

17-450  
TAX TYPE: INCOME TAX  
TAX YEAR: 2013  
DATE SIGNED: 10/3/2019  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 17-450  Account No. ##### Tax Type: Income Tax Year: 2013  Judge: Chapman
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**Presiding:**  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)  
For Respondent: RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 3, 2019.

TAXPAYER-1 & TAXPAYER-2 (“Petitioners” or “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of additional Utah individual income taxes for the 2013 tax year. On March 3, 2017, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest (calculated as of April 2, 2017),<sup>1</sup> as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2013	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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<sup>1</sup> Interest continues to accrue until any tax liability is paid. No penalties were imposed.

Appeal No. 17-450

The Division imposed additional Utah taxes based on changes that the Internal Revenue Service (“IRS”) made to the taxpayers’ 2013 federal adjusted gross income (“FAGI”). For 2013, the IRS increased the taxpayers’ 2013 FAGI by \$\$\$\$\$. As a result, the Division increased the taxpayers’ FAGI for Utah tax purposes by the same amount.

The \$\$\$\$\$ increase to the taxpayers’ 2013 FAGI is the sum of: 1) a capital gains distribution from a Form 1099-DIV in the amount of \$\$\$\$\$; 2) royalty income from a Form 1099-MISC in the amount of \$\$\$\$\$; and 3) the IRS’s action to increase the taxpayers’ taxable Social Security income by \$\$\$\$\$. The taxpayers did not include any portion of the \$\$\$\$\$ capital gains distribution or the \$\$\$\$\$ royalty income in the FAGI that they reported on their 2013 federal and Utah returns. On their 2013 federal and Utah returns, the taxpayers reported \$\$\$\$\$ of taxable Social Security income, which the IRS increased to \$\$\$\$\$ (an increase of \$\$\$\$\$).

The taxpayers state that they do not know if the changes that the IRS made to their 2013 FAGI are correct or not. However, the taxpayers have been challenging the changes at the IRS for some time. It appears that the IRS may no longer be reviewing the matter at the federal level because the IRS sent the taxpayers a letter dated DATE, 2019, in which it indicated that the taxpayers did not submit their refund claim within the timeframe to claim a refund of federal taxes. Unfortunately, the letter does not indicate whether the IRS would have reversed any portion of the changes that it made to the taxpayers’ 2013 FAGI, had the taxpayers’ refund request been timely.

The taxpayers proffered no information to show that the \$\$\$\$\$ of capital gains distribution or the \$\$\$\$\$ royalty income should not be included in their 2013 FAGI, other than saying that they did not receive the Form 1099-DIV or the Form 1099-MISC on which these amounts were reported. As a result, the taxpayers have provided no information to show that the IRS improperly increased their 2013 FAGI by the \$\$\$\$\$ or the \$\$\$\$\$ amount.

As to the \$\$\$\$ increase to their taxable Social Security income, the taxpayers believe that this increase may be incorrect because TAXPAYER-1 refunded to the United States Social Security Administration (“SSA”) \$\$\$\$ of Social Security payments that he claims that he received during 2013. TAXPAYER-1 proffered that he refunded this amount to the SSA on DATE, 2013. The taxpayers admit that TAXPAYER-2 also received Social Security benefits in 2013 and that they did not refund to the SSA any of the Social Security benefits that she received during 2013. The taxpayers could not find any Form 1099-SSA that the SSA may have issued to them for the 2013 tax year to show the amounts reported on these forms (i.e., to show the amount of Social Security benefits that TAXPAYER-1 and TAXPAYER-2 each received). The Division, however, provided a list of “possible sources of unreported income” in its Statutory Notice, which shows that two Form 1099-SSA’s were issued to the taxpayers for the 2013 tax year. Although this information does not show the person to whom each of these forms was issued, it shows the “gross pension or annuity” amounts reported on the forms to be \$\$\$\$ and \$\$\$\$. The taxpayers have not shown that the amounts of Social Security benefits that they initially received for the 2013 tax year were different from these amounts.

