

APPEAL #: 22-1555  
TAX TYPE: INDIVIDUAL INCOME TAX  
TAX YEAR: 2019  
DATE SIGNED: 7/18/2023  
COMMISSIONERS: M.CRAGUN, R.ROCKWELL, AND J.FRESQUES  
EXCUSED/RECUSED: J.VALENTINE

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER,</p> <p>Petitioner,</p> <p>v.</p> <p>INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 22-1555</p> <p>Account No: #####</p> <p>Tax Type: Audit - Individual Income Tax</p> <p>Tax Year: 2019</p> <p>Judge: Halverson</p>
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**Presiding:**  
Shannon Halverson, Administrative Law Judge

**Appearances:**  
For Petitioner: TAXPAYER  
PETITIONER'S REP-1, Taxpayer's Representative  
For Respondent: RESPONDENT'S REP-1, Manager, Income Tax and Education  
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 17, 2023 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Petitioner (“Taxpayer”) timely appealed the Respondent’s (“Division”) audit of his 2019 Utah individual income tax return. The Taxpayer filed a resident Utah individual income tax return with a filing status of head of household. The Division issued a Notice of Deficiency and Audit Change on DATE and made the audit change based on the Division’s determination that the equitable adjustment deduction claimed by the Taxpayer should be disallowed. The amounts of additional tax and interest due as of the date the Notice of Deficiency was issued are as follows:

REDACTED TABLE

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Ann. §59-10-104(1)<sup>1</sup>(2019), as follows:

. . . . a tax is imposed on the state taxable income of a resident individual as provided in this section . . . .

“Resident individual” is defined in Utah Code §59-10-103(1)(q), as follows:

(q) "Resident individual" means an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state.

The term “state taxable income” is defined in Utah Code Ann. §59-10-103(1)(w), below in relevant part:

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

- (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.
- . . . .
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

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<sup>1</sup> All substantive law citations are to the 2019 version of Utah law, unless otherwise indicated.

- ...
- (b) allowing for the adjustment to adjusted gross income required by Subsection (2).

The Internal Revenue Code sets forth provisions for the repayment of a “claim of right” in 26 U.S.C §1341(a), as follows in pertinent part:

If –

- (1) an item was included in gross income for a prior taxable year (or years) because it appeared that the taxpayer had an unrestricted right to such item;
- (2) a deduction is allowable for the taxable year because it was established after the close of such prior taxable year (or years) that the taxpayer did not have an unrestricted right to such item or to a portion of such item; and
- (3) the amount of such deduction exceeds \$3,000, then the tax imposed by this chapter for the taxable year shall be the lesser of the following:
- (4) the tax for the taxable year computed with such a deduction; or
- (5) an amount equal to –
  - (A) the tax for the taxable year computed without such deduction, minus
  - (B) the decrease in tax under this chapter (or the corresponding provisions of prior revenue laws) for the prior taxable year (or years) which would result solely from the exclusion of such item (or portion thereof) from gross income for such prior taxable year (or years).

Utah Code Ann. §59-10-537 imposes interest if tax is not paid on or before the due date, as follows in pertinent part:

- (1) (a) Subject to the other provisions of this section, if any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on the amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid.

In accordance with Utah Code Ann. §59-1-402, interest is computed as follows in pertinent part:

- (6) Interest on any underpayment, deficiency, or delinquency of a tax, fee, or charge shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §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 additional guidance on the waiver of 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.

Utah Code Ann. §59-1-1417 provides, "in a proceeding before the commission, the burden of proof is on the petitioner... ."

#### DISCUSSION

The Taxpayer stated at the Initial Hearing that he is disputing the Division's disallowance of an equitable adjustment taken by the Taxpayer in the amount of \$\$\$\$ for the 2019 tax year, which resulted in an increase in tax liability by \$\$\$\$\$. The Taxpayer received taxable Social Security benefits in 2018 in the amount of \$\$\$\$\$. The Taxpayer returned that amount to the Social Security Administration in 2019 under a Claim of Right provided by Social Security. The Taxpayer elected to claim a tax credit to account for the amount returned to Social Security pursuant to 26 U.S.C. Sec. 1341(a)(5) on his 2019 federal individual income tax return. The Taxpayer claimed an "equitable adjustment" under Utah Code Ann. §59-10-115 to account for the repayment of the Social Security benefits on his 2019 Utah individual income tax return.

The Taxpayer's representative stated at the Initial Hearing that the Taxpayer's position is that the Utah tax code is deficient because it makes no provision to account for a claim of right credit. They stated that if the Taxpayer had accounted for the repayment as an itemized deduction, rather than taking it as a credit on their federal return, the reduction in income would have flowed through on the State return. However, the Taxpayer's representative indicated that it was more advantageous for the Taxpayer to claim it as a credit on his federal return and asserted that is the preferred method of the IRS.

