

11-2380  
INCOME  
TAX YEAR: 2008  
SIGNED: 08-13-2012  
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN  
EXCUSED: D. DIXON

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No.    11-2380  Account No.    ##### Tax Type:    Income Tax Tax Year:    2008  Judge:    Phan
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**Presiding:**  
Jane Phan, Administrative Judge

**Appearances:**  
For Petitioner:    PETITIONER  
For Respondent:    RESPONDENT REP. Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code §59-1-502.5, on May 24, 2012. Petitioner (“Taxpayer”) is appealing an Audit Deficiency of Utah Individual Income tax for the 2008 tax year. The Statutory Notice of Deficiency and Audit Change had been issued by Respondent (“Division”) on June 2, 2011. The amount of the tax at issue was \$\$\$\$ and interest as of the date the notice had been \$\$\$\$\$. Interest continues to accrue until the balance is paid. No penalties were assessed with the audit. The additional tax resulted from the Division’s disallowance of an equitable adjustment taken by the Taxpayer on his 2008 Utah Individual Income Tax Return in the amount of \$\$\$\$.

APPLICABLE LAW

State taxable income is defined in Utah Code §59-10-104(1) (2008)<sup>1</sup> as follows:

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<sup>1</sup> The Commission applies the law in effect during the audit.

For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.

Utah Administrative Rule R865-9I-7 (2008) was adopted for determining how income is taxed for a part-year resident of Utah. It provides in pertinent part:

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The State taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah Portion of FAGI divided by the total FAGI, not to exceed 100 percent.

Utah Code §59-10-115 (2008) provided for an equitable adjustment, under specified circumstances in pertinent part:

The Commission shall allow an adjustment to adjusted gross income of a resident or nonresident individual if the resident or nonresident individual would otherwise: (a) receive a double tax benefit under this part; or (b) suffer a double tax detriment under this part.

...

Utah Admin. Rule R865-9I-4(A) (2008) clarifies when the equitable adjustment is allowed as follows:

Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as clarified in Utah Code Ann. 59-10-115 or as determining by the Tax Commission consistent with provisions of the Individual Income Tax Act.

The applicable statutes specifically provide that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code Sec. 59-1-1417 provides:

In a proceeding before the commission, the burden of proof is on the petitioner. . .

### DISCUSSION

The Taxpayer explained that he had been a resident of STATE 1 from January through March of 2008. He stated that he had come to Utah involuntarily after a medical issue at the insistence of family and friends but then decided to stay in Utah. He considers that he was a Utah resident from April 2008 forward. During 2008 he received a retirement military annuity. He attributed \$\$\$\$ of this income to the period that he was still a resident of STATE 1 and this was how the income was allocated by state on his W-2. The Taxpayer filed

a STATE 1 return claiming this income. He also filed a Utah return for the 2008 tax year. Rather than filling out the form using the TC-40B for a part-year resident, in which a percentage is determined based on Utah income verses the federal adjusted gross income, the Taxpayer deducted the \$\$\$\$ he attributed to STATE 1 as an equitable adjustment. It was his contention that he did read the Utah form and instruction booklet while preparing his tax forms. He asserted that it was his conclusion from this information that the equitable adjustment was the appropriate way to account for this income. He stated that there was nothing in the instructions to say he could not get an equitable adjustment on this income and no other way that he could see to get this income off of his Utah return.

It was the Division's position that the Taxpayer could not take the \$\$\$\$ as an equitable adjustment and that the Taxpayer had not filled out his Utah individual income return correctly for his part-year resident status. The Division explained that a part-year resident status is taken into account on the Utah return on Line 24 and the Utah form TC-40B. The Division pointed out that for the Utah return you calculate the tax first as if you were a full year resident. In this case the tax amount if the Taxpayer had been a full year resident was \$\$\$\$. Then you apply the percentage determined on form TC-40B based on the Utah income verses the federal adjusted gross income. For the Taxpayer this percentage was %%%%. The \$\$\$\$ tax amount is multiplied by the percentage which resulted in \$\$\$\$ in Utah income tax.

From the information provided at the hearing, it appears that the Taxpayer had made an attempt at correctly filing a Utah return for 2008, with the belief that he did not need to include income that he received while a resident of STATE 1. The Division did not assess any penalties with the audit. However, being unaware of the law or a misunderstanding is not basis for abatement of tax or interest. The law and the tax forms do provide for part-year residents to file returns calculating the actual tax due based on the percentage of the Utah income verses the federal adjusted gross income. As noted in Utah Code Sec. 59-10-115 and Utah Admin. Rule R865-9I-4(A) an equitable adjustment is allowed only when necessary to prevent the inclusion of the income for a second time in the Utah taxable income. Taxation of the income by Utah and another state is not basis for an equitable adjustment. Further, the Utah tax is reduced for part-year resident individuals by calculating the percentage applied to the tax on the form TC-40B. In looking at the Utah Individual Income Tax Instruction Booklet for the 2008 tax year, there are specific directions referring a part-year resident to the TC-40B. The Division has properly applied the law in this matter and the audit assessment should be upheld.

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Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Taxpayer's appeal in this matter is 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 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 \_\_\_\_\_, 2012.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner