

APPEAL # 24-1530  
TAX TYPE: AUDIT - INDIVIDUAL INCOME TAX  
TAX YEAR: 2020-2023  
DATE SIGNED: 10/28/2025  
COMMISSIONERS: J. VALENTINE, R. ROCKWELL AND J. DEEDS  
EXCUSED: J. FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1,  Petitioner,  v.  INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 24-1530  Account No: #####  Tax Type: Audit - Individual Income Tax  Tax Years: 2020 - 2023  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1, Taxpayer

For Respondent: RESPONDENT'S REP-1, Assistant Attorney General

RESPONDENT'S REP-2, Assistant Attorney General

RESPONDENT'S REP-3, Tax Examiner Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 21, 2025, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Petitioner ("Taxpayer") timely appealed the Respondent's ("Division") individual income tax audits for tax years 2020 through 2023 pursuant to Utah Code §59-1-501. The Division had issued the Notices of Deficiency and Audit Change on MONTH DATE, YEAR, for tax years 2020 through 2023. The Division assessed with each audit deficiency a \$500 frivolous position penalty pursuant to Utah Code Ann. §59-1-401(9).

The amount of tax and penalty, as well as the interest that had accrued as of the date of

the Notices of Deficiency for each tax year are as follows:

Tax Year	Tax Deficiency	Penalty	Interest as of Notice Date <sup>1</sup>
2020	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2021	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2022	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2023	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Ann. §59-10-104(1) (2022)<sup>2</sup> as follows:

(1) A tax is imposed on the state taxable income of a resident individual as provided in this section. (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the product of: (a) the resident individual's state taxable income for that taxable year; and (b) 4.85%.

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The term “state taxable income” is defined in Utah Code Ann. §59-10-103(1), below in pertinent part:

(z) "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;

...

“Resident individual” is defined in Utah Code Ann. §59-10-103(1) as follows:

(t) "Resident individual" means an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state.

“Adjusted gross income” is defined in Utah Code Ann. §59-10-103(1) as follows in relevant part:

“(a) (i) "Adjusted gross income": (A) for a resident or nonresident individual, means the same as that term is defined in Section 62, Internal Revenue Code; or (B) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.

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<sup>1</sup> Interest continues to accrue on the unpaid balance and will accrue until paid in full.

<sup>2</sup> This decision cites to the substantive legal provisions in effect for tax year 2022. Although there were some revisions during the audit years, there were no changes that would affect the outcome of this decision.

Section 62 of the Internal Revenue Code provides, “[f]or purposes of this subtitle, the term ‘adjusted gross income’ means, in the case of an individual, gross income minus the following deductions . . . .”

“Gross income” is defined in Section 61 of the Internal Revenue Code as follows:

(a) 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;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;
- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust.

A penalty is assessed under Utah Code Ann. §59-1-401 if a person files a return in furtherance of a frivolous position as follows:

(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.

Utah Code Ann. §59-10-537 imposes interest if an income tax is not paid on or before the due date, as follows in pertinent part:

(1) (a) Subject to the other provisions of this section, if any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on the amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid.

In accordance with Utah Code Ann. §59-1-402, interest is computed as follows in pertinent part:

(6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

Utah Code Ann. §59-1-1417 provides, "in a proceeding before the commission, the burden of proof is on the petitioner... ."

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §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.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
  - (a) Timely Mailing or Electronic Submission...
  - (b) Wrong Filing Place...
  - (c) Death or Serious Illness...
  - (d) Unavoidable Absence...
  - (e) Disaster Relief...
  - (f) Reliance on Erroneous Tax Commission Information...
  - (g) Tax Commission Office Visit...
  - (h) Unobtainable Records...
  - (i) Reliance on Competent Tax Advisor...
  - (j) First Time Filer...
  - (k) Bank Error...
  - (l) Compliance History:
  - (m) Employee Embezzlement...
  - (m) Recent Tax Law Change...
- (4) Other Considerations for Determining Reasonable Cause.
  - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
    - (i) Whether the commission had to take legal means to collect the taxes;
    - (ii) If the error is caught and corrected by the taxpayer;
    - (iii) The length of time between the event cited and the filing date;
    - (iv) Typographical or other written errors; and
    - (v) Other factors the commission deems appropriate.
  - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
  - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for a waiver. Nonetheless, other

supporting circumstances may indicate that reasonable cause for waiver exists.

