

APPEAL #: 21-1297

TAX TYPE: INDIVIDUAL INCOME TAX

TAX YEAR: 2015

DATE SIGNED: 3/21/2023

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,  Petitioner,  v.  INCOME TAX AND EDUCATION DIVISION <sup>1</sup> OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 21-1297  Account No: #####  Tax Type: Audit - Individual Income Tax  Tax Year: 2015  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP-1, Representative  
TAXPAYER

For Respondent: RESPONDENT REP-1, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 9, 2023 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5, on an appeal filed by Petitioner (“Taxpayer”) of a Utah individual income tax audit deficiency for tax year 2015. The Initial Hearing was held by teleconference. The original Notice of Deficiency and Audit Change had been issued by Respondent (“Division”) on DATE. The Taxpayer paid the original Notice of Deficiency amount and proceeded with the appeal. After some additional information was provided by the Taxpayer, the Division issued an amended Notice of Deficiency on DATE. No penalties were assessed with either audit. The amount of the original audit tax deficiency and the

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<sup>1</sup> Due to a reorganization at the Tax Commission, the name of the Tax Commission division that was the Respondent in this matter has been changed.

amended audit tax deficiency as well as the interest accrued thereon as of the date the Notices were issued are as follows:

Tax	Interest <sup>2</sup>	Penalty	Total as of Notice Date
TABLE REDACTED			

APPLICABLE LAW

Utah imposes income tax on resident individuals at Utah Code §59-10-104 (2015)<sup>3</sup> as follows:

- (1) For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.
- (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the product of:
  - (a) the resident individual's state taxable income for that taxable year; and
  - (b) 5%.
- (3) This section does not apply to a resident individual exempt from taxation under Section 59-10-104.1.

State taxable income is defined in Utah Code §59-10-103(1)(w)(2015) as follows:

- (w) "Taxable income" or "state taxable income":
  - (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)(2015) provides the statutory definition of “adjusted gross income”:

- (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code . . .

Utah Code §59-1-1417 provides that the burden of proof is upon the petitioner in proceedings before the Commission:

In a proceeding before the commission, the burden of proof is on the petitioner. . . .

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<sup>2</sup> Interest continues to accrue on the unpaid balance.

<sup>3</sup> This Decision cites to the substantive provisions in effect for the 2015 tax year.

DISCUSSION

The Taxpayer was a Utah part-year resident in tax year 2015 and he had filed a part-year Utah return.<sup>4</sup> On the return he claimed to be a Utah resident beginning DATE through DATE. The Taxpayer had been residing in STATE-1 State, prior to moving to Utah. While in STATE-1, the Taxpayer and his representative, PETITIONER REP-1, who was also the Taxpayer's mother, had purchased a residence together in STATE-1 in 2012. The property was a fixer-upper, so there were expenses incurred that affected the basis and they used the residence both as the Taxpayer's primary residence and as a rental property as it was rented to roommates during all of the time that they owned the property. The Taxpayer's ownership interest in the property was 30% and PETITIONER REP-1 interest was 70%. They listed the property for sale in DATE and the sale on this property closed on DATE, after the Taxpayer had moved to Utah.

PETITIONER REP-1 explained that because of these factors, the federal tax calculation was difficult regarding how to account for the gain from the sale on her return and on the Taxpayer's return. The Taxpayer was a college student in 2015 and had only a small amount of wage income to claim in addition to this gain from the sale. PETITIONER REP-1 was audited by the IRS on how she had accounted for the capital gain from the sale on her federal tax return. During the process with the IRS she was able to reach an agreement with the IRS regarding how her share of the basis and gain should have been reported. This review determined that the gain was actually lower than she had reported on her federal return and should have been lower on the Taxpayer's federal return. She also realized she had made other errors on the Taxpayer's federal return, but because the Taxpayer had not been audited by the IRS, and because the changes and corrections of the other errors would not have changed the Taxpayer's federal tax liability, she did not have him file an amended federal return for tax year 2015. The reason that the changes would not have affected his federal tax liability was because he had claimed the nonrefundable lifetime learning credit on his federal return and the credit offset all of his tax liability.

The Taxpayer filed his 2015 Utah part-year return late. The Division eventually audited the Taxpayer's 2015 Utah part-year individual income tax return and concluded that the capital gain the Taxpayer had claimed on the return as non-Utah income was actually Utah income because the Taxpayer was a resident of Utah when the property in STATE-1 had sold. By the time the Division audited the Utah return, it was too late for the Taxpayer to file an amended

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<sup>4</sup> The date the Taxpayer had signed this return was DATE, so the 2015 Utah return was filed some years after its due date.

federal return. However, based on the information the Taxpayer and PETITIONER REP-1 were able to provide regarding the amount of the gain, the Division accepted the lower amount that had been calculated by PETITIONER REP-1 after she had resolved the issue with the IRS regarding her personal return and allocated a revised amount to the Taxpayer's 30% ownership interest. This was the basis for the Division amending the audit and issuing the amended Notice of Deficiency. The tax deficiency on the original audit had been \$\$\$\$ and the Division amended the tax deficiency to \$\$\$\$.

