

18-1818
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 1/13/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1, & TAXPAYER-2</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>INITIAL HEARING ORDER</p> <p>Appeal No. 18-1818</p> <p>Account No. ####</p> <p>Tax Type: Individual Income</p> <p>Tax Year: 2015</p> <p>Judge: Chapman</p>
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Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
For Respondent: RESPONDENT, from Auditing 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 DATE, 2019.

TAXPAYER-1 & TAXPAYER-2 (“Petitioners” or “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of Utah individual income taxes for the 2015 tax year. On DATE, 2018, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed taxes and interest (calculated through DATE, 2018),¹ as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue until any tax liability is paid. No penalties were imposed.

The taxpayers filed a 2015 Utah full-year *resident* income tax return, on which they reported that their 2015 federal adjusted gross income (“FAGI”) was \$\$\$\$\$. In addition, the taxpayers filed a 2015 STATE-1 full-year *nonresident* income tax return, on which they allocated to STATE-1 \$\$\$\$\$ of their 2015 FAGI of \$\$\$\$\$. The taxpayers explained that even though they were Utah resident individuals for all of the 2015 tax year, most of their 2015 income was earned by TAXPAYER-1 while he was working in STATE-1.²

The taxpayers’ 2015 STATE-1 return shows that the State of STATE-1 imposed \$\$\$\$\$ of 2015 income taxes on the taxpayers. On the taxpayers’ 2015 Utah return, however, the taxpayers claimed a credit for taxes imposed by another state in the amount of \$\$\$\$\$. The \$\$\$\$\$ credit that the taxpayers claimed on their 2015 Utah return is \$\$\$\$\$ higher than the \$\$\$\$\$ of income taxes imposed by STATE-1. The taxpayers explained that this difference is related to the \$\$\$\$\$ of “local” income taxes that the City of CITY-1, STATE-1 (“City of CITY-1”) also imposed on the income that TAXPAYER-1 earned in STATE-1. The taxpayers stated that they claimed a credit on their Utah return for both the \$\$\$\$\$ of income taxes imposed by the State of STATE-1 and the \$\$\$\$\$ of income taxes imposed by the City of CITY-1 to avoid “double-taxation.”³

The Division, however, determined that while Utah law allows a Utah resident individual to claim a credit for income taxes imposed by another state, Utah law does not allow a credit to be claimed for income taxes imposed by a city or other local governmental entity. As a result, the Division amended the taxpayers’ 2015 Utah return to reflect a credit for income taxes imposed by another state of only \$\$\$\$\$ (which is the

2 TAXPAYER-1 explained that his employer generally has him working in states other than Utah and that he generally returns to Utah on weekends.

3 The sum of the \$\$\$\$\$ of income taxes imposed by the State of STATE-1 and the \$\$\$\$\$ of income taxes imposed by the City of CITY-1 is \$\$\$\$\$. It appears that the \$\$\$\$\$ credit claimed by the taxpayers was the result of them claiming a credit based on \$\$\$\$\$ of income taxes imposed by the State of STATE-1 and \$\$\$\$\$ of income taxes imposed by the City of CITY-1. TAXPAYER-1 confirmed that he made mistakes when he prepared the taxpayers’ 2015 Utah return and that the total amount of taxes imposed by the State of STATE-1 and the City of CITY-1 is \$\$\$\$\$, not \$\$\$\$\$.

amount of income taxes imposed by the State of STATE-1). For these reasons, the Division asks the Commission to sustain its assessment in its entirety.

The taxpayers, however, contend that they will have been double-taxed on their income unless the Commission allows them to claim not only a credit for income taxes imposed by another state, but also a credit for income taxes imposed by a city. As a result, the taxpayers ask the Commission to accept their 2015 Utah return as filed and to reverse the Division's assessment in its entirety.⁴

APPLICABLE LAW

1. Utah Code Ann. §59-10-1003 (2015)⁵ provides a credit for income taxes imposed by 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 TERRITORY, or a possession of the United States; and
 - (c) on income:
 - (i) derived from sources within that other state of the United States, TERRITORY, 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.

4 The taxpayers did not ask the Commission to increase the \$\$\$\$ credit for taxes imposed by another state that they claimed on their Utah return to \$\$\$\$ (the sum of the income taxes imposed by the State of STATE-1 and the City of CITY-1).

5 Unless otherwise indicated, all substantive law citations are to the 2015 version of Utah law.

2. Utah Admin. Rule R865-9I-3 (“Rule 3”) provides guidance concerning the credit for income taxes imposed by another state, as follows:

- (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 Subsection (2)(b) to the individual income tax return.
- (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.
- (4) For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete 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; and
 - (b) attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.
- (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 the 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.
- (6) A taxpayer claiming a credit under Section 59-10-1003 shall retain records to support the credit claimed.

3. 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 taxpayers have the burden of proof in this matter. The parties agree that Subsection 59-10-1003(1) allows a credit against their 2015 Utah income tax liability for the \$\$\$\$ of 2015 income taxes that the State of STATE-1 imposed on them. At issue is whether Utah law also allows a credit for the \$\$\$\$ of 2015 income taxes that the City of CITY-1 also imposed on them. The Division contends Utah law does not allow a credit for the income taxes imposed by the City of CITY-1, while the taxpayers contend that they will be double-taxed unless a credit is also allowed for the income taxes imposed by the city.

Subsection 59-10-1003(1) allows a Utah resident individual to claim a credit for taxes imposed on income “by another state of the United States, the TERRITORY, or a possession of the United States.” As a result, it is clear that Subsection 59-10-1003(1) allows a credit for income taxes imposed by another state of the United States, the TERRITORY, or a possession of the United States. It is also clear that Subsection 59-10-1003(1) does not allow a credit for income taxes imposed by any other entity, including income taxes imposed by a city. In addition, Rule 3 is consistent with Subsection 59-10-1003(1) and does not expressly indicate that Utah allows a credit for income taxes imposed by a city. Moreover, the taxpayers have the burden of proof, and they have not provided any other provisions of Utah law or precedent that would support their position.

Appeal No. 18-1818

Accordingly, the Commission finds Utah law does not allow a credit against the Utah taxes otherwise due for the income taxes imposed on the taxpayers by the City of CITY-1.⁶

The taxpayers indicate that they will be double-taxed unless they are able to claim a credit for the income taxes imposed on them by the City of CITY-1. The taxpayers may be suggesting Section 59-10-1003, as written, results in bad tax policy under their specific circumstances. While the Commission is tasked with the duty of implementing laws enacted by the Legislature, the Commission is not authorized to amend these laws to achieve what the taxpayers may consider to be a better tax policy. That is the role of the Legislature. For these reasons, the Commission should sustain the Division's assessment in its entirety.

Kerry R. Chapman
Administrative Law Judge

⁶ This decision is consistent with the Commission's decision in *USTC Appeal No. 11-297* (Revised Initial Hearing Order Aug. 25, 2011), in which the Commission found that "[i]t is also clear that under the Utah law, the [taxpayer in that case] is not entitled to claim a credit for taxes paid to a township." This and other selected decisions can be reviewed in a redacted format on the Commission's website at <https://tax.utah.gov/commission-office/decisions>.

Appeal No. 18-1818

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment for the 2015 tax year in its entirety. 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 _____, 2020.

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 taxpayers may contact Taxpayer Services Division at 801-297-7703 to discuss payment arrangements or see if they qualify for financial hardship consideration.