
BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 06-1424</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2005</p> <p>Judge: Phan</p>
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Presiding:

Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Assistant Director, Taxpayer Services Division
RESPONDENT REP. 3, Compliance Specialist, Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 9, 2008. Based upon the evidence and testimony presented at the hearing the Tax Commission hereby makes its:

FINDINGS OF FACT

1. This matter is before the Commission on Petitioner's (the "Taxpayer") appeal of Respondent's (the "Division") denial to issue a refund to the Taxpayer of Utah Individual Income Tax for the 2005 tax year, based on a claim for a credit. The Division issued the Statutory Notice denying the credit on October 23, 2006. The Taxpayer timely appealed the Statutory Notice and the matter proceeded through the appeal process to the Formal Hearing.

2. The amount of tax that the Taxpayer is requesting be refunded is \$\$\$\$\$.

3. The material facts were not in dispute in this matter. The Taxpayer had timely filed with his wife, a joint Utah Individual Income Tax Return for the 2005 tax year. They filed the return as Utah resident individuals. They acknowledge that they were Utah resident individuals for income tax purposes in 2005.

4. On their 2005 Utah return they declared \$\$\$\$ in federal adjusted gross income. This included \$\$\$\$ in pension payments the Taxpayer had received from a former employer in COUNTRY. Petitioner had resided in COUNTRY 1 and been employed there for a number of years prior to the 2005 tax year.

5. COUNTRY 1 required that the Taxpayer pay income taxes on the pension income from the COUNTRY 1 employer.

6. On his United States federal return the Taxpayer took a credit for taxes paid to COUNTRY, as is allowed under federal tax law. Federal tax law gave the Taxpayer the option of taking a credit for taxes paid to another country or taking a deduction. Had the Taxpayer chosen the deduction it would have reduced his federal adjusted gross income and the lower federal adjusted gross income would have been the starting point for the Utah taxable income. Therefore, he would have paid a lesser amount in Utah individual income tax. However, ultimately, this would have resulted in higher federal taxes, to the extent that the Taxpayer would have paid more in Utah and U.S. Federal income taxes on a combined basis, than by claiming the credit.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104 (2005)¹ 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

¹ The Tax Commission applies the code and cites to the sections as in effect during the tax year at issue. The Utah Individual Income Tax Act has had some subsequent revisions and renumbering of code sections.

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.

For the 2005 tax year, Utah Code Sec. 59-10-106(1) (2005) provided that a credit may be allowed against a person's Utah tax liability for taxes paid to another state as follows:

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 Utah Legislature has specifically provided that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code Sec. 59-10-543 provides the following:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . .

DISCUSSION

Utah Code Sec. 59-10-104 imposes a tax on the "state taxable income" of every resident individual. "State taxable income" is defined at Utah Code Sec. 59-10-112 as federal taxable income with the modifications, subtractions and adjustments set out at 59-10-114. In this matter there was no dispute that the Taxpayer was a Utah resident during 2005. Additionally, the pension income, which he received from his former COUNTRY 1 employer, was included in his federal taxable income and therefore became part of his state taxable income. The issue was the Taxpayer's contention that he should receive a credit against his Utah tax liability for taxes paid to COUNTRY.

Petitioner points out that because his COUNTRY 1 pension income was taxed in COUNTRY, by the U.S. federal government, and by the state of Utah, he has been triple taxed on this income. He ended up paying 44% of that income in taxes. Utah Code Section 59-10-106 allows for a credit for taxes paid to another

state. The Taxpayer points out that this section does not prohibit a credit for taxes paid to another country, that it is merely silent on this point. The Taxpayer argues that he should be allowed to take a credit for the taxes that he paid to COUNTRY 1 against his Utah state tax liability, or he should be allowed an equitable adjustment under 59-10-115. Pointing out that 59-10-115(4) provides that the Commission shall by rule prescribe for equitable adjustments where the taxpayers would suffer a double tax detriment. The Taxpayer asks that if the determination was made that the law does not allow a credit, then the law should be changed. He pointed to a study prepared by the STATE Legislative Fiscal Bureau, which had compared the state income tax provisions of all states that imposed the tax. The study indicated that of the 44 states that impose a state individual income tax, 12 allowed for a credit for taxes paid to a foreign country.

The Division pointed out that Utah Code Sec. 59-10-106 provides for a credit for only taxes paid to another state, not taxes paid to another country and the current law simply does not provide for the credit that Petitioner is requesting in this matter. The Division points out that Petitioner could have taken a deduction on his federal return rather than a credit. Taking a deduction would have reduced his Utah taxable income and tax liability. Of course it would have increased his federal liability in a greater amount.

Upon review of the parties' positions in this matter, it is the Commission's conclusion that the current law does not allow for a credit for taxes paid to another country. The Commission has considered this issue on two prior occasions. In *Findings of Fact, Conclusions of Law and Final Decision*, Appeal No. 03-0723, issued on March 22, 2004, the Commission considered a taxpayer's request for a credit for taxes paid to Canada. In *Order*, Appeal No. 05-1787, issued on September 5, 2006, the issue was a credit for taxes paid to COUNTRY 2. In both cases the Commission concluded that there is no statutory basis to allow the requested credit. The Tax Commission must implement that tax laws as they are written. The change in law that Petitioner is requesting is a policy determination that could only be made by the Utah Legislature. This is a change that would affect more individuals than the Taxpayer in this matter. It appears that some states have passed

Appeal No. 06-1424

legislation to allow for a credit for taxes paid to another state. The Commission would point out to Petitioner that he could go directly to the legislators in his voting district and ask that they sponsor legislation on this point. The Tax Commission is not responsible for initiating all tax related legislation. It is the state legislature that would need to consider this issue and make a determination whether the credit should be allowed for all residents of the state who have paid taxes to a foreign government on income also taxable to Utah.

CONCLUSION OF LAW

There is no statutory basis to allow a credit for taxes paid to COUNTRY 1 under Utah Code Sec. 59-10-106 or allow an equitable adjustment under Utah Code Section 59-10-115 to offset taxes that the Taxpayer paid in that country on income that is also taxable to Utah.

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies Petitioner's appeal. It is so ordered.

DATED this ____ day of _____, 2008.

Jane Phan
Administrative Law Judge

Appeal No. 06-1424

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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice: Failure to pay within thirty days the balance that results from this order may result in additional penalties and interest. 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 Sec. 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 Sec. 59-1-601 et seq. & 63-46b-13 et seq.

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