

APPEAL #23-1482

TAX TYPE: REFUND REQUEST/PASS THROUGH ENTITY SALT ELECTION

TAX YEAR:2022

DATE SIGNED: 03/04/2025

COMMISSIONERS: J.VALENTINE, M.CRAGAN, R.ROCKWELL, J.FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	<b>INITIAL HEARING ORDER</b>
Petitioner,	Appeal No. 23-1482
v.	Account No: #####
INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Refund Request/Pass Through Entity SALT Election
Respondent.	Tax Year: 2022
	Judge: Halverson

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**Presiding:**

Shannon Halverson, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP-1, Assistant Attorney General  
RESPONDENT REP-2, Manager, Income Tax and Education Division

**STATEMENT OF THE CASE**

This matter came before the Utah State Tax Commission on December 11, 2024, for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner (“PETITIONER”) is appealing Respondent’s (“Division’s”) denial of PETITIONER’ request for a partial refund of a State and Local Tax (SALT) payment in the amount of \$\$\$\$\$, which was paid by TAXPAYER (“Taxpayer”) as an electing pass-through entity on DATE pursuant to Utah Code Subsection 59-10-1403.2(2)(a). PETITIONER submitted a Petition for Redetermination on DATE requesting a partial refund of the Taxpayer’s SALT payment in the amount of \$\$\$\$\$. The Division filed a Response to PETITIONER’ Petition for Redetermination on DATE that indicated the Division is

prohibited from issuing a refund of any of the amount paid for the pass-through entity (PTE) SALT election on the grounds that an election to pay pursuant to Utah Code Subsection 59-10-1403.2(2)(a) is irrevocable and may not be refunded.<sup>1</sup>

APPLICABLE LAW

Utah Code Ann. §59-10-1045<sup>2</sup> as applicable during the 2022 tax year stated:

(1) As used in this section, "taxed pass-through entity taxpayer" means a resident or nonresident individual who:

- (a) has income attributed to the individual by a pass-through entity;
- (b) receives the income described in Subsection (1)(a) after the pass-through entity pays the tax described in Subsection 59-10-1403.2(2); and
- (c) adds the amount of tax paid on the income described in Subsection (1)(a) to adjusted gross income in accordance with Subsection 59-10-114(1)(i).

(2)

- (a) A taxed pass-through entity taxpayer may claim a nonrefundable tax credit for the taxes imposed under Subsection 59-10-1403.2(2).
- (b) The tax credit is equal to the amount of the tax paid under Subsection 59-10-1403.2(2) by the pass-through entity on the income attributed to the taxed pass-through entity taxpayer.

(3)

- (a) A taxed pass-through entity taxpayer may carry forward the amount of the tax credit that exceeds the taxed pass-through entity's tax liability for a period that does not exceed the next five taxable years.
- (b) A taxed pass-through entity taxpayer may not carry back the amount of the tax credit that exceeds the taxed pass-through entity's tax liability for the taxable year.

Utah Code Subsection 59-10-1403.2(2) was enacted as part of 2022 General Session H.B. 444, Income Tax Revisions, and given retrospective operation for a taxable year beginning on or after January 1, 2022. This subsection provided the following regarding nonrefundable tax credits for taxes paid by a pass-through entity as follows:

(2)(a) For each taxable year that begins on or after January 1, 2022, but begins on or before December 31, 2025, a pass-through entity that is not a disregarded pass-through entity may elect to pay a tax in an amount equal to:

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<sup>1</sup> Procedurally, this appeal may be atypical because there was no Statutory Notice denying the refund included in the file and instead only the PETITIONER' Petition for Redetermination requesting a partial refund that was filed on DATE and the Division's Response to Petition for Redetermination that was filed on DATE. However, the Division did not argue that the appeal was improperly before the Commission and noted in its Response to Petition for Redetermination, dated DATE, the following, "On DATE, Respondent received Petitioner's Petition for Redetermination. Petitioner states that a calculation error had occurred that resulted in the SALT payment being overstated because PETITIONER does not live in Utah any longer. Petitioner asks for a partial refund of their SALT payment in the amount of \$\$\$\$."

<sup>2</sup> This section, when adopted in 2022, had been numbered Utah Code Ann. §59-10-1044, but was renumbered by the Utah Legislature to Utah Code Ann. §59-10-1045.

