

14-374

TAX TYPE: INCOME TAX

TAX YEAR: 2009

DATE SIGNED: 11-30-2015

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 14-374 Account No. ##### Tax Type: Income Tax Tax Year: 2009 Judge: Marshall
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Presiding:

Michael Cragun, Commissioner

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*

For Respondent: RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 4, 2015, in accordance with Utah Code Ann. §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. The issue before the Utah State Tax Commission is the Petitioner's ("Taxpayer") appeal of an audit assessment of tax, penalties, and interest for the 2009 tax year by the Respondent ("Division").
2. The Division did not have record of a return having been filed by the Taxpayer for the 2009 tax year, and on January 3, 2014 issued a Notice of Deficiency and Estimated Income Tax. (Exhibit 1).
3. The Division calculated the Taxpayer's tax liability based upon IRS information. (Exhibit 4).

4. The Division assessed tax in the amount of \$\$\$\$\$, penalties in the amount of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$ through February 2, 2014¹. (Exhibit 1).
5. Taxpayer timely appealed the audit assessment. (Exhibit 2).
6. The Taxpayer does not contest that he was a resident of Utah during the 2009 tax year.
7. The Taxpayer currently, and during the year at issue, held a Utah driver license. (Exhibit 3).
8. The Taxpayer attended UNIVERSITY, and paid resident tuition rates, during the year at issue.
9. The Taxpayer was employed by COMPANY-1("COMPANY-1"), having started working for them in 2008.
10. For approximately four months during the summer of 2009, the Taxpayer worked for COMPANY-1 in a temporary office located in COUNTRY.
11. The Taxpayer had federal adjusted gross income of \$\$\$\$\$ for the 2009 tax year. (Exhibit 4).
12. The Taxpayer took a foreign tax credit on his federal return, rather than a deduction.
13. The Division has no objection to a waiver of penalties, as this is a first-time error for the Taxpayer.

APPLICABLE LAW

A tax is imposed on the state taxable income of a resident individual under Utah Code Ann. §59-10-104(1)².

Utah Code Ann. §59-10-103(1)(q) defines "resident individual" as follows:

- (i) "Resident individual" means:
 - (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
 - (B) an individual who is not domiciled in this state but:
 - (I) maintains a permanent place of abode in this state; and
 - (II) spends in the aggregate 183 or more days of the taxable year in this state.
- (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be counted as a whole day.

Utah Code Ann. §59-10-103(1)(w) defines "state taxable income" as follows, in pertinent part:

- (i) Subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
 - (A) Additions and subtractions required by Section 59-10-114; and
 - (B) Adjustments required by Section 59-10-115...

Utah Code Ann. §59-10-103(1)(a)(i) provides that "adjusted gross income" for a resident individual "is as defined in Section 62, Internal Revenue Code."

Utah Code Ann. §59-10-1003 provides for credit for taxes paid to another state as follows:

¹ Interest continues to accrue on any unpaid balance.

² The Commission cites to the 2009 version of the Utah Code.

- (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.
- (2) A tax credit under this section may only be claimed by a:
 - (a) resident claimant;
 - (b) resident estate; or
 - (c) resident trust.
- (3) The application of the tax credit provided under this section may not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state disregarded.
- (4) The tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

Utah Code Ann. §59-10-115 provides for equitable adjustments for state income tax as follows in pertinent part:

- (1) 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.

The Commission has discretion to waive penalties and interest. Utah Code Ann. §59-1-401(13) provides that, “[u]pon 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.”

Utah Administrative Rule R861-1A-42 provides additional guidance regarding the waiver of penalties and 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.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor...

- (j) First Time Filer...
- (k) Bank Error...
- (l) Compliance History...
- (m) Employee Embezzlement...
- (n) Recent Tax Law Change...

CONCLUSIONS OF LAW

- A. There is no statutory basis to allow a credit for taxes paid to COUNTRY under Utah Code Ann. §59-10-1003. This credit applies only to a tax imposed by another state of the United States, the District of Columbia, or a possession of the United States.
- B. There is no statutory basis to allow an equitable adjustment under Utah Code Ann. §59-10-115. The statute allows for an equitable adjustment if a taxpayer would suffer a double tax detriment “under this part.” The “part” referred to is the Utah Individual Income Tax Act. Because the equitable relief allowed in Utah Code Ann. §59-10-115 is limited to a double tax detriment under the Utah Individual Income Tax Act, it cannot provide equitable relief for a taxpayer required to pay Utah income tax in addition to taxes paid to another country. Had the Taxpayer chosen to take a deduction on his federal return for the taxes paid to COUNTRY, it would have reduced his federal adjusted gross income. The lower federal adjusted gross income would have flowed through to his state return, as the starting point for the Utah taxable income. Therefore, the Taxpayer would have paid a lesser amount in Utah individual income tax.
- C. There is good cause to waive the penalties assessed by the audit. Utah Code Ann. §59-1-401(13) grants the Commission discretion in waiving penalties. Administrative Rule R861-1A-42(3)(1) provides that the Commission may consider the Taxpayer’s compliance history in determining whether to waive penalties. The Division acknowledged that this was a first time error on the part of the Taxpayer, and that penalties should be waived on that basis.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment of tax and interest, but waives the penalties assessed by the Division’s audit for the 2009 tax year. It is so ordered.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

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.