

17-225
TAX TYPE: INCOME TAX
TAX YEAR: 2013
DATE SIGNED: 01/17/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYERS ,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 17-225</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2013</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 11, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) are appealing a Utah income tax audit deficiency issued for the tax year 2013. Respondent (“Division”) had issued a Notice of Deficiency and Audit Change on January 12, 2017. The amount of tax deficiency was \$\$\$\$ and the interest accrued thereon \$\$\$\$ as of the date of the Notice of Deficiency. No penalties were assessed with the audit. The Taxpayers had timely appealed the audit and the matter proceeded to the Initial Hearing.

APPLICABLE LAW

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

Utah Code §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:

¹ The Commission cites to the 2013 version of the Utah Code on provisions of substantive law.

- (A) additions and subtractions required by Section 59-10-114; and
- (B) adjustments required by Section 59-10-115...

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

During the audit year,² Utah Code §59-10-115 provided for an equitable adjustment in some limited situations as follows:

- (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.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to adjusted gross income required by Subsection (1).

Utah Code §59-1-1417 provides for burden of proof and statutory construction as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following . . .
- (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
 - (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
 - (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

DISCUSSION

The Taxpayers were Utah resident individuals for purposes of Utah Code Sec. 59-10-104 and had filed a Utah individual income tax return in 2013. On the return, they claimed an equitable adjustment in the amount of \$\$\$\$\$. The Division had disallowed this adjustment in the audit and that was what had resulted in the audit deficiency.

The Taxpayer explained that in 2012 he had started receiving disability benefits. For that year he had received \$\$\$\$\$ in benefits, which he claimed as income on his 2012 income tax return. He was, however, able to return to work in 2012. Social Security continued to send him benefits into 2013. In 2013, he received \$\$\$\$\$ in benefits, for a total of \$\$\$\$\$. In addition, in 2013 the Social Security Administration required that he repay the total of \$\$\$\$\$, which he did in 2013. Therefore, he did not claim on his 2013 taxes the disability benefits received during that

² After the audit period, effective beginning with the 2017 tax year, this statute was revised to add an equitable adjustment on foreign source taxable income for certain pass-through entity taxpayers.

year. Because he had claimed the \$\$\$\$ as income received in 2012 on his 2012 return and then had to pay that amount back in 2013, he had claimed an equitable adjustment to deduct the \$\$\$\$ on his 2013 return. He stated that his return was prepared by a tax professional in this manner. The Form SSA-1099 issued to the Taxpayer for tax year 2013 indicated a negative benefit paid of \$\$\$\$ for 2013. The Taxpayer also explained that he understood regarding his federal return filing that in 2013 he could have claimed the amount repaid as an itemized deduction or claim a credit under IRC Sec. 1341. Because he did not have enough deductions to itemize, the only option that he had on the federal return was to claim the credit.

The Division's representative did not disagree with the facts as presented by the Taxpayer. It was his position that the Taxpayer was not entitled to take an equitable adjustment for the \$\$\$\$ because he was not being taxed twice on the same income. He was only taxed once on this income, when he received it in 2012. What occurred in this case was that the Taxpayer was taxed only once on the income, but was taxed on income he had to repay the following year. The Division pointed to a prior Tax Commission decision, which had considered very similar circumstances and also disallowed the equitable adjustment. In *Utah State Tax Commission Initial Hearing Order Appeal No. 09-2968* (May 26, 2010)³ a taxpayer had started receiving Social Security Benefits in one year, decided the next year to voluntarily cancel his benefits and repaid the amount he had received for both years. He also received a Form 1099 that showed a negative amount. The taxpayer in *Appeal No. 09-2968* took the credit on his federal return under IRC Sec. 1341, rather than deduct the payment as an itemized deduction. The Commission in that case disallowed the equitable adjustment under Utah Code Sec. 59-10-115, finding that the taxpayer was not being taxed twice on the same income, but was instead "being taxed only once, on money they were not able to retain."

The Commission has allowed an equitable adjustment where there has been a repayment of Social Security benefits, but under circumstances that are different from the facts in the subject appeal and in *Appeal No. 09-2968*. In *Utah State Tax Commission Initial Hearing Orders Appeal No. 05-1416* (August 7, 2007) and *Appeal No. 09-2593* (May 13, 2010), both taxpayers became disabled and received disability insurance payments from private insurance carriers for several years until the Social Security Administration finally issued its ruling that they were disabled and qualified for SSI disability. During the years they received payments from their private insurer they claimed the disability payments as income. When SSA finally issued its ruling, SSA paid these taxpayers a lump sum payment to compensate them back to the time they became disabled.

³ This and other decisions issued by the Tax Commission are published in a redacted format at tax.utah.gov/commission-office/decisions.

The Taxpayers were required to claim this lump sum payment as taxable income in the year they received it. However, these taxpayers were required to reimburse the private insurance company for the payments they received prior to the SSA ruling. In *Appeals 05-1416* and *09-2593*, the taxpayers actually did receive disability payments twice and the disability payments were subject to tax twice, even though they had to repay one set of disability payments. This is not the case in this appeal where the Taxpayer was only taxed once on the disability income.

After reviewing the statutory provisions and the prior Tax Commission decisions, the audit should be upheld. Utah Code Secs. 59-10-104 and 59-10-103 impose an income tax on the state taxable income of Utah resident individuals and specifically define “state taxable income” to be the individual’s federal “adjusted gross income.” An equitable adjustment is provided under Utah Code Sec. 59-10-115 to adjusted gross income, but the statute specifically provides that the adjustment is only available if the individual would otherwise receive a double tax benefit or “suffer a double tax detriment” under this part. “This part” refers to Part 1 of Chapter 10, Individual Income Tax Act. The Taxpayers have only been taxed once on this income by the State of Utah.³ The Division’s position is consistent with how the Utah State Tax Commission has interpreted and applied Utah Code Sec. 59-10-115 and the audit should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Utah individual income tax audit deficiency of additional tax and the interest accrued thereon for tax year 2013. 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

³ The Tax Commission has uniformly interpreted this provision of law to limit the equitable adjustment to situations where the individual would be taxed twice by the State of Utah under Part 1 of the act, and has not allowed the adjustment in situations where the individual was taxed only once by the State of Utah, but also taxed by a foreign jurisdiction or by another state on the same income. *See Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-235* (November 15, 2016); *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 08-0590* (August 5, 2010); *Utah State Tax Commission Order, Appeal No. 05-1787* (September 5, 2006); *Utah State Tax Commission Initial Hearing Order, Appeal No. 12-915* (April 15, 2014); *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 14-374* (November 11, 2015).

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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 _____, 2018.

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.