

APPEAL #: 22-67 AND 22-638  
TAX TYPE: INDIVIDUAL INCOME TAX  
TAX YEAR: 2018 AND 2019  
DATE SIGNED: 2/21/2023  
COMMISSIONERS: J.VALENTINE, M.CRAGUN, AND J.FRESQUES  
EXCUSED/RECUSED: R.ROCKWELL

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYERS,</p> <p>    Petitioners,</p> <p>v.</p> <p>INCOME TAX AND EDUCATION DIVISION<sup>1</sup> OF THE UTAH STATE TAX COMMISSION,</p> <p>    Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal Nos. 22-67 and 22-638</p> <p>Account No: #####</p> <p>Tax Type: Individual Income Tax</p> <p>Tax Years: 2018 and 2019</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER'S REP-1, Representative  
TAXPAYER-1

For Respondent: RESPONDENT'S REP-1, Tax Examiner Manager

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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.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 19, 2022 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Taxpayers”) timely appealed the Respondent’s (“Division”) individual income tax audits for the 2018 and 2019 tax years. For the 2018 tax year, the Division assessed audit tax of \$\$\$\$\$, and interest of \$\$\$\$\$ through DATE. For the 2019 tax year, the Division assessed audit tax of \$\$\$\$\$ and interest of \$\$\$\$\$ through DATE. Interest continues to accrue on any unpaid balance. No penalties were assessed.

APPLICABLE LAW

Under Utah Code Ann. §59-10-104(1)<sup>2</sup>, “a tax is imposed on the state taxable income of a resident individual[.]”

Utah Code Ann. §59-10-103 defines “adjusted gross income,” “federal taxable income,” and “‘taxable income’ or ‘state taxable income,’” as follows:

- (1) As used in this chapter:
  - (a) "Adjusted gross income":
    - (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or
    - .....
  - (f) “Federal taxable income”:
    - (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or
    - .....
  - (w) "Taxable income" or "state taxable income":
    - (i) . . . 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;
    - .....

“Adjusted gross income” is defined in Internal Revenue Code (“IRC”) §62, in pertinent part, to mean “in the case of an individual, gross income minus the following deductions[.]”

Utah Code Ann. §59-10-115 provides for an equitable adjustment to Utah taxable income, as follows in pertinent part:

- (1) As used in this section:
  - (a) "Net foreign source taxable income" means:
    - (i) the amount calculated on line 17 of Internal Revenue Code Form 1116, Foreign Tax Credit; or
    - (ii) if, for purposes of federal individual income taxes, the amount calculated on line 17 of Form 1116 is reported on a line other than

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<sup>2</sup> All substantive law citations are to the 2018 version of Utah law, unless otherwise noted.

- line 17 of Form 1116, the amount on a line of a federal individual income tax form designated by the commission as being substantially similar to line 17 of the 2015 version of Form 1116.
- (b) "Pass-through entity taxpayer" means the same as that term is defined in Section 59-10-1402.
- (2) 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.
- (3) (a) For a pass-through entity taxpayer generating taxable income primarily from establishments classified in Code Section 33242, Metal Tank (Heavy Gauge) Manufacturing, of the 2002 or 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, an adjustment described in Subsection (2) includes net foreign source taxable income generated from Metal Tank (Heavy Gauge) Manufacturing establishments.
- (b) The adjustment described in Subsection (3)(a) applies to a taxable year beginning on or after January 1, 2017.

Utah Code Ann. §59-1-1417(1) provides for the 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, 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

The Taxpayers were Utah residents for purposes of Utah Code Ann. § 59-10-104, and had filed Utah individual income tax returns for the 2018 and 2018 tax years. On their 2018 return, the Taxpayers claimed an equitable adjustment in the amount of \$\$\$\$\$. On their 2019 return, the

Taxpayers claimed an equitable adjustment in the amount of \$\$\$\$\$. The Division disallowed the equitable adjustment for each of the years in its audits, resulting in the audit tax deficiency.

The Taxpayers' representative explained that in 2017, TAXPAYER-1 was overpaid by his employer, and his employer reported the overpayment of wages on his W-2 that year. The error was discovered in 2018, and the Taxpayers were forced to return the excess payment to TAXPAYER-1' employer in 2018 and 2019. The Taxpayers' representative explained that when the Taxpayers' 2018 and 2019 state returns were filed, an equitable adjustment was claimed in the amount of the repayment made in each year. On the Taxpayers' federal returns for the 2018 and 2019 tax years, the Taxpayers claimed a credit because the adjustment on Schedule A resulted in a minimal benefit.

The Taxpayers' representative explained why the Taxpayers believe they were subject to a double tax detriment. She stated that in 2017, TAXPAYER-1' W-2 reflected the full amount of wages he received, including the overpayment. The overpayment was repaid in 2018 and 2019. The Taxpayers made a lump-sum payment up front, made multiple monthly payments, and an additional lump-sum payment in 2019 to pay the remaining balance. The Taxpayers' representative stated that the Taxpayers' 2018 and 2019 W-2s were not reduced by the amounts of the repayment.

The Division's representative stated that the Division disallowed the equitable adjustment for each of the years because the Division does not believe the Taxpayers met the requirements to claim an equitable adjustment.

The Division's representative stated that Utah Code Ann. §59-10-115 allows for an adjustment to adjusted gross income if the individual suffers a double tax detriment "under this part." She explained that the equitable adjustment has been allowed in the past if there is double taxation. The Division's representative stated that in this case, the Division does not believe there has been double taxation. She stated that the Division believes TAXPAYER-1 was overpaid in 2017, and had to repay the overpayment of wages in 2018 and 2019. However, the Division's representative argued that the wages were correctly reported in 2018 and 2019. She stated that even though the Taxpayers had to repay the 2017 overpayment, that overpayment was not included twice in the Taxpayers' taxable income.

The Division's representative noted that the IRS allows taxpayers to either take a claim of right credit or make an adjustment on their Schedule A for such a repayment. She stated that had the Taxpayers taken the adjustment on their Schedule A, it would have flowed through to their Utah return. However, the Taxpayers elected the claim of right credit, and Utah does not allow for a similar credit.

When asked about the definition of “double tax detriment,” the Division’s representative acknowledged that the code section is broad. However, she stated that the Division is relying upon past Commission decisions. The Division’s representative stated that she has only seen the equitable adjustment allowed in certain circumstances. She stated as an example a taxpayer who was paid a disability benefit through a private company before the Social Security Administration had approved their disability benefits. The disability income received from the private company was included in the taxpayer’s income, and then was included again when the disability benefits were allowed by Social Security, even though the income had to be repaid to the private company. The Division’s representative stated that the Division looks at whether the same income was taxed once, and is then being subject to tax again.

In rebuttal, the Taxpayers’ representative argued that looking at it from the Taxpayers’ perspective, their W-2 wages have been over-reported by approximately \$\$\$\$\$. She stated that when the employer received the repayment, it was a net to the employer’s wage expense. However, there is no way for the Taxpayers to net those repayments. The Taxpayers’ representative argued that the Taxpayer was definitely double taxed, as he was taxed for the full amounts in each of the years, with no way to account for the repayment of the 2017 overpayment of wages.

The Utah Individual Income Tax Act imposes an income tax on the “state taxable income” of Utah resident individuals. *See* Utah Code Subsection 59-10-104(1). “State taxable income” is specifically defined as the individual’s federal adjusted gross income subject to certain additions, subtractions and adjustments. *See* Utah Code Subsections 59-10-103(1)(a) & (w). These provisions tax the resident individual on income included in his or her federal adjusted gross income whether it comes from sources outside of Utah or sources from within the state.

As noted by the Division’s representative, the Commission has allowed an equitable adjustment where there has been a repayment of Social Security benefits, but under circumstances that are different from the facts in the instant case. In *Utah State Tax Commission Initial Hearing Orders Appeal No. 05-1416* and *Appeal No. 09-2593*<sup>3</sup>, both taxpayers became disabled and received disability insurance payments from private insurance carriers for several years until the Social Security Administration finally issued its ruling that they were disabled and qualified for SSI disability. During the years they received payments from their private insurer they claimed the disability payments as income. When SSA finally issued its ruling, SSA paid these taxpayers a lump sum payment to compensate them back to the time they became disabled. The Taxpayers

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<sup>3</sup>These and other decisions issued by the Tax Commission are published in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

were required to claim this lump sum payment as taxable income in the year they received it. However, these taxpayers were required to reimburse the private insurance company for the payments they received prior to the SSA ruling. In *Appeals 05-1416* and *09-2593*, the taxpayers actually did receive disability payments twice and the disability payments were subject to tax twice, even though they had to repay one set of disability payments. This is not the case in the instant appeal.

The Taxpayers were only taxed once on the overpayment of wages, when it was received in 2017, but were also taxed on the income used to repay the overpayment in the following years. In *Appeal No. 09-2968* a taxpayer had started receiving Social Security Benefits in one year, decided the next year to voluntarily cancel his benefits and repaid the amount he had received for both years. He also received a Form 1099 that showed a negative amount. The taxpayer in *Appeal No. 09-2968* took the credit on his federal return under IRC Sec. 1341, rather than deduct the payment as an itemized deduction. The Commission in that case disallowed the equitable adjustment under Utah Code Ann. §59-10-115, finding that the taxpayer was not being taxed twice on the same income, but was instead “being taxed only once, on money they were not able to retain.”

After reviewing the statutory provisions and the prior Tax Commission decisions, the audit should be upheld. Utah Code Ann. §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 additions, subtractions, and adjustments. An equitable adjustment is provided under Utah Code Ann. §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. “This part” refers to Part 1 of Chapter 10, Individual Income Tax Act.<sup>4</sup> The Taxpayers have only been taxed once on this income by the State of Utah. The Division’s position is consistent with how the Utah State Tax Commission has interpreted and applied Utah Code Ann. §59-10-115 and the audit should be upheld.

Jan Marshall  
Administrative Law Judge

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<sup>4</sup> *Steiner v. Utah State Tax Comm’n*, 2019 UT 47.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's audit assessments for the 2018 and 2019 tax years. 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

**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.**