- (i) the percentage listed in Subsection 59-10-104(2); and
  - (ii) voluntary taxable income.
- (b) A pass-through entity that elects to pay the tax in accordance with Subsection (2)(a) shall notify any final pass-through entity taxpayer of that election.
- (c) A pass-through entity that pays a tax described in Subsection (2)(a) shall provide to each pass-through entity taxpayer a statement that states the amount of tax paid on the income attributed to the pass-through entity taxpayer.
- (d) A payment of the tax described in Subsection (2)(a) on or before the last day of the taxable year is an irrevocable election to be subject to the tax for the taxable year.

Utah Code Subsection 59-10-1403.2(2) was amended in 2023 General Session H.B. 56, Tax Assessment Amendments, and given retrospective operation for a taxable year beginning on or after January 1, 2022, as follows:

(2)

- (a) For each taxable year that begins on or after January 1, 2022, but begins on or before December 31, 2025, a pass-through entity that is not a disregarded pass-through entity may elect to pay a tax in an amount equal to the product of:
  - (i) the percentage listed in Subsection 59-10-104(2); and
  - (ii) voluntary taxable income.
- (b) A pass-through entity that elects to pay the tax in accordance with Subsection (2)(a) shall notify any final pass-through entity taxpayer of that election.
- (c) A pass-through entity that pays a tax described in Subsection (2)(a) shall provide to each final pass-through entity taxpayer a statement that states:
  - (i) the amount of tax paid under Subsection (2)(a) on the income attributed to the final pass-through entity taxpayer; and
  - (ii) the amount of tax paid to another state by the pass-through entity on income:
    - (A) attributed to the final pass-through entity taxpayer; and
    - (B) that the commission determines is substantially similar to the tax under Subsection (2)(a).
- (d) A payment of the tax described in Subsection (2)(a) on or before the last day of the taxable year:
  - (i) is an irrevocable election to be subject to the tax for the taxable year; and
  - (ii) may not be refunded.

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

Utah Code Ann. §59-1-1417(2) requires the Commission to construe a statute providing an exemption from or credit against a tax as follows:

- (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.

### DISCUSSION

On DATE, the Taxpayer submitted a payment to the Tax Commission in the amount of \$\$\$\$\$. This payment was made as an election by a pass-through entity (“PTE”) as a SALT payment on behalf of several final pass-through entity taxpayers (“PTETs”). The Division’s Response to Petition for Redetermination indicated that \$\$\$\$\$ of the SALT payment was made on behalf of PETITIONER as a final PTET, and the remaining \$\$\$\$\$ of the SALT payment was made on behalf of two other final PTETs. On DATE, PETITIONER submitted a Petition for Redetermination to the Tax Commission indicating that the appeal was related to a refund request and stated the following:

Hello, I moved to COUNTRY in DATE and became a bonafide resident. I was no longer a resident of Utah in DATE, therefore, I should not have paid any Utah State tax. My attorney made a mistake and said I was required to pay it but it turns out I did not. I overpaid \$\$\$\$\$ and I could really use that money. I know there are some other appeals regarding SALT overpayment as well.

The Division submitted a response to PETITIONER’ Petition for Redetermination on DATE. The Division’s response stated the following:

Petitioner’s DATE SALT election payment was made on DATE. Utah Code Ann. §59-10-1403.2(2)(d) provides that the payment is an irrevocable election.

Respondent is prohibited from issuing a refund of any of the amount paid in the election.

**NOTE:** During the 2023 General Session, the Utah State Legislature passed House Bill 56 (effective May 3, 2023 - with retrospective operation for a taxable year beginning on or after January 1, 2022) which added clarification of their intent by modifying the language in Utah Code Ann. §59-10-1403.2(2)(d)(i)(ii)(sic), which now states:

- (d) A payment of the tax described in Subsection (2)(a) on or before the last day of the taxable year:
  - (i) is an irrevocable election to be subject to the tax for the taxable year; and
  - (ii) may not be refunded.

Respondent is prohibited from issuing a refund of any of the amount paid in the Pass-through entity (PTE) Salt election.

The Division's response also included the original language of Utah Code Ann. §59-10-1403.2 that was passed by the Legislature in H.B. 444, Income Tax Revisions, 2022 General Session, and the modified provisions of Utah Code Ann. §59-10-1403.2 that were amended by the Utah Legislature in H.B. 56, Tax Assessment Amendments, 2023 General Session and were given retrospective operation for a taxable year beginning on or after January 1, 2022.

