

APPEAL #: 22-1432
TAX TYPE: IIT
TAX YEAR: 2019
DATE SIGNED: 12/19/2023
COMMISSIONERS: M.CRAGUN, R.ROCKWELL, AND J.FRESQUES
EXCUSED/RECUSED: J.VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

v.

INCOME TAX AND EDUCATION
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION**

Appeal No. 22-1432

Account No: #####

Tax Type: Audit - Individual Income Tax

Tax Year: 2019

Judge: Phan

Presiding:

Jennifer N. Fresques, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER
For Respondent: RESPONDENT'S REP-1, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 25, 2023, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On July 19, 2022, Respondent (“Division”) issued a Notice of Deficiency and Audit Change in which the Division increased Petitioner’s (“Taxpayer’s”) adjusted gross income from \$\$\$\$ to \$\$\$\$\$. The Division also reduced the Taxpayer’s retirement credit from \$\$\$\$\$ to \$\$\$\$\$. The result of

these changes was an audit tax deficiency in the amount of \$\$\$\$\$ and interest as of the date of the notice in the amount of \$\$\$\$\$.¹ No penalties were assessed on the audit.²

2. The Taxpayer timely appealed the audit deficiency and the matter proceeded through the administrative hearing process to this Formal Hearing.

3. The Division's representative explained the audit changes at the hearing. He stated that the Division had received information from the Internal Revenue Service (IRS) indicating taxable changes had been made to the Taxpayer's 2019 income tax return. The changes had been that the IRS had increased the Taxpayer's federal adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$.³ The Division's representative explained that the change the IRS had made was to add the \$\$\$\$\$ in taxable income reported as paid to the Taxpayer by Transamerica Life Insurance Company in a 1099-R. The Division's representative stated that there had also been \$\$\$\$\$ in interest from a 1099-Int. Because these additions increased the Taxpayer's federal adjusted gross income significantly, it also increased the taxable portion of the Taxpayer's Social Security and phased out the Utah retirement credit. The Division's representative explained that because Utah's state taxable income is based on the federal adjusted gross income, the Division made the same change that the IRS had made to the Taxpayer's federal adjusted gross income to the Taxpayer's Utah return.

4. The Division also provided a copy of the 1099-R from Transamerica Life Insurance Company. The 1099-R indicated that there had been \$\$\$\$\$ in federal withholding, but no Utah withholding.

5. At the hearing, the Taxpayer explained that the income was from when he resided in STATE-1. He explained that he had worked in the State of STATE-1 for many years and during that time he invested in an annuity with Transamerica Life Insurance. He stated that the payments he was making into the Transamerican account were pre-taxed. He said that in 2007 he retired and in 2015 he had moved from STATE-1 to Utah. He did acknowledge that when he withdrew the \$\$\$\$\$ in 2019 he was a resident of Utah. He also understood that the \$\$\$\$\$ was subject to federal tax.

6. The Taxpayer argued at the hearing that he could not understand being taxed for monies that were accumulated in his Transamerica account, because all the contributions he made to that account occurred while he was living and working in STATE-1. It was the Taxpayer's argument at the hearing that the distribution from his Transamerican account was not earned income, it was a return on investment. He argued that as a return on investment, it was not subject to tax in Utah and he stated that he did not

¹ Interest continues to accrue on any unpaid balance.

² Respondent's Exhibits R-1 through R-3.

³ Respondent's Exhibit pages R-7 through R-13.

think that Utah could tax investment monies or unearned income. The Taxpayer did not cite any statutory provisions or rules that supported this argument.

7. In response, the Division pointed out that based on Utah law, Utah income tax is imposed on the “state taxable income of a resident individual” and Utah Code Ann. §59-10-103 defines “state taxable income” to be “adjusted gross income as that is defined in the Internal Revenue Code.” The Division pointed out unearned income is included in federal adjusted gross income and so it is, therefore, also included in Utah’s state taxable income. The Division pointed out that these distributions are taxable federally in the year they were received and that the income was included by the IRS in the Taxpayer’s federal adjusted gross income for the 2019 tax year. The Division asserted that under Utah Code Ann. §59-10-103(1)(a) & (w), because the distributions are included in the Taxpayer’s federal adjusted gross income, they are also included in the Taxpayer’s “state taxable income.”

8. The Division also explained that because the Taxpayer’s adjusted gross income had increased so much, the Utah retirement credit was completely phased out. That was why the Division had disallowed the \$\$\$\$ retirement credit that the Taxpayer had claimed on his 2019 return.

APPLICABLE LAW

Utah Code §59-10-104(1) (2019)⁴ provides as follows:

- (1) 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) 4.95%.

Utah Code §59-10-103 (2019) defines “adjusted gross 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...
 - (f) "Federal taxable income":
 - (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code...
 - (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...

⁴ This decision cites the substantive provisions of Utah Code in effect for tax year 2019.

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

For the instant matter, Utah Code §59-1-1417(1) provides guidance concerning burden of proof and statutory construction as follows in relevant part:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner . . .
- (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
 - (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
 - (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

The Commission has been granted the discretion to waive penalties and interest. Utah Code §59-1-401(14) provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

CONCLUSIONS OF LAW

1. It was not disputed that the Taxpayer was a Utah resident individual in 2019, when he had received the distribution from Transamerica. Utah Code Ann. §59-10-104(1) provides “tax is imposed on the state taxable income of a resident individual as provided in this section.” Subsection 59-10-104(2) states, “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) 4.95%.” Therefore, for tax year 2019, Utah income tax was imposed on the Taxpayer's “state taxable income.” In this matter, the Taxpayer was in disagreement with the Division on what constituted his “state taxable income.”

2. However, Utah Code Ann. §59-10-103(1)(w) specifically defines “state taxable income” for purposes of Utah’s Individual Income Tax Act. “State taxable income” 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...” There are no additions, subtractions or adjustments for the type of unearned income or investment income at issue in this appeal in Sections 59-10-114 or 59-10-115.⁵ Therefore, the Taxpayer’s “state taxable income” is equal to the

⁵ As in effect for tax year 2019, Utah Code Section 59-10-114 provided the following:

(2) There shall be subtracted from adjusted gross income of a resident or nonresident individual:

Taxpayer's "adjusted gross income." Adjusted gross income is also specifically defined for purposes of Utah's Individual Income Tax Act at Utah Code §59-10-103(1)(a)(i), which states that "adjusted gross income" "is as defined in Section 62, Internal Revenue Code..."

3. In this matter, the Taxpayer's federal "adjusted gross income" for purposes of his federal income tax return, as determined by the IRS, was \$\$\$\$\$. The Taxpayer did not dispute this as his federal adjusted gross income and he had paid tax on that amount to the federal government. However, because the Taxpayer's federal "adjusted gross income" "as defined in Section 62, Internal Revenue Code" was \$\$\$\$\$, this was also the Taxpayer's "adjusted gross income" for purposes of Utah's Individual Income Tax Act at Utah Code §59-10-103(1)(a)(i). Pursuant to Utah Code §59-10-103(1)(w) this "adjusted gross income" of \$\$\$\$\$, becomes the Taxpayer's "state taxable income" and the Taxpayer is subject to Utah individual income tax on this "state taxable income" pursuant to Utah Code §59-10-104. There is simply no statutory support for the Taxpayer's argument that unearned income or investment income which he received as a distribution while a resident of Utah that was included in his federal adjusted gross income is not subject to Utah income tax.

4. No penalties were imposed with the audit. However, interest was imposed based on Utah Code §59-1-402. Pursuant to Administrative Rule R861-1A-42(2), "Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the

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- (a) the difference between: (i) the interest or a dividend on an obligation or security of the United States or an authority, commission, instrumentality, or possession of the United States . . .
 - (b) for taxable years beginning on or after January 1, 2000, if the conditions of Subsection (3)(a) are met, the amount of income derived by a Ute tribal member . . .
 - (c) an amount received by a resident or nonresident individual or distribution received by a resident or nonresident beneficiary of a resident trust: (i) if that amount or distribution constitutes a refund of taxes imposed by: (A) a state; or (B) the District of Columbia; and (ii) to the extent that amount or distribution is included in adjusted gross income for that taxable year on the federal individual income tax return of the resident or nonresident individual or resident or nonresident beneficiary of a resident trust;
 - (d) the amount of a railroad retirement benefit . . .
 - (e) an amount: (i) received by an enrolled member of an American Indian tribe . . .
 - (f) an amount received: (i) for the interest on a bond, note, or other obligation issued by an entity for which state statute provides an exemption of interest on its bonds from state individual income tax . . . and
 - (g) the amount of all income, including income apportioned to another state, of a nonmilitary spouse of an active duty military member if . . .

As in effect for tax year 2019 Utah Code Sec. 59-10-115 provided the following:

- (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 . . .

commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” There was no basis for waiver of interest presented at this hearing.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's audit deficiency of additional Utah individual income tax and the interest accrued thereon for tax year 2019. The Taxpayer's appeal is denied. It is so ordered.

DATED this _____ day of _____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights and 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. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.