

17-286  
TAX TYPE: INCOME TAX  
TAX YEAR: 2013  
DATE SIGNED: 01/17/2018  
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYERS,

Petitioners,

v.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 17-286

Account No. #####

Tax Type: Income Tax

Tax Year: 2013

Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1

For Respondent: RESPONDENT-1, Manager, Income Tax Auditing  
RESPONDENT-2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 19, 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 26, 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)<sup>1</sup>.

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

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

- (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 §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,<sup>2</sup> 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 §59-10-1003 provides for a credit for taxes paid to another state 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.
- ...

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

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<sup>2</sup> 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.

- (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 that was not in dispute. They had moved to Utah in 2005. During 2013, the Taxpayers sold a property that they had owned in CITY, STATE. The gain on this sale was included on their federal return as part of their federal adjusted gross income. The Taxpayers were required to file a STATE nonresident return and pay taxes to that state on the gain because it was STATE source income, which they did. Based on the information provided by the Division, the Taxpayers had paid \$\$\$\$\$ in STATE income tax in 2013.

When the Taxpayers filed their Utah resident individual income tax return, they thought the income they had earned from the sale of their STATE property should not be taxable in Utah. Therefore, the Taxpayers subtracted out the gain from their STATE property on their Utah return by claiming an equitable adjustment in the amount of \$\$\$\$\$, which was the income from the sale of their STATE property. The Taxpayers argue that this income was already taxed to STATE and so should not also be taxed to Utah. The Taxpayer also cites as support for this position Utah Code Sec. 59-10-118, which provides for the allocation and apportionment of business income that is taxed both within and without this state. The Taxpayer relies on Subsection 59-10-118(5) which says, “Capital gains and losses from sales of real property located in this state are allocable to this state.” The Taxpayer argues that, “The unwritten corollary to this statement is that gains from sales of real property not located in Utah are not allocable to Utah . . .”<sup>3</sup> The Taxpayer is incorrect, however, and an unwritten corollary should not be assumed regarding a tax law. The property was located in STATE, not Utah, so this subsection is not applicable in this case.

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” subject to certain adjustments. The Taxpayers were Utah resident individuals in 2013. They included the gain from the STATE property sale on their federal return in their federal adjusted gross income. The STATE income should have been included on their Utah return and is taxable to Utah, but they were entitled to a credit against the Utah taxes for the taxes they paid to STATE under Utah Code Sec. 59-10-1003. The Division did allow them this credit in its audit for the \$\$\$\$\$ in taxes they paid to STATE. There is a balance owed to Utah because of the difference in the Utah tax rate.

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3 See Petitioner’s Statement, dated June 28, 2017.

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*” (emphasis added). “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. Additionally, because they were allowed a credit for the full amount of the tax they had paid to STATE, they have not suffered a “double tax detriment.” 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).<sup>4</sup>

The Division’s position is consistent with how the Utah State Tax Commission has interpreted and applied Utah Code Secs. 59-10-104, 59-10-103(1) and 59-10-115 in Utah for many years. The Taxpayers’ argument that even though they are Utah resident individuals they are not subject to tax on income from a STATE source is incorrect. The Tax Commission has been consistent in its application of these provisions. In order to find that the Taxpayers are entitled to take an equitable adjustment, the Tax Commission would have to expand the equitable adjustment beyond what the Utah Legislature has specifically allowed at Utah Code Sec. 59-10-115. The Tax Commission declines to do so, especially in light of the fact that the Utah Legislature has recently considered Utah Code Sec. 59-10-115 with respect to foreign source income and revised that section in a very limited and specific manner. Certainly, the Utah Legislature could have made a broader applicable change to this section but chose not to do so. The audit should be sustained.

Jane Phan  
Administrative Law Judge

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<sup>4</sup> These and other decisions issued by the Utah State Tax Commission are available for review in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Taxpayers' appeal of the Utah individual income tax audit deficiency 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 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.**