The Taxpayer's representative stated that the Utah tax code is silent and does not prohibit the credit being claimed as an equitable adjustment. He argued that the adjustment should be allowed to do what is most beneficial for the Taxpayer and is the preferred method for accounting for the repayment of the Social Security funds. He argued that, because the Utah code is silent, under the Supremacy Clause of the United States Constitution and because there is a federal law providing the benefit, the federal code and Social Security law should take precedence. He argued that the Taxpayer should be allowed to deduct the amount as an equitable adjustment.

The Taxpayer argued that by disallowing the equitable adjustment, the State of Utah is forcing him to pay taxes on money that was returned to the Social Security Administration. He argued that, all things considered including the lack of a provision in the Utah Code addressing a claim of right for Social Security repayment, the equitable adjustment should be allowed. He argued that Social Security is a federally required program and is in all fifty states. He argued that

if Utah has a Social Security program, then the rights and privileges that come with those benefits should be allowed, including the right to surrender and return the money and not be taxed on it.

The Division's representative stated that the Division is not disputing that the Taxpayer repaid \$\$\$\$ to the Social Security Administration in 2019. The Division acknowledged that it was to the Taxpayer's advantage to claim the credit on his federal return. However, he stated that in the State of Utah an equitable adjustment is a subtraction from income that reduces the Taxpayer's income. He stated that the disallowance of the equitable adjustment is not a tax on Social Security. Rather, the tax is imposed on the Taxpayer's 2019 state taxable income, and the equitable adjustment reduces the tax on the Taxpayer's 2019 stated taxable income. He stated that the Division has no other concerns with the Taxpayer's return and the audit assessment is based solely on the disallowance of the claim of the equitable adjustment. He stated that the Division does not think the Taxpayer was intentionally evading tax and noted that there were no penalties assessed in the audit.

The Division's representative stated that Utah Code Ann. §59-10-115(2) allows an equitable adjustment from a taxpayer's adjusted gross income if the taxpayer would suffer a double tax detriment and if income was taxed twice by Utah. He stated that the Taxpayer received Social Security benefits in 2018 and paid taxes on those benefits in 2018. He stated that the Taxpayer repaid the Social Security benefits to the Social Security Administration in 2019. He argued that the Social Security benefits were not taxed again in 2019. Thus, he argued that the Social Security benefits were not taxed twice by the State of Utah. He stated that the Division does not believe that the Taxpayer qualifies for an equitable adjustment because the Social Security benefits were not taxed twice by the State of Utah.

The Division's representative noted that in IRS Publication 915, the publication addresses repayments of benefits received in a prior year and noted that a taxpayer may be able to take an itemized deduction for the repayment of benefits if the figure is more than \$\$. He stated that the Taxpayer's claimed amount was \$\$, which is higher than \$\$, so the Taxpayer's repayment was eligible to be claimed as itemized deduction.

The Division's representatives stated that the Commission has issued numerous Commission decisions on the repayment of Social Security benefits and has ruled that repayments of Social Security benefits do not qualify as an equitable adjustment. He cited *Initial Hearing Order, Appeal No. 09-2968*, Utah State Tax Commission (May 26, 2010); *Initial Hearing Order, Appeal No. 10-0481*, Utah State Tax Commission (May 11, 2011); and *Initial Hearing Order, Appeal No. 13-2245*, Utah State Tax Commission (November 17, 2014). He stated that the

Division's position is that the Social Security benefits were taxed one time in 2018 and not taxed in 2019, so the Division does not believe the repayment qualifies as an equitable adjustment.

The Division's representatives stated that in Utah Code Ann. §59-10-103 adjusted gross income is the same as defined in Sec. 62 of the Internal Revenue Code. He noted that Utah Code Ann. §59-10-103(1)(w) defines state taxable income for a resident individual as adjusted gross income after making additions or subtractions under Utah Code Ann. §59-10-114 and §59-10-115 and stated that Utah Code Ann. §59-10-104 imposes a tax on the state taxable income of a resident individual. The Division's representative stated that a credit claimed federally cannot be treated differently as a deduction on the state individual income tax return. He stated that the Utah return has to be treated the same as the federal return. He stated that the Division's position is that the only way to subtract the repayment of Social Security income was to itemize that amount on the Taxpayer's federal return. He stated that the Division is asking the Commission to uphold the Division's audit of the Taxpayer's income tax liability for the 2019 tax year.

**Commission Findings & Analysis**

In accordance with Utah Code Ann. §59-1-1417(1), the Taxpayer has the burden of proof in this appeal. The Utah Code does not have a provision that specifically addresses a "claim of right". Under federal law, a taxpayer may elect to take either a deduction under Internal Revenue Code §1341(a)(4) or a credit under Internal Revenue Code §1341(a)(5) on the federal individual income tax return. If the Taxpayer had elected to take an itemized deduction under Internal Revenue Code §1341(a)(4) on his 2019 federal income tax return, the lower federal adjusted gross income would have flowed through onto his state return. Instead, the Taxpayer elected to take the credit because it was more advantageous for the Taxpayer on his federal return. The statutory provisions do not allow the Taxpayer to pick different approaches on his state and federal returns to provide for the most advantageous treatment on each return. The tax treatment must be consistent between the federal and state returns.

The Taxpayer claimed an equitable adjustment on his 2019 Utah individual income tax return in the amount of \$5,001.00 to account for the repayment of the Social Security benefits. The "equitable adjustment" provision of law is described in Utah Code Ann. §59-10-115. Subsection 59-10-115(2) authorizes an adjustment to the federal adjusted gross income "of a resident or nonresident individual if the resident or nonresident individual would otherwise: . . . (b) suffer a double tax detriment under this part." For purposes of Subsection 59-10-115(2), "this part" described in Subsection 59-10-115(2)(b) is referring to Part 1 of the Utah Individual Income Tax Act. The "equitable adjustment" provision of law authorized in Utah Code Ann. §59-10-115 is limited to circumstances where the individual would be taxed twice by the State of Utah under

Part 1 of the Utah Individual Income Tax Act. The adjustment is not allowed in circumstances where the individual was taxed only once by the State of Utah. In *Steiner v. Utah State Tax Comm'n*, 2019 UT 47, the Utah Supreme Court ruled that the Subsection 59-10-115(2)(b) equitable adjustment is “available only if the Utah tax code itself imposes double taxation.”<sup>2</sup>

The Taxpayer argued that it is unfair to tax him on funds he had to repay. However, the Taxpayer is not being taxed twice on the income, even if he paid the audit deficiency, and thus does not qualify for an equitable adjustment under Utah Code Ann. §59-10-115. “State taxable income” is specifically defined in Utah Code Ann. §59-10-102 as federal taxable income with certain statutory adjustments. The Taxpayer’s Social Security income is not being taxed twice for state income tax purposes. The income was included only once in the Taxpayer’s federal adjusted gross income in 2018. It was not included again in the Taxpayer’s 2019 federal adjusted gross income.

The Commission has also issued several decisions where the Commission has denied an equitable adjustment where an individual claimed an equitable adjustment to account for the repayment of Social Security benefits.<sup>3</sup> The Taxpayer has not provided any information to demonstrate that the amount claimed by the Taxpayer as an equitable adjustment for the 2019 tax year would be taxed twice by the State of Utah. The Commission finds that the \$\$\$\$ amount claimed by the Taxpayer as an equitable adjustment in the 2019 tax year is not being taxed twice by the State of Utah and is not eligible for deduction as an equitable adjustment. Thus, the Division’s disallowance of the equitable adjustment for the 2019 tax year was proper and should be sustained, and the Division’s determination of the Taxpayer’s income tax liability for the 2019 tax year was correct.

The Taxpayer has also requested a waiver of interest. With regard to the waiver of interest, Utah Administrative Rule R861-1A-42 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, a taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” Interest is not assessed to punish taxpayers. Instead, interest is assessed to compensate the state for the time value of money. The State of Utah was denied the use of the funds from the time the taxes were originally due, until they were actually paid by the

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<sup>2</sup> *Steiner v. Utah State Tax Comm'n*, 2019 UT 47, 449 P.3d 189 (Utah 2019).

<sup>3</sup> See *Initial Hearing Order, Appeal No. 09-2968*, Utah State Tax Commission (May 26, 2010); *Initial Hearing Order, Appeal No. 10-0481*, Utah State Tax Commission (May 11, 2011); and *Initial Hearing Order, Appeal No. 17-225*, Utah State Tax Commission (January 17, 2018). Redacted copies of these and other selected Commission decisions can be reviewed on the Commission’s website at <https://tax.utah.gov/commission-office/decisions>.

Taxpayer. In this appeal, the Taxpayer has the burden of proof and has not provided any information to show that the Commission gave the Taxpayer erroneous information or took inappropriate action that contributed to the error. Thus, the Taxpayer has not demonstrated sufficient grounds for the waiver of interest in this appeal.

Based on the foregoing, the Commission finds that the Division's disallowance of the Taxpayer's claimed equitable adjustment was proper. Thus, the audit should be sustained in its entirety.

Shannon Halverson  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Division's disallowance of the Taxpayer's claimed equitable adjustment for the 2019 tax year was proper. The Commission sustains the Division's audit deficiency of income tax and interest for the 2019 tax year. 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](mailto: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.**