- (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance

### DISCUSSION

At the Initial Hearing, the Taxpayer did not dispute that she resided in Utah and was a Utah resident individual. She also did not dispute that she performed services for “private companies” for which she was paid "monetarily" during each year of the audit period. In fact, she did not dispute the dollar amounts that the Division had concluded that the Taxpayer had received from these private companies. She presented two arguments at the hearing. First, she argued that the “monetary” payments that she had received from these private companies were not “wages” and thus they were not part of her federal adjusted gross income and should not be included in her state taxable income. Second, she argued that she had filed amended federal returns, on which she had also claimed that her wage income was not taxable, and the State Tax Commission should wait until the IRS processed her amended returns before it issued its own assessments.

Because these are arguments that have been reviewed by the Tax Commission and the courts and have been rejected in many decisions and orders, only a brief discussion of the facts is required. For tax years 2020-2022, the Taxpayer had worked for several nongovernment employers, who had paid her for her services and issued Forms W-2 reporting the payments for the services as wage income and Utah wage income. The Taxpayer filed original Utah and federal individual income tax returns for each tax year 2020, 2021 and 2022 before the due dates of the returns, claiming the wage income as part of her federal adjusted gross income on her Utah and federal individual income tax returns.<sup>3</sup>

However, on MONTH DATE, YEAR, the Taxpayer filed amended Utah returns for tax years 2020, 2021 and 2022. In the amended returns, she removed from her returns the wage income that she had previously reported and requested a refund of the tax that she had previously paid on the wage income. She explained at the Initial Hearing that the reason for making this change was that her understanding of wages had changed. She stated that the income she had received from the private business employers was not “wages” as that was defined at 26 USC 3401(a) or 3121(a) and she had come to the conclusion that her income received from her

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<sup>3</sup> Respondent's Exhibits 5, 6, and 7.

employers was not taxable. The State of Utah processed the amended Utah individual income tax returns for the years 2020, 2021, and 2022, issuing refunds to the Taxpayer. The IRS did not accept the Taxpayer's amended federal returns for those years.<sup>4</sup> Eventually, the Division audited the Utah amended returns, concluded that they were in error and added back the wage income. The Division then issued audit deficiencies for those years and imposed a \$\$\$\$\$\$ frivolous position penalty for each year.<sup>5</sup>

For tax year 2023, the Taxpayer filed a Utah individual income tax return on MONTH DATE, YEAR, on which she claimed \$\$\$\$\$ on Line 4, as her federal adjusted gross income.<sup>6</sup> The Division provided a copy of the IRS's Account Transcript for the Taxpayer for tax year 2023, which shows that the IRS did not accept the return that reported \$\$\$\$\$ in adjusted gross income and had made an assessment based on \$\$\$\$\$ in adjusted gross income.<sup>7</sup> The Division audited the Taxpayer's 2023 Utah individual income tax return and issued the Notice of Deficiency for tax year 2023 based on \$\$\$\$\$ in federal adjusted gross income and also imposed a frivolous position penalty for tax year 2023.<sup>8</sup>

At the hearing, the Division pointed out that based on Utah law it is the Taxpayer who has the burden of proof pursuant to Utah Code Ann. §59-1-1417(1). The Division also explained Utah's statutes regarding the imposition of individual income taxes and why the Taxpayer's citations to Internal Revenue Code Sections 3401 and 3121 were not applicable in this matter. The Division explained that under Utah Code Ann. §59-10-103(1)(t), the Taxpayer was a Utah resident individual for the tax years at issue in this appeal, which the Taxpayer did not dispute at the hearing. The Division further explained that Utah imposes a tax on the state taxable income of a resident individual in Utah Code Ann. §59-10-104(1) and that "state taxable income" is defined in Utah Code Ann. §59-10-103(1)(z) as the resident individual's "adjusted gross income," subject to certain adjustments that are not applicable in this case. The Division also asserted that Utah Code Ann. §59-10-103(1)(a) provides that "adjusted gross income" for a resident individual "means the same as that term is defined in Section 62, Internal Revenue Code." Therefore, the Division concluded that Internal Revenue Code Section 62 is applicable in this matter, and Internal Revenue Code Section 62 specifies that "adjusted gross income" is "gross income" with some specified deductions. The Division noted that "gross income" is defined by Section 61 of the Internal Revenue Code as "all income from whatever source derived, including (but not

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<sup>4</sup> Respondent's Exhibits 9, 10, and 11.

<sup>5</sup> Respondent's Exhibits 1, 2, and 3.

<sup>6</sup> Respondent's Exhibit 8.

<sup>7</sup> Respondent's Exhibit 12.

<sup>8</sup> Respondent's Exhibit 4.

limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits and similar items . . . .”

The Division is correct that the payments that the Taxpayer received from the various employers as payment for her services, whether referred to as “wages” or being “paid monetarily” are compensation for services and meet the definition of gross income as that term is defined in Section 61 of the Internal Revenue Code, and, therefore, should be included in the Taxpayer’s adjusted gross income as state taxable income.

The Commission points out to the Taxpayer that the argument that wages or compensation from a private-sector employer are not subject to income tax has been soundly rejected by the courts<sup>9</sup> and the Utah State Tax Commission.<sup>10</sup> The Commission also finds that the argument that wages or compensation for services are not subject to income tax is contrary to the applicable statutory provisions noted above. Based on the express terms of Utah law, compensation for services is included in Utah taxable income regardless of whether it is referred to as “wages” or “compensation” and regardless of whether it is earned in the public or private sector.<sup>11</sup> As noted by the Division, Internal Revenue Code Sections 3401 and 3121 are not

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<sup>9</sup> In *Swanson v. United States*, 799 Fed. Appx. 668, 670, 2020 U.S. App. LEXIS 247, \*3, 125 A.F.T.R.2d (RIA) 2020-371, 2020 WL 90997 the court held, “Arguments ‘that wages are not taxable income . . . have been rejected by courts at all levels of the judiciary and are patently frivolous.’ (Citation Omitted). We have specifically held as frivolous arguments, including: that [taxpayers’] wages are not income subject to tax but are a tax on property such as their labor; that only public servants are subject to tax liability; [and] that withholding of tax from wages is a direct tax on the source of income without apportionment in violation of the Sixteenth Amendment . . . .” See *Waltner v. Commissioner of Internal Revenue*, T.C. Memo, 2014-35, pg. 49 (2014)(which rejected the argument that the definition of employee only includes federal employees and persons who are not federal employees are not taxed); *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985)(the court rejected a jury instruction stating that an employee does not include privately employed wage earners, and held “[i]t is obvious that within the context of both statutes the word ‘includes’ is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others”); *Sullivan v. United States*, 788 F.2d 813, 815 (1st Cir. 1986), which found that the argument is meritless; *Montero v. Comm’r*, 354 Fed. Appx 173, 174 fn. 1 (5th Cir. 2009),(the court noted that the Sixth Circuit has found the theory that private sector compensation is not “wages” and therefore not taxable “to be a frivolous tax-protestor argument”); *United States v. Connor*, 898 F.2d 942, 944 (3rd Cir. 1990)(the court held that wages are income within the meaning of the Sixteenth Amendment); *Briggs v. Commissioner*, T.C. Memo 2016-86, pg. 10 (2016), (the United States Tax Court held “[p]etitioners’ assertions that wages from private-sector employers are not ‘income’ for Federal income tax purposes are frivolous . . . .,” (citing *Grunsted v. Commissioner*, 136 T.C. 455, 459-460 (2011)); *Pohl v. Commissioner*, T.C. Memo. 2013-291)(the court found that the Petitioners did not have substantial authority or a reasonable basis for their position and their arguments lacked any legal or factual basis to constitute a reasonable misunderstanding of the law).

<sup>10</sup> See *Utah State Tax Commission, Initial Hearing Order, Appeal No. 19-1400 (7/17/2020)*; and *Findings of Fact, Conclusions Law and Final Decision, Appeal No. 21-1480 (7/25/2023)*. These decisions are available for review in a redacted format at: <https://tax.utah.gov/commission-office/decisions>.

<sup>11</sup> See *Stelly v. Commissioner*, 761 F.2d 1113, 1115 (5th Cir. 1985). See also *Grantor v. C.I.R.*, 739 F.2d 265, 267 (7th Cir. 1984) in which the Seventh Circuit Court of Appeals stated: “It is well settled that wages received by taxpayers constitute gross income within the meaning of Section 61(a) of the Internal Revenue Code . . . and that such gross income is subject to taxation.” In *United States v. Koliboski*, 732 F.2d 1328, 1329 fn. 1 (7th Cir. 1984), the Seventh Circuit Court of Appeals stated “the defendant’s entire case at trial

incorporated into any of the relevant provisions of the Utah Code, whereas 26 U.S.C. Sec. 61 and 62 are expressly incorporated into the Utah Code.

