 2017 tax year. Thus, this order finds that there was an underpayment of tax for the 2017 tax year.

The Fraud Penalty further requires that the underpayment be "due to fraud with intent to evade a tax." The Utah Supreme Court provided the following explanation about the Fraud Penalty in its decision for *Jensen v. Utah State Tax Commission*:[9]

> In the income tax arena, fraud is an actual intentional wrongdoing with the specific intent to evade tax believed to be owing. *Fahy v. Commissioner*, 43 T.C.M. (CCH) 387, 394 (1982). Tax fraud is a question of fact to be resolved by consideration of the entire record. *Kotmair v. Commissioner*, 86 T.C. (CCH) 1253, 1259 (1986); *Famularo v. Commissioner*, 47 T.C.M. (CCH) 948, 952 (1984); *Fahy*, 43 T.C.M. (CCH) at 394. Where fraud is asserted for several years, the Commission's burden must be met separately for each of those years. *Fahy*, 43 T.C.M. (CCH) at 393.
>
> Because direct evidence of a taxpayer's intent is often nonexistent, specific intent must be drawn from the surrounding facts, including the reasonable inferences drawn therefrom. The mere failure to file an income tax return is not sufficient to prove fraud. *Kotmair*, 86 T.C. (CCH) at 1260-61. However, the failure to file a return while aware of the obligation, combined with other factors such as the concealing of assets and records or the failure to maintain proper records to indicate income, may support a finding of fraud. *Famularo*, 47 T.C.M. (CCH) at 953; *Fahy*, 43 T.C.M. (CCH) at 394-95; *Cummings v.*

[9] *Michael K. and Karen Jensen v. Utah State Tax Commission*, 835 P.2d 965, 972-973 (Utah 1992). For the tax year of 1987, the Fraud Penalty was located in a combination of Utah Code Ann §59-10-539(3), which penalized a deficiency "due to fraud," and Utah Code Ann § 59-1-401(3)(d), which provided that the civil penalty for "fraud with intent to evade" is 100% of the deficiency. *See Jensen* at 972.

> *Commissioner*, 26 T.C.M. (CCH) 273, 279 (1968). The United States Supreme Court has stated with respect to the federal crime of willful intent to evade income tax:
>
> > By way of illustration, and not by way of limitation, we would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or to conceal.
>
> *Spies v. United States*, 317 U.S. 492, 499 (1943). Although the acts referred to in the quotation evidence the crime of fraud, they may also evidence the conduct that is subject to civil fraud. The Tax Court has found similar conduct subject to civil penalties for income tax fraud. *See, e.g.*, *Famularo*, 47 T.C.M. (CCH) at 953-54 (failure to file returns, combined with noncredible excuses for failing to file, failing to produce business records without an acceptable excuse, and misleading tax agents in interviews); *Fahy*, 43 T.C.M. (CCH) at 394-95 (failure to file tax returns while aware of the obligation, combined with customers' agreement not to withhold income tax for petitioner, attempts to conceal assets and records and failure to keep records, and noncredible explanation for receipt of federal reserve notes as not constituting receipt of income); *Cummings*, 27 T.C.M. (CCH) at 279 (failure to file returns without reasonable explanation, combined with failure to maintain proper records of income and refusal to cooperate with tax agents).

(Footnote removed.)

The Taxpayer participated in actual, intentional wrongdoing. The Taxpayer filed zero-income 2017 federal and state returns in **DATE**. For the state return, he reported that his W-2 form showed his wages as being $$$$$$, which is not true, and he requested a refund of all of his state W-2 withholdings. Based on the facts presented, the Taxpayer understood that he was reporting zero income even though he knew he had W-2 wages and other types of income. He deliberately, not accidentally, filed the zero-income 2017 federal and state returns. To file the state return as a zero-income return, he deliberately, not accidentally, misreported the amount of his wages reported by his employer on his W-2 form. He filed the zero-returns based on the frivolous position that he is not an employee under the Internal Revenue Code, so he did not have wages under the Internal Revenue Code, so there is no tax on any of his income. The Taxpayer and the Division disagree on the Taxpayer's specific intent in **DATE** when he filed the zero-income federal and state returns for the 2017 tax year.

The facts surrounding the filings of the zero-income 2017 federal and state returns in **DATE** show the Taxpayer's specific intent for those filings. For the 2013 tax year, the Taxpayer filed his **original** federal and state tax returns, reporting his wages and other income and paying the tax. This shows the Taxpayer was aware of his obligations to file correct federal and state tax returns and to pay the applicable tax. He filed correctly for the 2013 tax year before he unilaterally decided his income was not subject to

income tax and he filed the incorrect, amended 2013 federal and state returns in **DATE**, reporting his income as zero.

Additionally, the Tax Commission notified the Taxpayer multiple times of the incorrectness of the zero-returns before the Taxpayer filed his zero-income 2017 federal and state returns in **DATE**. Through the notices of deficiency and the answers to petitions for Appeal Nos. 18-1170 and 18-1171, the Tax Commission informed the Taxpayer on or about **DATE** and **DATE**, that the Taxpayer was wrong to file zero-income returns when he had earned W-2 wages and other income. Furthermore, the "Instructions for Employee" that is located on the back of the 2017 W-2 forms instructs employees that they are to report the Form W-2 Box 1: "Wages, tips, other compensation" on the wages line of their federal tax returns. Also, the 2017 TC-40 Instructions on page 27 clearly explain how Utah taxpayers are to report the amount found in Box 16: "State wages, tips etc." of the W-2 forms on their TC-40W forms. The Taxpayer presented no credible explanation for why he had thought his W-2 wages and other income were not taxable and why he thought his income for tax purposes was zero even though he received significant W-2 wages and other income.

The information explained above shows the Taxpayer deliberately filed incorrect zero-income 2017 federal and state tax returns, including the incorrect Form TC-40W, in **DATE**, with the specific intent to evade the 2017 income taxes he believed to be owing. For the 2017 tax year, the Taxpayer did not simply have a misunderstanding or make a mistake in good faith. The fact that he is currently trying to correct his zero-income returns for multiple years, even before Appeal Nos. 18-1170 and 18-1171 are closed and the related assessments for the 2013-2016 tax years are finalized, does not change this order's conclusions regarding the Fraud Penalty for the 2017 tax year. The 2017 Fraud Penalty should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains in full the Division's audit assessment for the 2017 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, 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.