

11-803
INCOME
TAX YEAR: 2009
SIGNED: 05-11-2012
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, vs. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING DECISION Appeal No. 11-803 Account No. #####-1 Tax Type: Income Tax Tax Year: 2009 Judge: Jensen
---	--

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on October 31, 2011 in accordance with Utah Code Ann. §59-1-502.5. Petitioner (the “Taxpayer”) is appealing a denial of a refund for the 2009 tax year by Respondent (the “Division”).

APPLICABLE LAW

Utah Code Ann. §59-10-116 (2009) provides for a tax on the state taxable income of a nonresident individual.

Utah Code Ann. §59-10-103(1)(w) (2009) defines “state taxable income” to include income derived from Utah sources as described in Utah Code Ann. §59-10-117.

Utah Code Ann. §59-10-117(1)(b) provides that Utah source income includes income from “carrying on of a business, trade, profession, or occupation in this state.”

Utah law allows for a credit for taxes paid to another state. Generally, the credit provides that if a Utah resident has income that is taxed as source income “by another state of the United States, the District of Columbia, or a possession of the United States,” Utah Code Ann. §59-10-1003(1) provides for a credit against the tax that the Utah resident would owe to Utah. However, Utah Code Ann. §59-10-1003(2); provides that the credit for taxes paid to another state “may only be claimed by a: (a) resident claimant; (b) resident estate; or (c) resident trust.

The Utah Legislature has provided that the taxpayer generally bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-1-1417 provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner”

DISCUSSION

The parties agree that for the 2009 tax year, the Taxpayer was an STATE 1 resident. He worked in Utah and had Utah source income from a Utah employer. The Taxpayer’s Utah employer withheld \$\$\$\$ in Utah state income tax. The Taxpayer filed a nonresident individual income tax return to request a refund of that tax. On that return, the Taxpayer claimed a \$\$\$\$ credit for taxes paid to STATE 1.

The Division denied the Taxpayer’s refund request, noting that the Taxpayer’s 2009 tax return showed that the Taxpayer had \$\$\$\$ withheld from income in STATE 1, but received that amount back as a refund and therefore did not pay STATE 1 state tax.

The Commission need not consider the Taxpayer’s argument that he is entitled to a credit for taxes withheld but not paid to another state because the Utah credit for taxes paid to another state is available only to Utah residents under Utah Code Ann. §59-10-1003(2). This limitation on a credit for taxes paid to another state is consistent with a policy that provides that if two states claim the ability to tax the same income, the state of the source income has precedence over the state claiming tax on the basis of residency. The Taxpayer is not a Utah resident therefore is not a person entitled to take a Utah credit for taxes paid to another state.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission sustains the Division’s denial of a refund of Utah income tax for the 2009 tax year. It is so ordered.

Appeal No. 11-803

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

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

DATED this _____ day of _____, 20 .

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner