18-1310
TAX TYPE: INCOME TAX
TAX YEAR: 2017
DATE SIGNED: 07/12/19
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-1310 Account No. ##### Tax Type: Individual Income Tax Year: 2017 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, from Taxpayer Services Division
REPRESENTATIVE FOR RESPONDENT-2, from Taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on May 8, 2019.

On May 16, 2018, Taxpayer Services Division ("Respondent" or "Division") issued a Notice of Change to Return ("Notice") to TAXPAYER ("Petitioner" or "taxpayer"). In the Notice, the Division informed the taxpayer that in accordance with Utah Code Ann. §59-1-1407, it had made a change to his 2017 Utah return because of a "math error." The Division also informed the taxpayer that he had "miscalculated the amount of tax due on line 40 of [his] return" and that the Division has changed this amount to $$$$$.[1] In the

1 Line 40 of the Form TC-40 shows the amount of "tax due." On his Utah return, the taxpayer had reported $$$$$ of tax due. Utah Code Ann. §59-1-1407 (2017) provides that when the Tax Commission corrects a "mathematical error" on a return that results in a tax, fee, or charge in excess of the amount shown

Notice, the Division also informed the taxpayer that this change had resulted in a balance due of $$$$$ (as of June 5, 2018).[2] The Notice did not provide any appeal rights to the taxpayer.

After receiving the Division's Notice, the taxpayer telephoned the Division several times to find out what specific "mathematical error" he had made on his Utah return. He explains that he eventually discovered that the Division had disallowed a $$$$$ credit for taxes paid to another state that he had claimed on his return.[3] He further explained that because he believes that he qualifies for the $$$$$ credit for taxes paid to another state that he had claimed, he wanted to appeal the Division's action. The taxpayer admitted that the Division informed him that he could not appeal a "mathematical error."[4] The taxpayer, however, contends that whether he qualifies for a credit for taxes paid to another state is more of a legal issue than a "mathematical error." As a result, the taxpayer looked online to find out how to file an appeal to the Commission. On July 15, 2018, the taxpayer filed a Form TC-738 (Petition for Redetermination) to contest the Division's May 16, 2018 Notice.

The Division has not filed a motion in which it asks the Commission to dismiss the taxpayer's appeal because the taxpayer filed his Petition for Redetermination more than 30 days after the Division issued its Notice and/or because Utah law does not allow a taxpayer to appeal notice of a "mathematical error." Nevertheless, at the hearing, the Division's representatives asked the Commission to find that the taxpayer is not entitled to claim the $$$$$ credit for taxes paid to another state, in part, because any change that Taxpayer Services Division makes to an income tax return is considered to be a "mathematical error" (as defined in Utah

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due on the return, the Tax Commission shall send a notice to the person who filed the return.

2 Interest continues to accrue until any tax liability is paid.

3 On line 26 of his Utah return, the taxpayer had claimed a credit for the entire $$$$$ of income taxes that STATE-1 had imposed on him for the 2017 tax year. If the $$$$$ amount that the taxpayer reported on line 26 of his Utah return is changed to $0 and if subsequent lines on the return are adjusted to reflect this change, it eventually results in line 40 showing a "tax due" amount of $$$$$.

4 Subsection §59-1-1407(4)(b)(i) provides that a person receiving a notice of a "mathematical error" does not have the right to appeal the Tax Commission's correction of that error.

Code Ann. §59-1-1402(6) (2017) and Internal Revenue Code ("IRC") §6213(g)(2) (2017))[5] and because the Tax Commission's action to correct a "mathematical error" cannot be appealed.

Furthermore, the Division's representatives contend that the taxpayer is not entitled to a Utah credit for any of the $$$$$ of income taxes that the taxpayer paid to STATE-1 because a review of the taxpayer's 2017 Utah and STATE-1 income tax returns shows that the taxpayer did not allocate any portion of his 2017 income to more than one state.[6] On both of his 2017 Utah and STATE-1 returns, the taxpayer reported his 2017 federal adjusted gross income ("FAGI") to be $$$$$. On his Utah return (on which he claimed to be a Utah resident individual from January 1, 2017 to October 26, 2017), the taxpayer allocated $$$$$ of his FAGI of $$$$$ to Utah. On his STATE-1 return (on which he claimed to be a STATE-1 resident individual from October 27, 2017 to December 31, 2017), the taxpayer allocated the remaining $$$$$ ($$$$$ minus $$$$$) of his FAGI to STATE-1. As a result, the taxpayer did not allocate any portion of his FAGI of $$$$$ to both Utah and STATE-1. Furthermore, the taxpayer, who has the burden of proof, proffered no evidence to suggest that any of the $$$$$ of income that he allocated to Utah was derived from sources within STATE-1.

On his STATE-1 return, the taxpayer also reported that he received an additional $$$$$ of interest income from municipal bonds that had not been included in FAGI (because this income was not subject to federal taxation), and he allocated $$$$$ of this interest income to STATE-1. As a result, the taxpayer reported on his STATE-1 return that his total 2017 income (for STATE-1 purposes) was $$$$$ (once the $$$$$ of interest income was added to the $$$$$ of FAGI), of which $$$$$ ($$$$$ plus $$$$$) was subject to STATE-1 taxation. The taxpayer did not report this $$$$$ of interest income from municipal bonds on his

5 The Division's representatives stated that they were not aware of Taxpayer Services Division ever discovering a mistake on a return that would result in appeal rights being given to a taxpayer (as opposed to Auditing Division discovering mistakes for which a notice of deficiency with appeal rights would be issued).

6 The Division's representatives asserted that when the Division can determine upon a review of a taxpayer's various state returns that none of the taxpayer's income was allocated to more than one state, claiming a credit for taxes paid to another state on a Utah income tax return constitutes a "mathematical error."

Utah return, nor did he allocate any of this interest income to Utah.[7] For these reasons, the taxpayer's Utah and STATE-1 returns show that no portion of the taxpayer's FAGI or interest income from municipal bonds was allocated to and taxed by more than one state.

The taxpayer, however, contends that he properly claimed a credit on his Utah return for the $$$$$ of income taxes that STATE-1 imposed on him for the 2017 tax year. First, the taxpayer claims that he should receive the credit because he used TurboTax software to prepare his 2017 tax returns and because the software determined that he was entitled to the $$$$$ credit. Second, he contends that Tax Commission instructions found on the internet show that he is entitled to claim the $$$$$ credit at issue. The taxpayer refers the Commission to portions of the instructions concerning the "Credit for Income Taxes Paid to Another State" that are found on the Tax Commission's website at https://incometax.utah.gov/credits/tax-paid-to-other-states.

These instructions explain how a Utah full-year resident or Utah part-year resident can determine the amount of income that has been taxed by more than one state and, if some income has been taxed by more than one state, the amount of the credit for taxes paid to another state that can be claimed on a Utah return. The examples for a Utah part-year resident address a taxpayer whose only income in Utah and the other state is FAGI. As a result, neither of these examples specifically address a part-year resident of two states where, as in the taxpayer's situation, one of the states imposes tax on income that is not includable in FAGI.

Furthermore, the taxpayer has mistakenly interpreted the examples on the Commission's website to show that $$$$$ of his 2017 income was subject to taxation in both Utah and STATE-1 (which if correct would have supported the taxpayer's claiming the $$$$$ credit at issue). Specifically, the taxpayer mistakenly determined that the portion of his "adjusted gross income taxed in STATE-1" was $$$$$ (which represents 100% of his FAGI plus 100% of the interest income from the municipal bonds). It is clear that STATE-1 did

7 The Division explained that this $$$$$ of interest income was generated from municipal bonds that were not subject to federal or Utah taxation.

not tax 100% of this $$$$$ of income. The taxpayer's STATE-1 return shows: 1) that the taxpayer's STATE-1 tax liability would have been $$$$$ if STATE-1 had taxed 100% of this $$$$$ of income; and 2) that his actual STATE-1 tax liability was $$$$$ based on the taxpayer's only allocating to STATE-1 $$$$$ of his FAGI and $$$$$ of the interest income from municipal bonds.

Where the taxpayer did not allocate any portion of his FAGI or the interest income from municipal bonds to both Utah and STATE-1 and where the taxpayer has not shown that any portion of the $$$$$ of FAGI that he allocated to Utah was derived from sources within STATE-1, the Commission finds that none of the taxpayer's 2017 income was subject to taxation by both Utah and STATE-1. Later in the decision, the Commission will apply this finding to the applicable Utah law to determine whether the taxpayer is entitled to any portion of the $$$$$ credit for taxes paid to another state that he claimed on his 2017 Utah return.

APPLICABLE LAW

1. Utah Code Ann. §59-10-1003 (2017)[8] provides for a credit for taxes imposed by another state, as follows in pertinent part:

> (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.
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> . . . .

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8 Unless otherwise indicated, the 2017 version of the substantive law will be cited.

> (4) The tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

2. Utah Admin. Rule R865-9I-3(3) ("Rule 3") provides guidance concerning the Utah credit for taxes imposed by another state for a Utah part-year resident, as follows:

> (3) A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Credit For Income Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

3. UCA §59-1-1407 provides for the Tax Commission to correct a "mathematical error" on a return, 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.

4. For purposes of Section 59-1-1407, "mathematical error" is defined in UCA §59-1-1402(6), as follows:

> (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.

5. In Subsection 6213(g)(2) of the IRC, "mathematical error" is defined, as follows:

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,
(F) an omission of a correct taxpayer identification number required under section 32 [26 USCS § 32] (relating to the earned income credit) to be included on a return,
(G) an entry on a return claiming the credit under section 32 [26 USCS § 32] with respect to net earnings from self-employment described in section 32(c)(2)(A) [26 USCS § 32(c)(2)(A)] to the extent the tax imposed by section 1401 [26 USCS § 1401] (relating to self-employment tax) on such net earnings has not been paid,
(H) an omission of a correct TIN required under section 21 [26 USCS § 21] (relating to expenses for household and dependent care services necessary for gainful employment) or section 151 [26 USCS § 151] (relating to allowance of deductions for personal exemptions),
(I) an omission of a correct TIN required under section 24(e) [26 USCS § 24(e)] (relating to child tax credit) to be included on a return,
(J) an omission of a correct TIN required under section 25A(g)(1) [26 USCS § 25A(g)(1)] (relating to higher education tuition and related expenses) to be included on a return,
(K) an omission of information required by section 32(k)(2) [26 USCS § 32(k)(2)] (relating to taxpayers making improper prior claims of earned income credit) or an entry on the return claiming the credit under section 32 [26 USCS § 32] for a taxable year for which the credit is disallowed under subsection (k)(1) thereof,
(L) the inclusion on a return of a TIN required to be included on the return under section 21, 24, or 32 [26 USCS § 21, 24, or 32] if--
(i) such TIN is of an individual whose age affects the amount of the credit under such section, and
(ii) the computation of the credit on the return reflects the treatment of such individual as being of an age different from the individual's age based on such TIN,
(M) the entry on the return claiming the credit under section 32 [26 USCS § 32] with respect to a child if, according to the Federal Case Registry of Child Support Orders established under section 453(h) of the Social Security Act [42 USCS § 653(h)], the taxpayer is a noncustodial parent of such child,
(N) an omission of any increase required under section 36(f) [26 USCS § 36(f)] with respect to the recapture of a credit allowed under section 36 [26 USCS § 36],

> (O) the inclusion on a return of an individual taxpayer identification number issued under section 6109(i) [26 USCS § 6109(i)] which has expired, been revoked by the Secretary, or is otherwise invalid,
> (P) an omission of information required by section 24(g)(2) [26 USCS § 24(g)(2)] or an entry on the return claiming the credit under section 24 [26 USCS § 24] for a taxable year for which the credit is disallowed under subsection (g)(1) thereof, and
> (Q) an omission of information required by section 25A(b)(4)(B) [26 USCS § 25A(b)(4)(B)] or an entry on the return claiming the American Opportunity Tax Credit for a taxable year for which such credit is disallowed under section 25A(b)(4)(A) [26 USCS § 25A(b)(4)(A)].A taxpayer shall be treated as having omitted a correct TIN for purposes of the preceding sentence if information provided by the taxpayer on the return with respect to the individual whose TIN was provided differs from the information the Secretary obtains from the person issuing the TIN.

6. For the instant matter, UCA §59-1-1417(1) (2019) provides guidance concerning which party has the burden of proof, as follows:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
> (i) required to be reported; and
> (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.
> . . . .

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter. First, the Commission will address whether the Division's disallowance of the $$$$$ credit at issue is a "mathematical error" for which the taxpayer does not have a right to appeal under Utah law. Second, if the Commission finds that the taxpayer may appeal the Division's action to the Commission, the Commission will determine whether the taxpayer is entitled to any portion of the $$$$$ credit that he claimed on his 2017 Utah return.

Mathematical Error. Subsections 59-1-1407(1) and (2) provides for the Tax Commission to correct a "mathematical error" and to provide notice of the error to a taxpayer if the error results in an amount of tax, fee, or charge in excess of that shown upon the return is due.[9] Subsection 59-1-1407(4)(b)(i) further provides that a taxpayer who receives a notice of a "mathematical error" does not have a right to appeal the Tax Commission's correction of that error. Consequently, if the Division's disallowance of the $$$$$ credit for taxes paid to another state that the taxpayer claimed constitutes the Division's correction of a "mathematical error," Utah law does not authorize a taxpayer to appeal that action. For these reasons, the Commission will determine whether the taxpayer's claiming the $$$$$ credit at issue on his 2017 Utah return is a "mathematical error."

For purposes of Section 59-1-1407, Subsection 59-1-1402(6) provides that "mathematical error" is defined in IRC §6213(g)(2). IRC §6213(g)(2) defines "mathematical or clerical error" to "mean" any of 16 specifically listed errors.[10] Because IRC §6213(g)(2) does not use the word "includes" or another word to suggest that other circumstances similar to the 16 specifically listed errors may also be considered to be a "mathematical or clerical error," the 16 errors listed in IRC §6213(g)(2) is an exclusive list. The Division did not indicate which of the errors listed in IRC §6213(g)(2) would apply to the instant case. As a result, the

9 Subsection 59-1-1407(3)(a) also requires for the notice of a "mathematical error" to include a description of the error. On the Notice the Division issued to the taxpayer, the Division explained how the taxpayer's "tax due" was affected by its correction of a "mathematical error." The Division, however, did not explain on the Notice that what "mathematical error" it had found (i.e., the Division did not explain that it had determined that the taxpayer was not entitled to claim the $$$$$ credit for taxes paid to another state that he had claimed).

10 While Sections 59-1-1407 and 59-1-1402(6) use the term "mathematical error," IRC §6213(g)(2) uses the term "mathematical or clerical error." None of the 16 specifically listed errors described in IRC §6213(g)(2), however, are identified as "clerical errors" only and not "mathematical errors." Furthermore, Subsection 59-1-1402(6) provides that "mathematical error," for Utah purposes, is defined in IRC §6213(g)(2) without differentiating between a "mathematical error" or a "clerical error." As a result, any "mathematical or clerical error" described in IRC §6213(g)(2) will be considered to be a "mathematical error" for purposes of Sections 59-1-1402 and 59-1-1407.

Commission needs to consider all 16 errors listed in IRC §6213(g)(2) to determine if one or more of them apply to the Division's determination that the taxpayer did not qualify for any portion of the credit at issue.

Many of the 16 errors listed in IRC §6213(g)(2) address information required on federal returns in accordance with specific sections of the IRC and, thus, are not errors that pertain to filing a Utah return. Nevertheless, some of the errors listed in IRC §6213(g)(2) are more generic in nature and, thus, are errors that can pertain to filing a Utah return. For example, IRC §6213(g)(2)(A) provides that "an error in addition, subtraction, multiplication, or division shown on any return" is a "mathematical or clerical error." It is clear that the Division's determination that the taxpayer did not qualify for the $$$$$ credit at issue is not an error in addition, subtraction, multiplication, or division. Accordingly, the Division's disallowance of the $$$$$ credit for taxes paid to another state is not a "mathematical or clerical error" described in IRC §6213(g)(2)(A).

IRC §6213(g)(2)(C) provides that "an entry on a return of an item which is inconsistent with another entry of the same or another item on such a return" is a "mathematical or clerical error." The taxpayer's entry of a $$$$$ credit for taxes paid to another state does not appear to be inconsistent with another entry of the same or another item on his Utah return. The taxpayer entered the same $$$$$ credit on line 26 of the Form TC-40, Part 4 of the Form TC-40A, and line 7 (First State) of the Form TC-40S. Where a taxpayer's claim of a credit for taxes paid to another state is consistent throughout the taxpayer's return, the Division's determination that the taxpayer is not entitled to that credit is not a "mathematical or clerical error" described in IRC §6213(g)(2)(C), especially where the Division made the determination by comparing the taxpayer's Utah return to his STATE-1 return.

IRC §6213(g)(2)(D) provides that "an omission of information which is required to be supplied on the return to substantiate an entry on the return" is a "mathematical or clerical error." It does not appear that the taxpayer omitted any required information from his Utah return in regards to the $$$$$ credit he claimed. That the Division, after comparing the taxpayer's Utah and STATE-1 return, believes that the taxpayer has

erroneously determined that he was entitled to claim a $$$$$ credit for taxes paid to another state does not mean that the taxpayer omitted any required information to substantiate his claim. Accordingly, the Division's disallowance of the $$$$$ credit at issue is also not a "mathematical or clerical error" described in IRC §6213(g)(2)(D). For these reasons, it does not appear that the taxpayer's claiming the $$$$$ credit at issue for taxes paid to another state on his Utah return constitutes any of the "mathematical or clerical errors" listed in IRC §6213(g)(2) and, as a result, does not constitute a "mathematical error" for purposes of Sections 59-1-1407 and 59-1-1402(6).

Furthermore, the Division's representatives could not explain why the Division's disallowance of the $$$$$ credit at issue would be considered an unappealable "mathematical error" other than to proffer that they were unaware of any change that the Division makes to a return ever being subject to appeal. Such a position, however, is inconsistent with the Commission's decision in *USTC Appeal No. 17-738* (Order on Respondent's Motion to Dismiss Jan. 17, 2018).[11] In that decision, the Commission ruled that the Division had expanded "the statutory definition of mathematical error" and that "[i]t was not appropriate for the Division to make this type of correction under Utah Code Sec. 59-1-1407." The Commission further instructed the Division that "[t]his 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."

11 *Appeal No. 17-738* concerned the Division's issuance of a Notice of Change to Return to taxpayers who filed a Utah part-year resident return. In that appeal, the Division informed the taxpayers that because of "math errors," they had a balance due of $$$$$. Through the appeals process, it was discovered that the "math errors" at issue in that case were the result of the Division's determining that the taxpayers, on the Form TC-40B, had failed to allocate to Utah certain income that they received and which the Division considered, after investigation, to be subject to Utah taxation. The taxpayers in that appeal subsequently filed an appeal to contest the Division's action, after which the Division filed a Motion to Dismiss on the basis that its correction of a "mathematical error" is not appealable. In that case, the Commission denied the Division's Motion to Dismiss after concluding that the "error" at issue in that case was not a "mathematical error."

The Division's representatives stated at the hearing that they did not recall the ruling in *Appeal No. 17-738*. Nevertheless, that ruling is applicable to the instant matter. Where the Division's determination that the taxpayer was not entitled to the $$$$$ credit at issue is not a "mathematical error," the Division's request for the Commission to find that the taxpayer's appeal should be denied, at least in part, because a "mathematical error" cannot be appealed is misplaced.[12] Accordingly, the Commission will apply the facts to the applicable law to determine whether the taxpayer is or is not entitled to the $$$$$ credit for taxes paid to another state that he claimed.

Applying the Facts to Utah Law. Subsection 59-10-1003(1) provides that an individual who is a Utah resident can claim a credit against his or her Utah income tax otherwise due equal to the amount of tax imposed by another state on income that is: 1) derived from sources within that other state; and 2) if that income is also subject to Utah taxation. For reasons previously discussed, a review of the taxpayer's 2017 Utah and STATE-1 returns shows that the taxpayer did not allocate any portion of his 2017 income to both Utah and STATE-1. Furthermore, the taxpayer did not proffer any evidence to suggest that any of the income that he did allocate to Utah while a Utah resident individual was derived from sources within STATE-1. For these reasons, the taxpayer has not shown that any of the income that STATE-1 taxed was also taxed by Utah. Accordingly, the taxpayer is not entitled to claim a credit for taxes paid to another state under Subsection 59-10-1003(1).

Nevertheless, Subsection 59-10-1003(4) provides that "[t]he tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission." The Commission adopted Rule 3 to provide guidance concerning the credit for taxes imposed by another state. As a result, the

12 Pursuant to the Commission's guidance in Appeal No. 17-738, the Division, in the instant matter, should have issued a notice of deficiency in which the taxpayer would have been given appeal rights. Because the taxpayer in the instant appeal was not given appeal rights in the Notice that the Division issued to him, the Commission will also not dismiss the taxpayer's appeal on the basis that he filed his Petition for Redetermination more than 30 days after the Division issued its Notice. To do so would deprive the taxpayer of his due process.

Commission must also determine whether the $$$$$ credit for taxes paid to another state that the taxpayer claimed on his Utah return is allowed under Rule 3. For a Utah part-year resident (like the taxpayer for the 2017 tax year), Rule 3(3) provides, in part, that "[a] part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state." For reasons previously discussed, the taxpayer has not shown that any of his 2017 income was subject to taxation in both Utah and STATE-1. Accordingly, the taxpayer is also not entitled to claim a credit for taxes paid to another state under Rule 3(3).

Based on the foregoing, Utah law provides that the taxpayer is not entitled to claim on his 2017 Utah return a credit for the 2017 income taxes he paid to STATE-1. As a result, the Division correctly determined that the $$$$$ credit at issue should be disallowed. While the taxpayer contends that he claimed the credit because his TurboTax software determined that he was entitled to it, the Commission bases it decisions on Utah law, not on the results of commercial tax software that a taxpayer uses to prepare his or her tax returns. Accordingly, the Commission should find that the taxpayer is not entitled to any portion of the $$$$$ credit for taxes paid to another state that he claimed on his 2017 Utah return.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission denies the Division's assertion that its disallowance of the $$$$$ credit at issue is a "mathematical error" that cannot be appealed. Nevertheless, the Commission finds that the taxpayer is not entitled to any portion of the $$$$$ credit for taxes paid to another state that he claimed on his 2017 Utah return. 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 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

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

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty. The taxpayer may contact Taxpayer Services Division at 801-297-7703 to discuss payment arrangements or see if he qualifies for financial hardship consideration.