

14-1144  
TAX TYPE: INCOME TAX  
TAX YEAR: 2009  
DATE SIGNED: 9-8-2015  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL  
EXCUSED: R. PERO  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 14-1144  Account No. ##### Tax Type: Income Tax Tax Year: 2009  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-2, By Telephone  
For Respondent: RESPONDENT-1, Manager, Income Tax Auditing  
RESPONDENT-2, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on June 2, 2015 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Taxpayer”) had filed an appeal of a Notice of Deficiency and Audit Change, which originally had been issued on March 26, 2014. The amount of audit tax due on the original notice had been \$\$\$\$ and interest as of the date that the notice was issued had been \$\$\$\$\$, for a total of \$\$\$\$\$. The deficiency arose from Respondent’s (“Division’s”) disallowance of credit for taxes paid to another state, which had been claimed by the Taxpayers on their 2009 Utah Resident Individual Income Tax Return. Subsequently, the Division amended the audit, issuing an amended Notice of Deficiency and Audit Change on February 19, 2015. In the amended audit, the Division allowed a portion of the credit claimed. The amended audit tax due was \$\$\$\$\$ with interest as of the date of the amended notice \$\$\$\$\$, for a total of \$\$\$\$\$ due. No penalties were assessed with either audit. Interest continues to accrue on the amount due as indicated in the amended audit until paid in full.

APPLICABLE LAW

Resident individuals of Utah are allowed to claim a tax credit against taxes paid to another state. For the 2009 tax year, Utah Code §59-10-1003 (2009)<sup>1</sup> 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.

. . .

(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.

The Commission adopted Utah Admin. Rule R865-9I-3 (2009) pursuant to § 59-10-1003 (2009). The rule provides in pertinent part:

(1) A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-1003 even though part of the income may be from sources outside this state.

(2) Except to the extent allowed in Subsection (4), a resident taxpayer may claim the credit provided in Section 59-10-1003 by:

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

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

(c) attaching any schedule completed under 2(b) to the individual income tax return.

. . . .

(5) The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following: (a) the amount of tax paid to the other state; or (b) a percentage of that 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.

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 . . .

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<sup>1</sup> The Commission applies the substantive provisions of law in effect during the tax year at issue in this appeal.

DISCUSSION

The Taxpayer explained that she and her spouse were Utah residents. In 2009 she was visiting STATE-1 and purchased a lottery ticket from the STATE-1 Lottery. She ended up winning \$\$\$\$ and had been issued a Form W-2G (Gambling Winnings) by the STATE-1 Lottery for that year. The W-2G indicated that from her winnings, \$\$\$\$ was withheld for federal income taxes and \$\$\$\$ for STATE-1 State Income Taxes. The Taxpayers were Utah residents and they did not understand at the time their 2009 taxes were due that they should have filed a Nonresident STATE-1 Tax return for that year. They assumed that the \$\$\$\$ withholding would cover any taxes that they owed to the state of STATE-1. They filed a Utah Resident Individual Income Tax return for 2009. On their Utah return they claimed the gambling winnings as well as a credit for taxes paid to another state in the amount of \$\$\$\$\$, which was the amount they had calculated on their Utah TC-40S based on the credit limitations and the \$\$\$\$ withholding.

When the Division audited the Taxpayers 2009 return, they requested verification of the taxes paid to another state and it was through the audit process that the Taxpayer learned they should have filed a STATE-1 return to calculate the actual amount of the tax imposed by that state. The Taxpayers then did prepare a STATE-1 Nonresident Personal Income Tax Return which they filed in STATE-1 on September 9, 2014. It turned out, after they prepared the return, that the amount of tax they had owed to STATE-1 for 2009 had been only \$\$\$\$\$. Had they filed the return within STATE-1'S statute of limitations for refunds, they would have received a refund of \$\$\$\$\$ from the STATE-1 withholding that had been paid for them by the lottery. However, STATE-1 denied issuing the Taxpayers the refund because the Taxpayer'S STATE-1 return had been filed after the expiration of the statute of limitations. The Taxpayers provided a copy of a letter from the state of STATE-1 which indicates the STATE-1 return was filed, but the refund was denied.

The Taxpayer requests that the audit be abated, noting that \$\$\$\$ had been withheld from the lottery winnings and paid to STATE-1 in withholding and they were not able to get any of this back, even though this had significantly overpaid the taxes due to STATE-1. She also indicated that to have to pay the State of Utah now on this amount was a serious financial hardship. She was retired and living on a fixed income.

It was the Division'S position that the Taxpayers had to file a return in the other state in order to claim the credit for taxes paid to another state and also that the credit amount is based on the taxes "imposed" by that other state. It was the Division'S position that "taxes imposed" meant

the taxes that were actually due under that state's law, not the withholding amount. In the original audit deficiency the Division disallowed all of the credit for taxes paid to another state because the Taxpayers had not filed a return in STATE-1. After the Taxpayers had prepared and filed their STATE-1 Nonresident Personal Income Tax Return, the Division determined it would allow a credit for the \$\$\$\$\$, which was the amount of tax the Taxpayers actually owed to STATE-1 as indicated on the return and the Division amended its audit to allow a credit in this amount.

In support of its position, the Division's representative provided a copy of a prior Tax Commission decision, *Findings of Fact, Conclusions of Law and Final Decision in Appeal No. 11-2740* (December 19, 2012).<sup>2</sup> The facts in Appeal No. 11-2740 were very similar to those in the subject appeal. In Appeal No. 11-2740 the taxpayer had been a Utah resident but had some income from STATE-2. There had been withholding paid to STATE-2, but that taxpayer had not filed a STATE-2 return when it was due. Had he filed he would have received a refund of much of the withholding. That taxpayer did eventually file a STATE-2 return, but was denied the refund because it was filed after the statute of limitations for refund has expired.

After reviewing the facts and the law in this case, Utah Code §59-10-1003 (2009) provides a credit equal to the amount of the tax imposed by another state of the United States. As concluded previously by the Tax Commission, the "tax imposed" is the amount of tax actually due and paid to the other state based on that state's laws. It is not necessarily the amount withheld and paid over to the other state. It is unfortunate for the Taxpayers that they did not file a STATE-1 return for 2009 when the return was due. Had they filed a STATE-1 return timely, they would have received a substantial refund from STATE-1 because the withholding overpaid the tax they owed to that state. However, they were not entitled to the credit amount they had claimed on their Utah return and their Utah return was in error. Under Utah law the Taxpayers owe the state of Utah the tax as indicated in the amended audit. The audit should be sustained.

The Taxpayer has indicated that payment of the tax at this time will cause severe financial hardship. Financial hardship is not a consideration in an audit appeal proceeding. However, the Taxpayer may contact the Taxpayer Services Division at (801) 297-7703 to discuss with that Division options that may be available due to financial hardship on the collection of the amount, including monthly installment plans or Offer in Compromise.

Jane Phan

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<sup>2</sup> Many prior Tax Commission decisions are available for review in a redacted format at <http://tax.utah.gov/commission-office/decisions>.

Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the amended audit deficiency of Utah individual income tax and the interest accrued thereon for the 2009 tax year. 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, or emailed, 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

or emailed to:  
taxappeals@utah.gov

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.**

