

12-50

TAX TYPE: INCOME TAX

TAX YEAR: 2008

DATE SIGNED: 3-31-2014

COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO

EXCUSED: D. DIXON

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2,

Petitioners,

vs.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION**

Appeal No. 12-50

Account No. #####

Tax Type: Income Tax

Tax Year: 2008

Judge: Phan

Presiding:

R. Bruce Johnson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1
TAXPAYER-2

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 7, 2014, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners (“Taxpayers”) timely filed an appeal of a Notice of Deficiency and Audit Change, issued by Respondent (“Division”) on November 23, 2011.¹ The matter proceeded to a Formal hearing before the Utah State Tax Commission.

¹ Respondent’s Exhibit 1.

2. The Notice of Deficiency was for tax year 2008 and indicated an audit tax due in the amount of \$\$\$\$\$. As of the date of the Notice of Deficiency, interest in the amount of \$\$\$\$\$ had accrued. Interest continues to accrue on any unpaid balance. No penalties were assessed with the audit. SENTENCE DELETED.

3. The Taxpayers had been part-year residents of STATE during 2008 and part-year residents of Utah.

4. The Taxpayers filled out the Utah Individual Income Tax Return (TC-40) as if they were full year Utah residents, as they failed to fill out TC-40B. Following line 23 on Utah's TC-40, which is the last line on page 1, it states, "Non or Part-Year Residents complete TC-40B before continuing on Page 2. See TC-40B Instructions on page 10.

5. There was no dispute that the Taxpayers were, in fact, part year residents of Utah. In the audit the Division changed the return type from "Full-Year Resident" to Non/Part-Year Resident.

6. The Taxpayers had received \$\$\$\$\$ in federal adjusted gross income during 2008.²

7. It was the Taxpayer's position that of that amount, \$\$\$\$\$ was earned while they were still living in STATE. They testified that they had paid income tax to STATE on the income they earned in that state.

8. After moving to Utah in July 2008, TAXPAYER-1 worked in Utah at COMPANY and had earned \$\$\$\$\$ in wages from that employer during 2008. A copy of the W-2 from COMPANY was provided at the hearing.³ TAXPAYER-2 did not work in Utah in 2008.

9. The Utah TC-40 Line 4, asks for "federal adjusted gross income from federal return." Instead of listing on that line their federal adjusted gross income of \$\$\$\$\$, the Taxpayers excluded their STATE income and reported only their Utah income of \$\$\$\$\$.⁴ This is contrary to the TC-40 and the Instructions for the TC-40. It is not clear why there was a small difference between the wages reported on the W-2 from COMPANY and the income listed on the Utah return.

10. In the audit the Division corrected the filing to a part-year resident filing. The Division calculated the tax starting with the Taxpayers' full federal adjusted gross income, the \$\$\$\$\$, which should have been listed by the Taxpayers on Line 4 of their Utah return. Then the Division calculated out the tax based on the instructions provided part-year residents on Utah TC-40B. In this calculation the Division subtracted from the \$\$\$\$\$ of Utah employment income the amount of \$\$\$\$\$ for moving expenses, to get to Utah income of \$\$\$\$\$. The Division had allowed the moving expenses in the audit, even though the Taxpayers had not claimed them on their Utah return. The Division calculated that the

2 Respondent's Exhibit 4.

3 Respondent's Exhibit 3, pg. Aud. 15.

4 Respondent's Exhibit 3.

Utah income was 37.28% of the federal adjusted gross income. The tax amount is calculated at first based on the full FAGI, but then is multiplied by this percentage, so that Taxpayers were assessed 37.28% of the tax that would have been on the full FAGI.

APPLICABLE LAW

State taxable income is defined in Utah Code §59-10-104(1) (2008)⁵ as follows:

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 Code Sec. 59-10-103(1)(v) provides for a percentage of tax on a part-year resident individual as follows:

“State income tax percentage for a part-year resident individual” means, for a taxable year, a fraction:

(i) the numerator of which is the sum of: (A) . . .for the time period during the taxable year that the part-year resident individual is a resident, the part-year resident individual’s total adjusted gross income for that time period . . . and (B) for the time period during the taxable year that the part-year resident individual is a non resident, an amount calculated by: (I) determining the part-year resident individual’s adjusted gross income for that time period . . . and (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I) that is derived from Utah sources in accordance with Section 59-10-117; and
(ii) the denominator of which is the difference between (A) the part-year resident individual’s total adjusted gross income for that taxable year, after making the: (I)additions and subtractions required by Section 59-10-114; and (II) adjustments required by Section 59-10-115 . . .

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.

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:

⁵ The Commission applies the law in effect during the audit.

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

CONCLUSIONS OF LAW

1. The Taxpayers argue that the Division’s audit is assessing tax on the STATE income, for which they have already paid tax to STATE. The Taxpayers argue that “it is an illegal tax” and it is not fair to be taxed on this income in Utah. There was no dispute that the Taxpayers failed to follow the forms and instructions for part-year residents in filling out their 2008 Utah return. The Taxpayers state instead that they filled out their Utah return in a way they felt was fair. The Taxpayers cite no statutory provisions or case law in support of their argument. In fact, the Taxpayers’ position is directly contrary to Utah Code Sec. 59-10-103(1)(v) and the Commission has previously rejected similar arguments.⁶

2. The Division has properly followed Utah Code Sec. 59-10-103(1)(v) in calculating the Taxpayers’ part-year resident Utah income tax for the 2008 tax year. As noted by the Division, although the Division’s calculation does result in a higher tax amount than the Taxpayers’ method, it is because the Taxpayers’ method improperly allocates 100% of their federal exemptions and deductions to the Utah income. The Utah statutory method results in an increase in tax because it applies the same 37.28% of federal exemptions and deductions to the Utah income, which was 37.28% of the federal adjusted gross income.

The Division’s audit for the 2008 tax year should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Utah State Tax Commission sustains the Utah individual income tax audit against the Taxpayers for the 2008 tax year. It is so ordered.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D’Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

⁶ *Tax Commission Initial Hearing Order, Appeal No. 11-2380 (2012)*. This and other Tax Commission decisions may be reviewed in a redacted format at tax.utah.gov/commission-office/decisions.

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. §63G-4-302. 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 et seq. and §63G-4-401 et seq.