At the hearing, the Taxpayer did not contest that he owed Utah individual income tax on the gain he received from his share of the STATE-1 property that had been sold after he had moved to Utah, as corrected by the amended audit. The amount the Taxpayer contested was only \$\$\$\$ of the audit deficiency. The Taxpayer and his representative prepared corrected numbers on how the Taxpayer should have filed his federal return, and then submitted a Utah return based on the corrected federal return amount. They stated that they could not now file an amended federal return because it was beyond the federal statute for filing an amended return. Based on their corrected calculations, they claimed the lesser amount of the capital gain, which the Division had accepted in the amended audit. They calculated the corrected tax amount claimed on Line 44. On the Taxpayer's federal return they had claimed the tax amount to be \$\$\$\$\$, and it was offset in its entirety by the lifetime learning credit claimed on Line 50 of the return. The Taxpayer's representative presented at the hearing a recalculated Qualified Dividends and Capital Gain Tax Worksheet, which indicated that only \$\$\$\$\$ should have been claimed on Line 44. In addition, they argued if they could now file an amended federal return, they would make one more change. Instead of claiming the lifetime learning or education credit, which they had claimed on Line 44 on the federal return, the Taxpayer would have claimed the tuition and fees deduction on Line 34 of the federal return.<sup>5</sup> The Taxpayer's representative indicated that had the Taxpayer claimed the \$\$\$\$\$ he had spent in Utah on tuition and fees as a deduction on Line 34 of his federal return instead of the education credit, the result still would have been \$\$\$\$\$ federal taxes owed, but there would have been a reduction to the Taxpayer's federal adjusted gross income that would have resulted in the \$\$\$\$\$ reduction in Utah individual income tax. The Taxpayer had prepared and submitted an amended Utah return on that basis. The Taxpayer's representative also pointed out that for the next several years after 2015, the Taxpayer had taken the tuition and fees deduction instead of the lifetime learning credit on his tax returns.

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<sup>5</sup> This Line 34 deduction is not part of the itemized deductions. Instead it was one of the adjustments made to federal taxable income to calculate federal adjusted gross income.

At the hearing, the Division's representative did not provide any information or have a position on whether or not the Taxpayer would have been able to claim the Line 34 tuition and fees deduction, instead of the lifetime learning credit on the federal return, or whether the Taxpayer would have had no federal tax liability had he taken the deduction on the federal return. The Taxpayer has the burden of proof in this matter. Copies of the federal return filed by the Taxpayer, the schedules filed with the original return and the re-worked schedules provided by the Taxpayer's representative support the position that had the Taxpayer been within the time period to file an amended federal return, he could have claimed the tuition and fees deduction instead of the lifetime learning credit on the federal return with no change to the federal tax. The Taxpayer then could have filed a corresponding Utah return that would have resulted in a tax liability that was \$\$\$\$ less than the amount the Division calculated in the amended audit.

Upon review of the evidence and arguments submitted at the hearing, the Taxpayer has shown that his correct federal adjusted gross income would have resulted in a lower Utah individual income tax liability had he been able to file an amended federal tax return. Utah Code §59-10-104 imposes a tax on Utah resident individuals' state taxable income. Utah Code §59-10-103(1)(w) defines "state taxable income" for a resident individual to mean "the resident individual's adjusted gross income" after making certain additions or subtractions that are not at issue in this matter. Utah Code §59-10-103(1)(a)(i) specifically defines "adjusted gross income" to be "as defined in Section 62, Internal Revenue Code." Notably, this definition refers to "as defined in the Internal Revenue Code" and not as claimed by a taxpayer on their original federal return. Therefore, it may be appropriate under some circumstances for the Division or the Tax Commission to look at what should have been claimed as adjusted gross income on the return.

The Tax Commission does give deference to the IRS's determination where the IRS audited a taxpayer's federal return and adjusted the federal adjusted gross income or itemized deductions, but even then the Tax Commission has in prior decisions independently examined what the IRS has done and has occasionally concluded sufficient evidence was presented by a taxpayer to support a different federal adjusted gross income or amount of federal itemized deductions than as indicated on the Federal Account Transcript.<sup>6</sup> In this case, there has been no federal audit and no IRS adjustment. The federal adjusted gross income and federal taxable income on the account transcript are the amounts the Taxpayer had claimed on his federal return. The issue was that the Taxpayer had made errors on his federal return that were not consequential to his federal income tax liability. When the Taxpayer was audited by Utah on the Utah individual

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<sup>6</sup> See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal Nos. 12-1345* (December 12, 2016) and *06-1408* (Nov. 5, 2007). See also *Utah State Tax Commission Appeal Nos. 14-580, 13-1292, 12-2967, 12-2963, 11-2709 and 08-1482*.

income tax return it was too late to file an amended federal return. However, the Taxpayer has established what his federal adjusted gross income should have been under the Internal Revenue Code. One of the changes, the amount of the capital gain, had been accepted by the Division in its amended audit. The second change was to take the tuition and fees deduction on Line 34, instead of the lifetime learning credit, which results in no increase in federal tax and a small reduction of \$\$\$\$ in state tax. The evidence supported the Taxpayer's position that it would have been an appropriate way to file his federal return. Because the Taxpayer had already paid the original audit deficiency, this decision will result in a refund to the Taxpayer.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission hereby orders the Division to further amend its audit deficiency to decrease the Utah individual income tax deficiency by the \$\$\$\$ in tax as requested by the Taxpayer in this matter. 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 \_\_\_\_, 2023.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Jennifer N. Fresques  
Commissioner