

19-671
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 4/7/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDED DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS,	INITIAL HEARING ORDER
Petitioners,	Appeal No. 19-671
v.	Account No. #####
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Income Tax
Respondent.	Tax Year: 2015
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1
NAME-1, CPA

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 27, 2020, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) had filed pursuant to Utah Code §59-1-501 an appeal of a Notice of Deficiency and Audit Change issued by Respondent (“Division”) on DATE, 2019. This original Notice of Deficiency indicated audit tax due in the amount of \$\$\$\$ and interest as of the date the notice was issued of \$\$\$\$.¹ No penalties were assessed with the audit. The Division amended the audit, a copy of which was provided at the hearing, with the issuance date of January 28, 2020. The Amended Notice of Deficiency reduced the audit tax due to \$\$\$\$\$. Interest as updated to the date of the amended notice was \$\$\$\$\$. The Taxpayer disputed the amended audit, so it was the amended audit that was at issue at this hearing.

¹ Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

Utah Code Ann. §59-10-1003 (2015)² 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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- (4) The tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

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.

UCA §59-1-1417(1) (2019) provides that the Taxpayer has the burden of proof in this matter as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner

² The Tax Commission applies the substantive legal provisions that were in effect for tax year 2015.

DISCUSSION

The Taxpayers had filed a Utah part-year resident return for tax year 2015 on which they claimed they were Utah residents from DATE 2015 to DATE, 2015, and on that return the Taxpayers had claimed \$\$\$\$\$ of Utah income. They had moved to Utah from STATE-1. At the hearing, the Taxpayers claimed they were entitled to a credit for taxes paid to other states in the amount of \$\$\$\$\$, which they claimed was the total tax amount the Taxpayers paid to all the other states they had filed in for tax year 2015.³

After auditing the return and reviewing the additional information the Taxpayers submitted, the Division did not dispute that the Taxpayers were part-year Utah residents, moving into Utah part way through 2015. The issue, however, was that the Division reduced the credit for taxes paid to another state to \$\$\$\$\$, on the basis that this amount represented a credit for the taxes on income that was taxed both in Utah and another state. The Division's original audit had allowed a credit of \$\$\$\$\$, but in its amended audit had increased that to \$\$\$\$\$. It was the Division's contention that the \$\$\$\$\$ credit requested by the Taxpayers was in error because Utah had not taxed all of the Taxpayers' income, as the Taxpayers were only part-year residents. Because of this, there was income that was taxed to the other states that was not also taxed to Utah.

The facts in this appeal were not in dispute. The Taxpayers were part year residents of STATE-1 and part-year Utah residents in 2015. They had received income sourced to a number of different states. They had filed returns in all the different states in 2015 and paid individual income tax to those other states. It was not disputed that the total individual income tax they had paid to all states other than Utah had been \$\$\$\$\$. After auditing the Taxpayers' return, the Division agreed that the Taxpayers were part-year Utah residents and calculated the taxes based on the part-year status. The Division concluded that much of the income the Taxpayers had received throughout the year was not taxable to Utah because it was received during the period when the Taxpayers were domiciled in STATE-1 and was not Utah source income.

The Taxpayers had shown \$\$\$\$\$ of their income as taxable to Utah on their Utah return Schedule TC-40B. The Auditing Division's representative explained at the hearing that they agreed in the audit that this was the appropriate amount for their Utah income on that schedule. The Division provided at the hearing a chart the Division had made to consider all of the

³ Taxpayers had submitted an amended returning claiming the credit amount to be \$\$\$\$\$ on line 26 of their TC-40. *See* Respondent's Exhibit P15. The Division, however, had added up all the taxes paid to the other states and it actually totaled \$\$\$\$\$.

