

03-0723
INCOME TAX
TAX YEARS: 1999, 2000
SIGNED: 03-22-04
COMMISSIONERS: R. JOHNSON, P. DEPAULIS, M. JOHNSON
ABSENT: P. HENDRICKSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 03-0723
)	Account No. #####
AUDITING DIVISION OF)	
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	
)	Judge: Davis
Respondent.)	

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, from the Auditing Division
 RESPONDENT REP. 3, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 26, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.

2. The years in question are 1999 and 2000.

3. For 1999 and 2000, Petitioner filed a resident income tax return. On his 1999 income tax return, he took a retirement income deduction of \$\$\$\$\$, and a credit for taxes paid to another state of \$\$\$\$\$. On his 2000 income tax return, he took a credit for taxes paid to another state of \$\$\$\$\$. For 1999, the credit for taxes paid to another state was for taxes which he paid to COUNTRY. For 2000, \$\$\$\$\$ of the credit for taxes paid to another state was for taxes paid to STATE, and \$\$\$\$\$ was for taxes paid to COUNTRY.

4. Respondent performed an audit on the tax returns of Petitioner, and denied the deductions for each of the above items. However, upon providing later information, Respondent removed its adjustment and allowed the deduction for retirement income in the amount of \$\$\$\$\$. Respondent also allowed the credit for taxes paid to STATE, but they disallowed the deduction for taxes paid to COUNTRY. The only issue in this proceeding is for the credit for taxes paid to another state which was taken on Petitioner's returns for taxes which he paid to COUNTRY.

5. Petitioner presented a copy of a United States-COUNTRY Income Tax Convention Treaty dated August 16, 1984, which had as one of its stated purposes the avoidance of double taxation. Part of Petitioner's position in this matter is that even if the Utah Statutes do not allow such taxes, the treaty between the United States and COUNTRY should require that either the credit be allowed or that the income from his pension in COUNTRY should not be required to be included as income on his Utah income tax return.

6. On Petitioner's 1999 and 2000 federal income tax returns, he took a foreign tax

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credit for the taxes which he paid to COUNTRY. In doing so, he had an election to take either that credit, or a deduction for the taxes, but elected to take the credit instead of the deduction.

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...

"Resident individual" is defined in Utah Code Ann. 59-10-103(1)(k) as:

(i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or (ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state. For purposes of this Subsection (1)(k)(ii), a fraction of a calendar day shall be counted as a whole day.

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.

Utah Code Ann. 59-10-106 provides in relevant part as follows:

No credit applied directly to the income tax calculated for federal income tax purposes pursuant to the Internal Revenue Code shall be applied in

calculating the tax due under this chapter.

Utah Code Ann. §59-10-110 provides as follows:

(1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter equal to the amount of the tax imposed on him for the taxable year by another state of the United States, the District of Columbia, or a possession of the United States, on income derived from sources therein which is also subject to tax under this chapter.

The United States-Canada Income Tax Convention dated August 16, 1984 defines the taxes which are covered by that treaty, in Article II thereof as follows:

Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. The existing taxes to which the Convention shall apply are:
 - (a) In the case of Canada, the taxes imposed by the Government of Canada under Parts I, XIII, and XIV of the Income Tax Act; and
 - (b) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code.
3. The Convention shall apply also to:
 - (a) Any identical or substantially similar taxes on income; and
 - (b) Taxes on capital, which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.
4. Notwithstanding the provisions of paragraphs 2(b) and 3, the Convention shall apply to:
 - (a) The United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);
 - (b) The United State excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations); and
 - (c) The United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXIX (Miscellaneous Rules).

DISCUSSION

Article II of the United States-COUNTRY Income Tax Convention specifically states which taxes are covered by that convention. In reviewing those provisions, income taxes with individual states of the United States are not included as taxes covered by that convention. Therefore, the Commission determines that the treaty or convention between the United States and COUNTRY does not require the State of Utah to give taxpayers credit on their Utah income tax return for any taxes they may have paid to COUNTRY.

Utah Code Ann. §59-10-106 specifically limits the credit for taxes paid to another state to the amount of the tax "imposed on him for the taxable year by another state of the United States, the District of Columbia, or a possession of the United States, on income derived from sources therein which is also subject to tax under this chapter". (Emphasis added.) Therefore, the statute does not give credit for taxes paid to another country, such as COUNTRY.

In addition, Utah Code Ann. §59-10-110 specifically prevents credit on the State of Utah return for credits applied directly to the income tax under the Internal Revenue Code. The foreign tax credit taken by Petitioner on his federal income tax return is one of those taxes which may not be taken pursuant to that statute.

As stated in the findings, Petitioner took a credit for the taxes paid to COUNTRY on his federal income tax return for each of the years at issue. In doing so, he made an election to not take a deduction for the taxes which he had paid to COUNTRY. If he had taken a deduction instead of a credit, such deduction would have flowed through to his State of Utah income tax return and

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would have reduced the amount of income on the state return by the amount of the deduction on the federal return. By taking the credit instead of a deduction, it saves Petitioner more tax money, but results in those savings occurring on his federal return instead of his state return.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Petitioner was not legally entitled to take the credit for taxes paid to another state for the taxes which he paid to COUNTRY. COUNTRY is not a jurisdiction for which a deduction is allowed on his Utah return pursuant to Utah Code Ann. §59-10-106. Therefore, the audit assessment is hereby sustained, and the Petition for Redetermination is hereby denied. It is so ordered.

DATED this _____ day of _____, 2004.

G. Blaine Davis
Administrative Law Judge

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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 _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. 59-1-601 and 63-46b-13 et. seq.

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