

06-0267
INCOME
SIGNED: 11-13-2006
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON
ABSENT: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	06-0267
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 REP., CPA
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
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 August 29, 2006.

Petitioner is appealing an audit deficiency of additional Utah individual income tax for tax year 2003. Respondent issued the Statutory Notice of Audit Change on February 9, 2006, which indicated a deficiency of income tax in the amount of \$\$\$\$\$ and \$\$\$\$\$ in interest. No penalties were assessed with the audit.

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.

Utah law allows for a credit for taxes paid to another state at Utah Code §59-10-106 that provides in pertinent part:

- (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.
. . . .
- (3) The credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

The Commission has adopted a rule regarding how the credit is to computed and claimed. Utah Admin. Rule R865-9I-3(E) states:

The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following: 1. the amount t of tax paid to the other state; or 2. a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

DISCUSSION

The issue before the Commission is whether it was appropriate for Respondent to disallow a portion of the credit Petitioners claimed on their Utah income tax return for taxes paid to another state. For tax year 2003 Petitioners were Utah residents and filed Utah resident individual income tax returns. In addition to Utah income, they had received some STATE 1 source income during that year. For this reason they also filed an STATE 1 nonresident income tax return and were required to pay taxes to STATE 1 on the STATE 1 source income. On their Utah individual income tax return Petitioners claimed a credit for income taxes paid to STATE 1 in the amount of \$\$\$\$\$. In the audit Respondent disallowed a portion of the credit, reducing the amount of the credit to \$\$\$\$\$. This resulted in the tax deficiency of \$\$\$\$\$.

The discrepancy appears to result from a difference between Utah and STATE 1 income tax law. For the STATE 1 return Petitioners were required to add back into their STATE 1 taxable income an amount of \$\$\$\$\$ for bonus depreciation. This add back is unique to STATE 1. Federal tax law allowed this depreciation deduction, so it was not included in their federal adjusted gross income. Utah income tax is based on the federal taxable income, so in Utah the deduction would also have been allowed and the amount not included in the taxable income. However, STATE 1 required Petitioners to add the bonus depreciation to their federal adjusted gross income to determine Petitioner's STATE 1 taxable income, which increased their STATE 1 taxable income from \$\$\$\$\$ to \$\$\$\$\$.

When Petitioners calculated the amount of the Utah credit for taxes paid to another state, Petitioners used \$\$\$\$\$ on line 1 of Schedule TC-40A, which requested federal adjusted gross income taxed in the state of STATE 1. It was Respondent's position the correct amount for line 1 was \$\$\$\$\$ because the bonus depreciation was not actually included in the federal adjusted gross income.

Petitioners' representative did not dispute that Respondent had applied the Utah law in computing the amount for the credit. He argued instead that Utah should make some type of equitable or fairness adjustment because the tax difference resulted from a mismatch between Utah law and STATE 1 Law. Petitioners' representative presented no cites to Utah code or case law that supported his contention that the Tax Commission had the authority to make an exception for Petitioners in this manner.

Upon review of the audit and the parties' arguments, the Commission concludes that Respondent has correctly calculated the amount of credit for taxes paid to STATE 1. The Utah statute that provides the credit expressly limits the credit to income that would also be subject to tax in Utah. See Utah Code Sec. 59-10-106(1). The bonus depreciation would not have been subject to tax in Utah because it was allowed as a deduction from federal adjusted gross income. The add back of the depreciation is a peculiarity of STATE 1 tax law. In determining the amount of the credit the Tax Commission must apply the statutes as written by the legislature. Petitioners have presented no provision in the law that allows the exception requested by Petitioners in this matter.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit deficiency of additional tax and interest for tax year 2003. 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

Appeal No. 06-0267

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

DATED this _____ day of _____, 2006.

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 _____, 2006.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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