

13-1355  
TAX TYPE: INCOME TAX  
TAX YEAR: 2006  
DATE SIGNED: 11-6-2014  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO  
EXCUSED: D. DIXON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER-1& TAXPAYER-2,

Petitioners,

vs.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 13-1355

Account No. #####

Tax Type: Income Tax

Tax Year: 2006

Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-2, By Telephone

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 16, 2014 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) had appealed a non-filing audit deficiency issued on March 26, 2013 for the 2006 tax year. After receiving the original audit deficiency the Taxpayers provided copies of their 2006 Utah Individual Income Tax Return, as well as returns filed in other states. Respondent (“Division”) had reviewed the Utah return that had been filed and accepted the return with one change, issuing the revised Notice of Deficiency and Audit Change on February 10, 2014 (“Revised Audit”). In the Revised Audit, the Division disallowed a portion of the credit claimed by the Taxpayers for taxes paid to STATE-1. The Revised Audit indicated additional tax due of \$\$\$\$\$, interest of \$\$\$\$\$ and no penalties. It was the Revised Audit that was at issue at the hearing.

APPLICABLE LAW

Utah Code § 59-1-1417 provides that the burden of proof is upon the petitioner (the taxpayer) in income tax matters before the Commission as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following . . . [The statute then provides three exceptions; none of which apply to this case.]

Utah Code § 59-1-1410(3) provides that there is no time limit for the Division to issue a statutory notice when a taxpayer has not filed a Utah income tax return; this section states in part:

The commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee, or charge at any time if:

(a) a person:

. . . .

(ii) fails to file a return; or

(b) the commission estimates the amount of tax, fee, or charge due in accordance with Subsection 59-1-1406(2).

Resident individuals of Utah are allowed to claim a tax credit against taxes paid to another state. For the 2006 tax year, Utah Code §59-10-1003 provided as follows:

(1) Except as provided in Subsection (2), a claimant, estate, or trust may claim a nonrefundable tax credit against the tax otherwise due under this chapter equal to the amount of the tax imposed: (a) on that claimant, estate, or trust for the taxable year; (b) by another state of the United States, the District of Columbia, or a possession of the United States; and (c) on income: (i) derived from sources within that other state of the United States, District of Columbia or possession of the United States; and (ii) if that income is also subject to tax under this chapter.

. . . .

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

The Commission adopted Utah Admin. Rule R865-9I-3 (2006) pursuant to § 59-10-1003 (2006). The rule provides in pertinent part:

A. A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-106<sup>1</sup> even though part of the income may be from sources outside this state.

B. Except to the extent allowed in D., a resident taxpayer may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

2. completing form TC-40A, Credit For Income Tax Paid To Another State, for each state for which a credit is claimed; and

3. attaching any schedule completed under B.2. to the individual income tax return.

. . . .

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<sup>1</sup> Effective in 2006, Utah Code Sec. 59-10-106 was revised and renumbered to Utah Code Sec. 59-10-1003.

E. The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

1. the amount 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.

F. A taxpayer claiming a credit under Section 59-10-106 shall retain records to support the credit claimed.

The Commission has been granted the discretion to waive penalties and interest. Utah Code § 59-1-401(13) (2011) states, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

The Commission has promulgated Administrative Rule R861-1A-42 (2011) to provide additional guidance on the waiver of interest, as follows in pertinent part:

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

### DISCUSSION

The issue in this case was the amount of credit that the Division had allowed for taxes paid by the Taxpayers to STATE-1 for the 2006 tax year. The Taxpayers had claimed on their Utah return credit for taxes paid to another state in the amount of \$\$\$\$\$. Part of this was a credit in the amount of \$\$\$\$\$ paid to the State of STATE-2 and was not in dispute as the Division had allowed this credit amount. The Division disallowed \$\$\$\$\$ of the credit which the Taxpayers had claimed as taxes paid to the State of STATE-1.

The Division provided a copy of the STATE-1 Income Tax Return for the 2006 year as filed by the Taxpayers.<sup>2</sup> On that return, on Line 12, it showed “STATE-1 Tax Liability” in the amount of \$\$\$\$\$. Line 13 showed \$\$\$\$\$ in withholding. However, Line 21 provided a “Tax Forgiveness Credit from Part D,” in the amount of \$\$\$\$\$. This credit offset the entire amount of the Line 12 tax liability. Therefore, the Division pointed out there was actually \$\$\$\$\$ in tax paid to STATE-1 and the entire amount of withholding was refunded to the Taxpayers based on that return. It was the Division’s position that a taxpayer may only claim the credit provided at Utah Code Sec. 59-10-1003 for taxes actually paid to another state. In this case the Division did not

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<sup>2</sup> Respondent’s Exhibit 2.

consider the \$\$\$\$ to be paid to STATE-1 because all of the STATE-1 liability had been offset by the Tax Forgiveness Credit provided by that state.

The Taxpayer argued that the \$\$\$\$ was the tax liability and they should not be required to pay tax just because STATE-1 had decided to refund that amount to them. She did not provide any statute or case law in support of this contention.

The applicable law on the credit for taxes paid was set out at Utah Code Sec. 59-10-1003 for the 2006 tax and is provided above in this decision. It provides for a nonrefundable tax credit against the tax otherwise due under this chapter “equal to the amount of the tax imposed” by the other state. Utah Admin. Rule R865-9I-3 (2006) further clarifies that the tax credit allowable on the Utah return be the smaller of “the amount of tax paid to the other state” or a factor that is not applicable here. Therefore, the credit is limited to the amount “of tax paid” to STATE-1. As all withholding was refunded to the Taxpayer with the liability being offset by the credit, the amount of tax paid was \$\$. As noted by the Division at the hearing, the Commission has previously considered the effect of a state tax credit allowed by another state in *Utah State Tax Commission Order Appeal No. 06-0711* (2006).<sup>3</sup> In that case the Commission concluded, “Although it is not particularly clear whether a tax paid with a credit would be tax ‘imposed,’ the rule adopted pursuant to the statute is specific. It states the credit would be limited to “the amount of tax paid to the other state.”

The Taxpayer has not provided a basis that would support a different interpretation of the statute and rule and the Revised Audit should be sustained.

Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayers’ appeal in this matter. 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:

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<sup>3</sup> Available for review in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

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 \_\_\_\_\_, 2014.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

**Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**