Taxpayers' income and the states in which it was taxed. This showed the portion of the Taxpayers' federal adjusted gross income (AGI) that the taxpayers had claimed to be Utah income and the portions of their AGI the Taxpayers had claimed taxable to the other states on their other state returns, as well as the taxes they paid to the other states. Based on this, the Division calculated the portion of the total income that was double taxed and a ratio to apply to determine the portion of the tax credit that should be allowed as follows:⁴

UT	(12 STATES REMOVED)	Total
	<u>AGI Claimed to States</u>	
\$\$\$\$	\$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$	
	<u>Taxes Paid to Other States</u>	
	\$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$ \$\$\$\$	

The Taxpayers had claimed \$\$\$\$ in total AGI on their federal return. From this the Division had calculated the following on their Exhibit P26:

AGI in other States	\$\$\$\$
Double Taxed Income	\$\$\$\$ ⁵
Total Taxes Other States	\$\$\$\$
Credit Allowed for Taxes Paid	\$\$\$\$
Ratio: (Double Taxed Income/AGI in other state) x Total Taxes Paid to other States	

The Division points out that while the sum of all the Taxpayers' state returns had been \$\$\$\$ in AGI, the Taxpayers' actual total AGI as claimed on their federal return had been only \$\$\$\$\$, meaning that some of the reported AGI income (the difference between \$\$\$\$ and \$\$\$\$\$) was income that was claimed on more than one state return. It is clear from this that not all of the Taxpayers' AGI was claimed on more than one state return and the Division concluded that only the \$\$\$\$ in income was taxed by more than one state. Of the \$\$\$\$ in AGI the Taxpayers reported on their state returns, \$\$\$\$ was reported to Utah and \$\$\$\$ was reported to the other states on the other states' returns. The Division then made its calculation on the basis that all of the double taxed income was taxed in Utah plus taxed in another state, which was an assumption favorable to the Taxpayer.⁶ The Division divided the double taxed portion by the AGI reported in

⁴ See Respondent's Exhibit P26, which was a correction offered at the hearing of P25.
⁵ This is the number the Division had calculated on its Exhibits. The Tax Commission was not able to recreate this calculation exactly but got near to it.
⁶ Since the Taxpayers were domiciled in STATE-1 prior to their move to Utah, some of this may actually have been taxed in STATE-1 and another state other than Utah. However, the Division was willing to

other states which resulted in its ratio (\$\$\$\$\$/\$\$\$\$\$). The Division then multiplied the \$\$\$\$\$ of state taxes paid to all the states other than Utah by its derived ratio, calculating the credit of \$\$\$\$\$.

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. 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 Utah Admin. Rule R865-9I-3 to provide clarity concerning the credit for taxes imposed by another state where the taxpayer is a Utah part-year resident. Rule 3(3) provides “a part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state.” Therefore, the Division is correct in this matter that the Taxpayers are not entitled to a credit for the full \$\$\$\$\$ they had paid in individual income taxes to those other states because not all of their income was subject to both Utah tax and tax in another state. Accordingly, the Taxpayer is not entitled to claim as a credit all the taxes paid to all the other states under Subsection 59-10-1003(1).

After reviewing the information presented at the hearing, the Taxpayers’ request for credit based on the full amount of taxes paid to the other states is inconsistent with Utah law and the Taxpayers’ appeal should be denied. The Division has used a methodology to calculate the credit in this appeal where the facts are complicated. Because the statute and rule are silent as to the methodology for calculating the credit under these unique circumstances, the Division’s methodology appears to be consistent with the statute and rule, while the Taxpayers’ position clearly violates the statute and rule. There may be a better methodology than what was used by the Division in this matter, but the Taxpayer has clearly not provided a methodology that is consistent with the statute and rule.



Jane Phan
Administrative Law Judge

make the adjustment on the basis that all double taxed income was attributable to being taxed to Utah and another state.

DECISION AND ORDER

Based on the foregoing, the Taxpayers' appeal is denied and the Division's amended audit of additional Utah individual income tax and interest for tax year 2015 is upheld. 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 _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner



Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.