Considering the Taxpayer's second argument, that the Tax Commission should wait until the IRS accepts the Taxpayer's amended federal returns, or original 2023 return, before issuing an assessment, the Commission finds that Utah is not bound to accept a Taxpayer's adjusted gross income as \$\$\$\$ simply because that amount was reported as federal adjusted gross income on a federal income tax return. Additionally, the Utah Supreme Court has previously held that the state is not precluded from issuing an assessment in situations where the IRS has not issued one.<sup>12</sup> It appears that the Taxpayer had attempted to file amended federal returns for tax years 2020 through 2022 and an original federal return for tax year 2023 that claimed \$\$\$\$ in wage income and those returns were not accepted by the IRS. The Commission generally gives deference to the IRS in determining a Taxpayer's federal adjusted gross income. However, it is appropriate for the Division to make an independent determination in certain circumstances.<sup>13</sup> Furthermore, several courts have found that filing a \$\$\$\$ return where a Taxpayer has a Form W-2 showing income is incorrect on its face.<sup>14</sup>

The Division assessed a \$\$\$\$ furtherance of a frivolous position penalty for all of the tax years at issue in this appeal. Utah Code Ann. §59-1-401(9) provides “[i]f 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.” Due to the extensive case law stating that wages are included as part of federal adjusted gross income and are subject to income tax, the Commission finds the Taxpayer's argument to the contrary to be a frivolous position. The Commission finds that for each tax year at issue, the

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rested on his claim that he in good faith believed that wages are not income for taxation purposes. Whatever his mental state, he, of course, was wrong, as all of us already are aware. Nonetheless, the defendant still insists that no case holds that wages are income. Let us now put that to rest: WAGES ARE INCOME.” See also *United States v. Collins*, 920 F.2d 619 (10th Cir. 1990), cert. denied, 500 U.S. 920 (1991); *United States v. Lonsdale*, 919 F.2d 1440 (10th Cir. 1990); *United States v. Sloan*, 939 F.2d 499, 501 (7th Cir. 1991), cert. den. 112 S.Ct. 940 (1992); *Cox v. Commissioner of Internal Revenue*, 99 F.3d 1149 (10th Cir. 1996).

<sup>12</sup> See *Jensen v. State Tax Comm'n*, 835 P.2d 965, 970 (Utah 1992); *Nelson v. Auditing Division*, 903 P.2d 939, 940 (Utah 1995).

<sup>13</sup> See *Initial Hearing Order, Appeal No. 12-2963*, pg. 4, Utah State Tax Commission (February 23, 2015).

<sup>14</sup> See *Sisemore v. United States*, 797 F.2d 268, 269 (6th Cir. 1986) (holding that a return showing no income “on its face clearly showed that their assessment of their taxes was substantially incorrect and that their position on the matter was frivolous”); *Davis v. United States Government*, 742 F.2d 171, 172 (5th Cir. 1984); *Kelly v. United States*, 789 F.2d 94 (1st Cir. 1986).

Taxpayer filed a purported return that clearly indicated the tax liability shown was substantially incorrect in furtherance of this frivolous position. Thus, the Commission finds that the Division properly assessed a \$\$\$\$ penalty pursuant to Utah Code Ann. §59-1-401(9). The Commission has discretion to waive penalties under Utah Code Ann. §59-1-401(14). The Commission has promulgated Administrative Rule R861-1A-42 and Publication 17 to outline the circumstances, which the Commission may consider “reasonable cause” justifying a waiver of penalties. However, the Taxpayer has not presented a basis to show reasonable cause exists to waive the penalties in this matter.

For the reasons stated above, the Division’s audit deficiencies of tax, frivolous position penalty and interest should be sustained for each tax year at issue in this appeal and the Taxpayer’s appeal should be denied.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains in full the Division’s audit deficiencies including tax, frivolous position penalty and interest, for each of the tax years 2020 through 2023, and the Taxpayer’s appeal is hereby denied. 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.

DATED this \_\_\_\_ day of \_\_\_\_, 2025.

John L. Valentine  
Commission Chair

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
Commissioner

John T. Deeds  
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.**