

14-1809

TAX TYPE: INCOME TAX

TAX YEAR: 2011

DATE SIGNED: 2-21-2017

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

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 14-1809</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2011</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: FATHER OF TAXPAYER, Representative

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 22, 2016 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“Taxpayer”) is appealing a Notice of Deficiency and Audit Change, issued by Respondent (“Division”) on August 26, 2014, for tax year 2011. The amount of the deficiency indicated in the notice was \$\$\$\$ in tax and \$\$\$\$ in interest as of the notice date. Interest continues to accrue on the unpaid balance. No penalties were assessed with the audit. The increase in tax resulted from the Division’s revising the itemized deductions, from the \$\$\$\$ that the Taxpayer had claimed on his return, to \$\$\$\$.

APPLICABLE LAW

Utah income tax is imposed at Utah Code Subsection 59-10-104(1) (2011)<sup>1</sup> as follows:

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<sup>1</sup> The Commission applies the substantive legal provisions in effect during the audit year.

For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.

State taxable income is defined in Utah Code Subsection 59-10-103(1)(w) (2011) as follows:

“Taxable income” or “State taxable income”: (i) subject to Section 59-10-1404.5, 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 . . .

“Adjusted gross income” is defined in Utah Code Subsection 59-10-103(1)(a) (2011) as follows:

“Adjusted gross income”: (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.

Utah Code Subsection 59-1-401(14) 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.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

Utah Code Sec. 59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

#### DISCUSSION

The Utah deficiency was the result of an audit performed by the Internal Revenue Service (“IRS”) during which the IRS had disallowed some of the itemized deductions claimed by the

Taxpayer on his 2011 federal income tax return. The IRS had reduced the itemized deductions from \$\$\$\$\$ to \$\$\$\$\$. As this change affected the Utah tax liability, the Division made the same change in its audit of the Taxpayer's Utah return.

The representative for the Taxpayer explained that the Taxpayer was his son. In 2011 the Taxpayer, who was eleven or twelve years of age at that time, was hired to perform in a Broadway production in CITY-1. The Representative provided a copy of the Taxpayer's 2011 federal return and the return showed that the Taxpayer had earned \$\$\$\$\$ in wages or salary. It also showed that on Schedule A, line 21, he had claimed \$\$\$\$\$ in unreimbursed employee expenses. These were part of his total of \$\$\$\$\$ in itemized deductions on that Schedule. In 2011, the Taxpayer filed a nonresident STATE-1 return because his income was STATE-1 source income and a Utah resident return recognizing that Utah was still his domicile for tax purposes.

The representative for the Taxpayer explained that the IRS, which had originally questioned the itemized deductions, audited the federal return. The Taxpayer's representative stated, however, that he concluded that there would not be a difference in the actual federal tax amount his son would have to pay because of the alternative minimum tax provisions, so he did not pursue or challenge the IRS's determinations regarding the itemized deductions. He stated that after the Division had issued the Utah audit deficiency, he had tried to get the IRS to review the itemized deductions, but no change had been made by the IRS. Of the \$\$\$\$\$ in itemized deductions the Taxpayer had claimed on his 2011 federal return, the IRS allowed \$\$\$\$\$ and disallowed \$\$\$\$\$. The Taxpayer's representative stated at the hearing that he did not know why the IRS had allowed some expenses and disallowed other expenses.

Because it did not appear the IRS was going to reconsider the itemized deductions, the Taxpayer was given the opportunity to establish to the Utah State Tax Commission that the deductions claimed on Schedule A of his federal return were correct. However, at the hearing, the representative did not provide receipts or documents to support the itemized deductions claimed on the return. He did provide after the hearing copies of the federal, Utah and STATE-1 returns that were filed. The Taxpayer's representative argued that he thought the IRS issue was with travel expenses, rent expenses and food expenses claimed as part of the \$\$\$\$\$ in unreimbursed employee expenses listed on Schedule A, but the representative did not provide any information regarding the amounts of each type of expense or receipts or other backup information. At this time, it is not known how much of these expenses had been travel related expenses.

The Division's representative provided a copy of the IRS Record of Account for the 2011 tax year. This does not show which of the itemized deductions were disallowed. The Division's

representative stated that the IRS may have disallowed travel expenses because the Taxpayer would not have been entitled to take them as his federal tax home would have been New York, despite that his state tax domicile would have been Utah. The Division provided excerpts from IRS Publication 463, which at page 3 provides:

To determine whether you are traveling away from home, you must first determine the location of your tax home.

Generally, your tax home is your regular place of business or post of duty, regardless of where you maintain your family home. It includes the entire city or general area in which your business or work is located.

It was the Division's conclusion that the Taxpayer was not entitled to claim travel expenses as unreimbursed employee expenses on his federal return and so the IRS in its audit had properly disallowed it.

Reviewing what the parties submitted, the Taxpayer's representative did not provide evidence at the hearing to support the itemized deductions that he had claimed on the federal income tax return for tax year 2011. The Taxpayer has the burden of proof in this appeal under Utah Code Sec. 59-1-1417. Further, the Tax Commission generally gives deference to the IRS' determination of federal adjusted gross income and itemized deductions for purposes of the Utah income tax filing, which is based on the federal amounts by statute. The Commission has found in limited circumstances that it would consider making an independent determination from what was concluded by the IRS regarding taxable income and deductions.<sup>2</sup> Generally, this occurs if a person had failed to appeal an IRS audit administratively or with amended filings, due to failing to meet deadlines or other procedural issues, and if it was clear that the IRS' determination was in error. In this case, it is not clear that the IRS' determination was in error because the Taxpayer may not have been entitled to deduct travel related expenses. Further, the Taxpayer's representative did not provide evidence to substantiate his claimed deductions.

No penalties were assessed with the audit. Interest was assessed based on the statute from the time the tax was due and will continue to accrue until the balance is paid in full. Under Utah Code Subsection 59-1-401(14) and Utah Admin. Rule R861-1A-42(2), grounds for waiver of interest are limited to instances where the taxpayer proves that the Tax Commission or Tax Commission employee gave erroneous information or took inappropriate action that contributed to the error. There was no such showing in this matter.

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<sup>2</sup> See Tax Commission decisions issued in *Utah State Tax Commission Appeal Nos. 14-364, 12-2963, 12-2967, 11-827, 10-2360, 07-0365, 06-1408, 07-1036, 03-0510 & 03-0586*. These and other Tax Commission decisions are available in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

The Taxpayer's representative has not shown that the federal deductions determined by the IRS were erroneous and the Taxpayer's appeal should be denied.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal of a Utah individual income tax audit deficiency for tax year 2011.

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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
Commissioner

**Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**