The Division's representatives stated at the Initial Hearing that the Division will stipulate that PETITIONER bought a house in COUNTRY in DATE and moved to COUNTRY in DATE. They acknowledged that his first full year of residency in COUNTRY was DATE.

PETITIONER stated at the Initial Hearing that he moved to COUNTRY in DATE. He stated that he was a Utah resident in DATE but changed to being a resident of COUNTRY in DATE. He stated that he had no other income from Utah in DATE other than the income that was reported on the Form K-1 Form from the Taxpayer. He stated that, during the process of moving, it was very challenging to find capable, professional services. He stated that the issue in this appeal is an issue that came up in DATE. He indicated that his partners in Utah were rushing to get the taxes done, and he did not know if he needed to pay Utah tax. He stated that he asked his CPA if he needed to pay Utah tax because he was residing in COUNTRY. He stated that his CPA advised him that he needed to at the time the payment was made. However, he stated that he was never able to contact the CPA again.

PETITIONER stated that he subsequently hired a new tax attorney and was advised that the payment was a mistake because he was not a Utah resident but was a resident of COUNTRY and still is a resident of COUNTRY. He stated that he has now hired a new CPA firm in Utah that is new to the Taxpayer's account. He indicated that the accountant did find that \$\$\$\$ payment was calculated based on the assumption that he was a Utah resident. He stated that, on the Form K-1, he was treated as a Utah resident for DATE and DATE. He stated that he amended the DATE tax filing to be treated as a resident of COUNTRY. He indicated that this amended filing decreased the amount of the apportionment factor, which resulted in a very large overpayment of tax by the PTE on his behalf as the PTET. He stated that the DATE income included Paycheck Protection Program (PPP) loan forgiveness income.

PETITIONER indicated that the amount of his requested refund is \$. He indicated that he reduced the requested refund amount from \$\$\$\$ because he had a small Utah tax liability in DATE, and the carry forward nonrefundable credit was used to offset that liability.

PETITIONER noted that the Commission issued a prior ruling regarding a SALT payment refund that was in favor of the taxpayer in that appeal. He cited *Initial Hearing Order*,

*Appeal No. 23-56*, Utah State Tax Commission, to support that assertion. He argued that the Taxpayer's election to make a SALT payment on his behalf was a mistake and stated that there were a lot of moving pieces in making that determination. He stated that he had difficulty finding information regarding the Utah tax.

PETITIONER acknowledged that he utilized the nonrefundable credit received for the PTE payment and acknowledged that he was told to request \$\$\$\$ based on the use of the nonrefundable credit. He stated that he is having a hard time getting his personal state taxes done but was advised that was the amount that he should request be refunded because of the proportional sales that occurred in Utah. He acknowledged that the nonrefundable credit has a five year carry forward and that the Taxpayer is still in Utah and is a Utah company. He indicated that he is the owner of the Taxpayer and owns %%% of the company. He stated that the decision to request the refund was made by him and was not a decision made by the other partners.

The Division's representatives stated that the legal framework for this appeal came about based on the Tax Cuts and Jobs Act, which established a \$10,000, or \$5,000 for married filing separately, cap on the ability to deduct state and local tax payments. They stated that Utah created a work around in 2022 General Session H.B. 444, Income Tax Revisions ("HB 444"), which enacted Utah Code Ann. §59-10-1403.2 and §59-10-1044, which was subsequently renumbered to Utah Code Ann. §59-10-1045. They stated that Utah Code Ann. §59-10-1403.2(2) allows a pass through entity (PTE) to pay Utah tax at the entity level and provide a statement of the amount of tax paid. Thus, they indicated that the PTE reports a lower income and has less tax at the federal level. They stated that it is revenue neutral at the state level because Utah Code Ann. §59-10-114(1)(i) requires the entity to add the payment back to gross income. They stated that pursuant to Utah Code Ann. §59-10-1045, a PTET is allowed to claim a nonrefundable tax credit equal to the amount paid by the PTE. They indicated that the PTET is allowed to carry forward the nonrefundable tax credit for five years but there is no allowance for a carry back of the nonrefundable tax credit.

The Division's representatives stated that Utah Code Ann. §59-10-1403.2(2)(d)(i) provides that a SALT payment is an irrevocable election. They noted that 2023 General Session H.B. 56, Tax Assessment Amendments ("HB 56"), added language that states that a payment made under Utah Code Ann. §59-10-1403.2(2)(a) may not be refunded and was given retrospective operation for a taxable year beginning on or after January 1, 2022. They stated that after a PTE pays the tax and makes the election, a PTET is given a nonrefundable tax credit. They stated that electing to make a payment under Utah Code Ann. §59-10-1403.2(2) irrevocably

converts the payment into nonrefundable tax credits. They stated that Utah Code Ann. §59-10-1403.2(2)(d) provides that the payment is an irrevocable election and may not be refunded. Thus, they argued that PETITIONER's petition must be denied.

The Division's representatives stated that the facts in this appeal are that on DATE, the Taxpayer made payments on behalf of three shareholders in an amount that totaled \$\$\$\$\$. They stated that \$\$\$\$\$ of that payment was paid on behalf of PETITIONER as a PTET. They noted that the Taxpayer voluntarily accessed the SALT payment election page on the Tax Commission's website, acknowledged the statement that the election is irrevocable, entered the payment amount, and again acknowledged that the election is irrevocable. They also noted that the Taxpayer issued Forms K-1 that reflected the lower income based on the SALT payment and received the benefit of that payment for federal tax purposes. They stated that PETITIONER received a nonrefundable tax credit based on that SALT payment.

The Division's representatives stated that PETITIONER called the Taxpayer Services Division to request a refund of the portion of the SALT payment paid on his behalf based on his move to COUNTRY. They stated that, on DATE, the Division told PETITIONER that the money could not be refunded and advised him to file a Petition for Redetermination. They indicated that on DATE, which is almost one year after the election payment was made, PETITIONER filed a Petition for Redetermination. They stated that his requested refund amount was refused because the payment may not be refunded and because he is using the nonrefundable tax credits when he is filing Utah returns.

The Division's submissions included a screenshot of the Tax Commission's Taxpayer Access Point (TAP) submission screen. The Division's representatives noted that there is a statement on that screen that notifies the Taxpayer that the election is irrevocable and also noted that the payment was made by the Taxpayer on DATE at TIME.

The Division's submissions also included a screenshot of an example of an online Utah SALT Deduction report. They noted that before a taxpayer initiates a SALT payment, the Taxpayer is notified that the election is irrevocable and the taxpayer must click yes that they understand the election is irrevocable. They argued that the payment could not have been made by accident because the taxpayer has to intentionally access the portal and acknowledge that the election is irrevocable.

The Division's submissions also included a screenshot of the Tax Commission's webpage titled SALT Report & FAQ. They noted that this webpage explains that H.B. 444 allows a PTE to pay Utah tax on behalf of a PTET, as a measure of mitigating the federal limitation on the deduction for state and local taxes. They noted that the webpage states that the process may not

always be beneficial. They also noted that the webpage explains that if an election is made by a PTE, the final PTET is not permitted to opt out and that the election is irrevocable for the tax year. They noted that the webpage states that the PTET may not reduce the amount of an election or receive a refund.

The Division's submissions included a screenshot of the Taxpayer's registered principals that are listed on the Division of Corporations and Commercial Code website. They noted that the Taxpayer is registered as a corporation in CITY-1 and PETITIONER is listed as an officer. They noted that the Taxpayer is still operating as a Utah company.

The Division's representatives stated that, pursuant to Utah Code Ann. §59-1-1417, in a proceeding before the Commission, the burden of proof is on the petitioner and a statute providing an exemption from or credit against a tax should be construed strictly against the taxpayer. They cited *Ivory Homes, Ltd v. Utah State Tax Comm'n*, 266 P.3d 751, 2011 UT 54 (Utah 2011), where the Utah Supreme Court held that tax refunds are to be construed narrowly against the taxpayer.

The Division's representatives argued that the Legislature knew what it was doing when it passed HB 444 and HB 56, which provide that the election is irrevocable and payment may not be refunded. They stated that in *Nielsen v. Retirement Board*, 2019 UT App 89 (Utah App. 2019), the Utah Court of Appeals concluded that under the rules of statutory construction, courts look first to the statute's plain language to determine its meaning, and if the plain meaning of the statute can be discerned from its language, then other interpretive tools need not be employed. The Division's representatives argued that the Commission should give effect to the Legislature's intent and should look to the plain language of the statute itself. They stated that if the plain meaning can be discerned then the Commission need not look beyond the plain meaning. They stated that an irrevocable election is an election that may not be changed, altered, or revoked. They argued that the statutory provision that states that the payment may not be refunded is plain and unambiguous.

The Division's representatives acknowledged that in *Initial Hearing Order, Appeal No. 23-56*, Utah State Tax Commission, which dealt with a refund request of a SALT payment under Utah Code Ann. §59-10-1403.2(2), the Commission found that a SALT payment may be refunded because the taxpayer in that appeal made the SALT payment by mistake and submitted the payment to the wrong state. However, they noted that, in that appeal, the taxpayer called the Tax Commission the next morning and was told by a Tax Commission employee that the payment would be canceled. The Division's representatives noted that in *Appeal No. 23-56*, the Commission found that the Utah legislature clearly stated that a payment under Utah Code Ann.



§59-10-1403.2(2)(d) is an irrevocable election and noted that in 2023, the Utah Legislature added clarification that a SALT payment may not be refunded. They noted that the 2023 revisions were made retrospective to January 1, 2022. The Division's representatives argued that the Commission allowed the refund of the SALT payment in *Appeal No. 23-56* based on the limited circumstances of the immediate cancellation of the payment and the taxpayer's reliance on advice given by a Tax Commission employee that the Tax Commission would cancel the payment.

The Division's representatives argued that the Taxpayer issued Forms K-1 reporting less income based on the SALT payment. They noted that of the three owners, only PETITIONER has requested a refund of the portion of the SALT payment that was made on his behalf. They also noted that PETITIONER's refund request was made nine months after the payment was made. They stated that Mr. Thomsa has continued to use the nonrefundable credits and argued that the fact of the payment was not a mistake. The Division's representatives concluded by arguing that the Taxpayer made an election to make a SALT payment under Utah Code Ann. §59-10-1403.2(2). They argued that the statutory language is plain and unambiguous that the election to make the payment is irrevocable and may not be refunded. They argued that PETITIONER has not provided a statutory basis for the refund to be issued.

PETITIONER concluded by stating that he does not disagree with the Division's position. He stated that the reason for the length of time for making the refund request was due to his difficulty in finding acceptable professional help. He stated that he is asking for grace in this case, because he has come under financial hardship and could use the money. He stated that the election to make the SALT payment was a mistake, but he did not know it was a mistake until months later. He stated that if had known earlier, the Taxpayer would not have elected to make the SALT payment.

### **Commission Findings & Analysis**

In accordance with Utah Code Ann. §59-1-1417(1), PETITIONER has the burden of proof to demonstrate that he is entitled to a refund in this appeal. Additionally, under Utah Code Ann. §59-1-1417(2)(b), the commission shall construe a statute providing an exemption from or credit against a tax strictly against the taxpayer. Furthermore, the Utah Supreme Court in *Ivory Homes, Ltd v. Utah State Tax Comm'n*, 266 P.3d 751, 2011 UT 54 (Utah 2011), concluded that tax refunds are to be construed narrowly against the taxpayer.

The issue presented in this appeal is whether a pass-through entity ("PTE") state and local tax ("SALT") payment made by the Taxpayer for the DATE tax year can be refunded. The applicable statutory provisions were enacted in the 2022 General Session of the Utah Legislature and made retrospective for a taxable year beginning on or after January 1, 2022. These

provisions were revised in the 2023 General Session of the Utah Legislature, and were also given retrospective operation for a taxable year beginning on or after January 1, 2022.

Utah Code Ann. §59-10-1403.2(2)(a) authorizes a PTE to elect to make a SALT payment on behalf of a PTET as follows:

(2)(a) For each taxable year that begins on or after January 1, 2022, but begins on or before December 31, 2025, a pass-through entity that is not a disregarded pass-through entity may elect to pay a tax in an amount equal to:

- (i) the percentage listed in Subsection 59-10-104(2); and
- (ii) voluntary taxable income.

Furthermore, Utah Code Ann. §59-10-1403.2(2)(d) provides that a SALT payment made by a PTE on behalf of a PTET is irrevocable and may not be refunded as follows:

(d) A payment of the tax described in Subsection (2)(a) on or before the last day of the taxable year:

- (i) is an irrevocable election to be subject to the tax for the taxable year;
- and
- (ii) may not be refunded.

In this appeal, PETITIONER is requesting a partial refund of a SALT payment made by the Taxpayer for the DATE tax year. He asserted that the SALT payment made on his behalf was made in error based on the assumption that he was a Utah resident in DATE. However, PETITIONER asserted, and the Division did not dispute, that he was a resident of COUNTRY in DATE, which he stated resulted in a significant overpayment of tax to Utah. The Commission must determine whether PETITIONER is entitled to a refund based on his assertion that the portion of the SALT payment made on his behalf was made in error.

