

17-738
TAX TYPE: INCOME TAX
TAX YEAR: 2016
DATE SIGNED: 1/17/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 and TAXPAYER-2 Petitioners,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>ORDER ON RESPONDENT’S MOTION TO DISMISS</p> <p>Appeal No. 17-738</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2016</p> <p>Judge: Phan</p>
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Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1
For Respondent: RESPONDENT-1, Deputy Director, Taxpayer Services Division
RESPONDENT-2, Problem Resolution Specialist, Taxpayer Services
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 2, 2017, for a Hearing on Respondent’s (“Division”) Motion to Dismiss. Petitioners (“Taxpayers”) had filed a Petition for Redetermination on May 4, 2017 contesting a Notice of Change to Return. The Notice of Change to Return stated, “When your return was processed, it was reviewed for math errors (see Utah Code 59-1-1407) which resulted in a balance due of \$\$\$\$\$.” Taxpayers are not provided with information on how to appeal a Notice of Change to Return for mathematical errors, as it is the Division’s position that a change for math errors is not appealable. The Taxpayers disagreed with the Division’s action and eventually obtained information about filing an appeal and this appeal was opened. The Division has submitted its Motion to Dismiss on the basis that the Division’s correction for math errors is not an appealable action under Utah Code Sec. 59-1-1407.

APPLICABLE LAW

Utah Code Sec. 59-1-1407 requires that the Commission correct mathematical errors and provide the taxpayer notice of the correction as follows:

- (1) The commission shall correct a mathematical error.
- (2) The commission shall provide notice to a person if:
 - (a) because of a mathematical error appearing on a return, an amount of tax, fee, or charge in excess of that shown upon the return is due; and
 - (b) an assessment of the amount of tax, fee, or charge is or will be made on the basis of what would have been the correct amount of tax, fee, or charge but for the mathematical error.
- (3) The notice required by Subsection (2):
 - (a) shall describe the mathematical error; and
 - (b) is not considered to be a notice of deficiency.
- (4) For purposes of Subsection (2):
 - (a) there is no restriction upon the assessment and collection of an amount of tax, fee, or charge described in Subsection (2); and
 - (b) the person described in Subsection (2) does not have a right to:
 - (i) file a petition to the commission on the basis of a notice provided under Subsection (2); or
 - (ii) apply for review by a district court or the Utah Supreme Court of the determination of a mathematical error by the commission.

Mathematical error, for purposes of this provision, is defined by statute at Utah Code Subsection 59-1-1402(6) as:

- (a) Subject to Subsection (6)(b), “mathematical error” is defined in Section 6213(g)(2), Internal Revenue Code.
- (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a) means:
 - (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable year; or
 - (ii) a corresponding or comparable provision of the Internal Revenue Code as amended, redesignated, or reenacted.

Section 6213(g)(2) of the Internal Revenue Code provides this definition of “mathematical error” in relevant part:

- Mathematical or clerical error. The term “mathematical or clerical error” means:
- (A) an error in addition, subtraction, multiplication, or division shown on any return,
 - (B) an incorrect use of any table provided by the Internal Revenue Service with respect to any return if such incorrect use is apparent from the existence of other information on the return,

- (C) an entry on a return of an item which is inconsistent with another entry of the same or another item on such a return,
- (D) an omission of information which is required to be supplied on the return to substantiate an entry on the return,

....

DISCUSSION

The issue presented in this appeal appears to be one of first impression before the Tax Commission. The Taxpayers had filed a Utah Individual Income Tax Return for 2016 as a part-year resident. On the return, the Taxpayers had claimed only \$\$\$\$ as Utah income in Column A of the TC-40B. This was unemployment income the Taxpayers had received while residing in Utah. In processing the return, the Division noticed that the Taxpayers were claiming Utah withholding credits of \$\$\$\$ and requesting a refund from Utah in the amount of \$\$\$\$\$. The Division found W-2 information that indicated the Taxpayers had received \$\$\$\$ in wages from COMPANY, which COMPANY had reported as Utah income in 2016. The Taxpayers had not listed this income as Utah source income on Column A of their schedule TC-40B.

The Division then changed the return, or “corrected the return” to reflect the \$\$\$\$ wage income as Utah source income on the Taxpayers’ TC-40B, arguing that this was a correction of a mathematical error under Utah Code Sec. 59-1-1407. Because this change was made as a correction of a mathematical error and not through an audit, the Division argues the Taxpayers do not have the right to appeal the action under Utah Code Subsection 59-1-1407(4)(b).

At the hearing, the Taxpayer explained that he had been working for COMPANY in STATE-1 and was laid-off during 2016. It took some time to finalize severance benefits, which were contingent on his signing a release of liability form. Although living in STATE-1 and other locations, he and his wife had owned a residence in CITY-1, Utah for many years. After the lay-off, they decided to move from STATE-1 to their Utah residence. They had moved to the Utah residence before the severance benefits were finalized and the severance payment of \$\$\$\$ was made to the Taxpayer. The Taxpayer had received other wage income during 2016 from COMPANY while they were living and working in STATE-1 and this regular wage income was not at issue as it was reported by COMPANY as STATE-1 income. The Taxpayer had provided COMPANY with the CITY-1 address as his forwarding address. He stated that COMPANY personnel later told him they had to list the state and withhold in accordance with the state of his forwarding address. The Taxpayer argues that there were a number of interpretations in the instruction booklet for Form TC40 that led him to believe he qualified for the refund of the withholding

on this severance pay amount. The Taxpayer explained that he did go into the local Tax Commission office in CITY-2 and a Tax Commission employee explained why the change was made, but since the Taxpayer still disagreed with the change, the employee had suggested to the Taxpayer that he file an appeal. As noted previously, there are no instructions on how to appeal or a deadline provided for filing an appeal on the Notice of Change to Return.¹

After reviewing the facts and the law in this matter, and noting that for purposes of Utah Code Sec. 59-1-1407, there is a statutory definition of “mathematical error” provided at Utah Code Subsection 59-1-1402(6). The correction made by the Division does not constitute a “mathematical error.” Utah Code Subsection 59-1-1402(6) refers to the Internal Revenue Code at 26 USCS Sec. 6213. That federal definition makes it clear that a “mathematical error” is an error in addition, subtraction, multiplication or division on the return, an incorrect use of tables, an omission of information required to be supplied, or “an entry on the return of an item which is inconsistent with another entry of the same or another item on such return.” The Division has expanded this to be an entry on the return that is inconsistent with a W-2 prepared by someone other than the Taxpayer filing the return. This is clearly an expansion of the statutory definition of mathematical error. It was not appropriate for the Division to make this type of correction under Utah Code Sec. 59-1-1407. This type of change should be made by issuing a Notice of Deficiency, which provides a taxpayer the right to an administrative appeal of the action under Utah Code Sec. 59-1-501. Therefore, the Taxpayers’ appeal should not be dismissed and the appeal scheduled for a hearing to determine whether or not the W-2 severance income should have been included as Utah income on the Taxpayers’ return.²

Jane Phan
Administrative Law Judge

¹ The Notice of Change to Return was issued on March 29, 2017. The Taxpayers filed their appeal by email on April 27, 2017.

² This decision should not be considered as an indication of the Commission’s position regarding the merits of the Taxpayers’ claim that this income is not taxable to Utah.

ORDER

Based on the foregoing, the Tax Commission denies the Division's Motion to Dismiss. The appeal is to remain open and a hearing on the merits of the claim will be scheduled. It is so ordered.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights and 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. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.