

99-1011
INCOME TAX
SIGNED: 07-26-2000

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	ORDER
Petitioners,)	
)	Appeal No. 99-1011
v.)	Account No. #####
)	
AUDITING DIVISION OF)	Tax Type: Income Tax
THE UTAH STATE TAX)	
COMMISSION,)	Judge: Phan
)	
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1

For Respondent: RESPONDENT REP. 1, Senior Auditor

RESPONDENT REP. 2, Senior Auditor

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 July 11, 2000.

Petitioners are appealing the assessment of additional income tax and interest for the 1996 tax year. The relevant facts in this matter were not in dispute. Petitioners had been residents of STATE 1 until mid 1995 when they moved to Utah. PETITIONER 1 worked during 1995 for a company which paid out its commission in the March following the year in

Appeal No. 99-1011

which they were actually earned. In March 1996 his employer paid him a commission of approximately \$\$\$\$ for work he performed in STATE 1 during 1995. Petitioners properly claimed this commission as part of their federal taxable income on their joint 1996 federal income tax return, because they had received it in 1996. Petitioners filed a joint Utah resident individual return for 1996, however, they did not include the \$\$\$\$ commission thinking erroneously that since it was STATE 1 source income it was not subject to Utah income tax. Petitioners had received some erroneous tax advice, however, they had actually prepared their own 1996 tax returns.

The discrepancy between the state and federal return was eventually discovered through the tape match program between the state of Utah and the IRS. Petitioners were notified by the State Tax Commission in August of 1999 to provide additional information and the Statutory Notice of Assessment was issued in November 1999.

The law is clear, for Utah resident individuals, Utah taxable income is based on their federal taxable income for that year. For individuals who are nonresidents of Utah the law looks to whether income was Utah source income. Since Petitioners were residents of Utah during 1996, the subject income is part of their federal taxable income and in turn state taxable income for 1996, regardless of the source of the income.

Petitioners ask that interest be waived in this matter based on the complicated nature of the tax assessment and the length of time between when they filed their 1996 income tax return and the date of the assessment.

APPLICABLE LAW

"State taxable income" in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in section 59-10-114. . . (Utah Code Ann. §59-10-112.)

A tax is hereby imposed on the state taxable income, as defined in sections 59-10-111 and 59-10-112, of every nonresident individual in accordance with the schedules in Section 59-10-104, but the individual's Utah tax shall be only the portion of the resident tax so calculated as the individual's federal adjusted gross income received from Utah sources (determined under Section 59-10-117) bears to the individual's total federal adjusted gross income for the taxable year. (Utah Code Ann. §59-10-116.)

DECISION AND ORDER

The law is clear and well settled in this matter, the commission income that Petitioner earned in STATE 1 is subject to Utah individual income tax for the 1996 tax year because the employer paid the commission to Petitioner during 1996 when he was a resident of the state of Utah. The section on which Petitioners relied pertained to nonresident individuals and it so stated. Petitioners were resident individuals during 1996. Furthermore, in preparing the 1996 tax return in the manner in which they did the Petitioners significantly departed from

Appeal No. 99-1011

the Utah individual income tax return form and instruction booklet which should have indicated to them that there was something wrong with their return. Certainly it has taken some time for the Tax Commission to catch the error and prepare its audit assessment, as well as provide Petitioners the administrative appeal process. However, this is not sufficient justification for waiver of any portion of the interest. No penalties were assessed with the audit. The assessment of interest is statutory, and compensates the state for the time value of money from the time that the tax should have been paid, until it is actually paid. In this case the delay is due to Petitioners error in preparing their 1996 income return.

Based on the foregoing, the Commission sustains the audit assessment of additional income tax and interest for the 1996 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

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

DATED this _____ day of _____, 2000

Appeal No. 99-1011

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2000.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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