11-2265 AND 11-2270
TAX TYPE: INCOME TAX
TAX YEARS: 2002, 2003, 2004, 2005, 2006 AND 2007
DATE SIGNED: 3-12-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal Nos. 11-2265, 11-2270 Account No. ##### Tax Type: Income Tax Year: 2002 - 2007 Judge: Jensen

Presiding:
Clinton Jensen, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
REPRESENTATIVE FOR TAXPAYER, for the Taxpayer
For Respondent: RESPONDENT, for the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on September 20, 2012 in accordance with Utah Code Ann. § 59-1-502.5.

The Petitioner named above (the "Taxpayer') filed appeals to audits completed by the Auditing Division of the Utah State Tax Commission (the "Division') for the 2002, 2003, 2004, 2005, 2006, and 2007 tax years. The parties have resolved all issues relating to the 2005, 2006, and 2007 tax years. They have resolved all issues relating to the 2002, 2003, and 2004 tax years, with the exception of possible withholding credit for these years for one employer for which neither party has been able to locate W-2 forms or other direct documentary evidence of withholding.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Ann. §59-10-104 as follows:

> ...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

State taxable income is defined in Utah Code Ann.§59-10-112 as follows:

> "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 . . .

Federal taxable income is defined in Utah Code Ann. §59-10-111 as follows:

> "Federal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.

Taxable income is defined in the Internal Revenue Code at 26 U.S.C. 63 as:

> Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Gross income is defined in the Internal Revenue Code at 26 U.S.C. 61(a) as:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; ...

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) of the Utah Code provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

Utah Code Ann. §59-1-1417 provides, "[i]n a proceeding before the commission, the burden of proof is on the petitioner…"

DISCUSSION

The Division initiated this case with non-filling audits for the 2004 and 2006 tax years. Following these audits, the Taxpayer worked with the Division to resolve outstanding tax issues for 2002 to 2007 tax years. As a result of these efforts, the Taxpayer filed returns for all years from 2002 to 2007. The Division accepted the 2005, 2006, and 2007 returns as filed. For the 2002, 2003, and 2004 tax years, the Division accepted the returns and most of the withholding amounts, but disallowed other withholding amounts for which neither party was able to locate a W-2. As of the Initial Hearing in this matter, the only issue remaining was whether to allow credit for those withholding amounts.

The Taxpayer produced as a witness a representative from the tax preparer that had completed tax returns for the Taxpayer for all years from 2002 to 2007. The representative had reviewed the tax preparer's records and had determined that for each year from 2002 to 2007, the tax preparer had reviewed W-2 forms provided by the Taxpayer and had entered all amounts from the W-2s, including state withholding amounts, into its computer system. The representative indicated that it completed this action contemporaneously for each of the tax years at issue. The tax preparer did not keep copies of source documents such as W-2 forms. Rather, it returned these to taxpayers for safekeeping along with other documents such as receipts and bank statements. The representative indicated that under normal circumstances, these actions would have led to filed state returns for all years at issue. But a communication problem between the tax preparer's office and the Taxpayer left each thinking the other had filed the returns.

The Division located some of the W-2 forms for the years at issue and compared the figures from these W-2s to the amounts as recorded by the Taxpayer's tax preparer. The known W-2 amounts matched the figures provided by the Taxpayer's tax preparer. The Division's representative acknowledged that this would tend to show that the tax preparer's figures were accurate for those employers and years for which there were no available W-2s. However, the Division's representative could not justify taking unilateral action outside the appeal process waiving the need for a taxpayer to document withholding when it required this documentation from all other taxpayers. Additionally, the Division's position is that it is up to taxpayers to retain necessary records to document credits, deductions, and withholding.

Reviewing the evidence presented, there is good cause to have confidence that the withholding figures recorded by the Taxpayer's tax preparer are accurate. Given the strength of the evidence presented, there is good cause to accept the withholding amounts presented on the Taxpayer's returns for 2002, 2003, and 2004.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission orders that the withholding amounts as recorded by the Taxpayer's tax preparer may be used for purposes of calculation of the Taxpayer's tax liability for the 2002, 2002, and 2004 tax years. 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 _______________________, 2013.

R. Bruce Johnson Commission Chair	D'Arcy Dixon Pignanelli Commissioner
Michael J. Cragun Commissioner	Robert P. Pero Commissioner