Upon review of the facts presented by the parties, it is clear to the Tax Commission that the Taxpayer's election to make an irrevocable SALT payment on behalf of the PTETs was an informed decision that was made by the Taxpayer. The Taxpayer had to acknowledge at the time the payment was made that the election to make the SALT payment was irrevocable. The Division implemented a tax form for taxpayers to make the PTE SALT payments on the Utah Taxpayer Access Point and specifically added an acknowledgment to the form that the person filling out the form had to check before the form could be processed. This acknowledgment said, "I understand I am electing to report and pay tax on behalf of the individual(s) and this election is irrevocable." The Taxpayer filled out the Utah form, checked the box acknowledging it was irrevocable, and submitted the SALT payment on DATE. Furthermore, the Taxpayer issued Forms K-1 that reflected the lower income based on the SALT payment and received the benefit of that payment for federal tax purposes. Additionally, PETITIONER received a nonrefundable tax credit

based on that SALT payment and indicated that he used a small portion of the nonrefundable credit authorized in Utah Code Ann. §59-10-1045 to offset his Utah income tax liability in DATE.

The Commission considers these facts in conjunction with the applicable law. The Utah Legislature clearly stated in the 2022 version of Subsection §59-10-1403.2(2)(d) that a payment “on or before the last day of the taxable year is an irrevocable election to be subject to the tax for the taxable year.” In 2023, the Utah Legislature added further clarification to Subsection 59-10-1403.2(2)(d) that the payment was “an irrevocable election to be subject to the tax for the taxable year” and “may not be refunded.” As noted by the Utah Court of Appeals in *Nielsen v. Retirement Board*, 2019 UT App 89 (Utah App. 2019), under the rules of statutory construction, courts look first to the statute's plain language to determine its meaning, and if the plain meaning of the statute can be discerned from its language, then other interpretive tools need not be employed. The Commission finds that the provisions of Utah Code Ann. §59-10-1403.2(2)(d) are plain and unambiguous that a SALT payment made by a PTE on behalf of a PTET is irrevocable and may not be refunded. The Commission assumes that the Legislature used each term advisedly according to its ordinary and usually accepted meaning in enacting the provisions that state that the SALT payment is an irrevocable election and may not be refunded. Furthermore, PETITIONER has not provided a statutory basis for the refund to be issued. Thus, the Commission finds that PETITIONER has not met the burden of proof to demonstrate that he is entitled to a partial refund of the SALT payment.

The Commission notes that PETITIONER argued that the payment was made in error based on subsequent advice from a different attorney. He argued that the Commission has previously issued a refund of a SALT payment based on the payment being made in error and cited *Initial Hearing Order, Appeal No. 23-56*, Utah State Tax Commission, to support that assertion. The Commission acknowledges that a refund of a SALT payment was issued in *Appeal No. 23-56* but finds that the issue in that appeal is distinguishable from this case. In *Appeal No. 23-56*, the taxpayer's accountant made a clerical error in submitting the SALT payment to Utah instead of STATE-1. Furthermore, the taxpayer's accountant called the Tax Commission immediately requesting cancellation of the payment and relied on the representation of a Tax Commission employee that the payment would be cancelled in not contacting his own bank to have the payment stopped or cancelled from that end. In this appeal, PETITIONER's request for a refund is distinguishable because his assertion of error was not a clerical error. The Commission notes that the refund request was made over nine months after the SALT payment was submitted, and PETITIONER's assertion of error is an error in his understanding of the tax consequences in electing to make the SALT payment. The Utah Supreme Court has noted in *Ivory Homes v. Tax*

*Commission*, 2011 UT 54, ¶16, “the form in which a transaction is structured often creates very different tax consequences given that our tax code is highly sensitive to such form.” The Court in that case found that the form in which parties chose to arrange their transactions cannot be dismissed as inconsequential simply because one party may now suffer an unfavorable tax consequence. The Commission finds that PETITIONER’ assertion of error in this appeal is not sufficient to demonstrate that he is entitled to a partial refund of the SALT payment, and the Division’s denial of PETITIONER’ refund request should be sustained.

Shannon Halverson  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Division’s denial of the PETITIONER’ request for a partial refund of a State and Local Tax (SALT) payment. 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 \_\_\_\_, 2025.

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.**