The taxpayers also provided no information to show whether the SSA and/or the IRS considers the \$\$\$\$ repayment that TAXPAYER-1 claims to have made on DATE, 2013 to relate to the 2013 tax year or to a different tax year.<sup>2</sup> However, from the information that the Division provided, it appears that the IRS does consider the \$\$\$\$ repayment to relate to the 2013 tax year. The total “gross pension or annuity” amounts reported on the two Form 1099-SSA’s that the taxpayers received for the 2013 tax year is \$\$\$\$ (\$\$\$\$ plus \$\$\$\$). If the \$\$\$\$ repayment is subtracted from this \$\$\$\$ amount, it would leave a remainder of \$\$\$\$ of 2013 Social Security benefits.

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<sup>2</sup> Different consequences may result from the repayment of Social Security benefits in the year in which they are received as opposed to a later year. *See, e.g.,* <https://tlc.intuit.com/questions/2949057-repayment-of-social-security-income-when-repayment-occurs-in-a-subsequent-year>.

Furthermore, the Division proffers that depending on income, up to %%%% of Social Security benefits are subject to taxation.<sup>3</sup> If the \$\$\$\$ of remaining Social Security benefits are multiplied by 85%, it would result in \$\$\$\$ of taxable Social Security benefits for the taxpayers for the 2013 tax year (which is the amount to which the IRS increased the taxpayers' taxable Social Security benefits). The taxpayers have not shown that they did not receive \$\$\$\$ of 2013 Social Security benefits (after accounting for the \$\$\$\$ repayment), nor have they shown that less than %%%% of these \$\$\$\$ of 2013 Social Security benefits is subject to taxation. Although the taxpayers have not provided any information to show that any portion of the Division's assessment is incorrect, they ask the Commission to reverse the assessment. The Division, on the other hand, asks the Commission to sustain its assessment in its entirety because: 1) the assessment reflects the taxpayers' FAGI, as shown on a recent IRS transcript of the taxpayers' 2013 federal account; and 2) even if the Commission were to independently determine whether the IRS's changes to the taxpayers' 2013 FAGI were correct or not, the taxpayers have not provided sufficient information to show that any of the changes that the IRS initially made and the Division subsequently made to the taxpayers' 2013 FAGI are incorrect.

APPLICABLE LAW

Utah Code Ann. §59-10-103 (2013)<sup>4</sup> 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; or
    - ....
    - (f) "Federal taxable income":
      - (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or

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3 The Division's assertion appears to be correct. See page 6 of the 2013 version of IRS Publication 915 (Social Security and Equivalent Railroad Retirement Benefits), which provides that "%%%% of your benefits can be taxable if . . . the total of one-half of your benefits and all your other income is more than \$\$\$\$ (\$\$\$\$ if you are married filing jointly). The taxpayers filed a joint 2013 federal income tax return, and an IRS transcript of the taxpayers' 2013 account shows the taxpayers' 2013 FAGI to be \$\$\$\$.

4 The 2013 version of the substantive Utah law is cited in the decision, unless otherwise indicated.

- ....
- (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;

....

For the instant matter, UCA §59-1-1417(1) (2019) provides guidance concerning which party has the burden of proof, 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

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. The Division shows that the IRS increased the taxpayers' 2013 FAGI by \$\$\$\$\$, which is still reflected on IRS transcripts of the taxpayers' 2013 account. The Division also proffers that its assessment reflects these IRS changes.

Subsections 59-10-103(1)(a) and (w) provide that Utah "state taxable income" is based on the definition of "adjusted gross income" as found in the Internal Revenue Code, which the IRS uses to determine federal taxable income. As a result, the Tax Commission generally relies on federal taxable income, as reflected in IRS records, when determining Utah taxable income. Nevertheless, the Commission has, on occasion, independently reviewed a petitioner's evidence of federal taxable income instead of relying on IRS

Appeal No. 17-450

records where the petitioner was unable to contest the matter at the IRS, generally in situations where a federal deadline had expired and it was too late for the IRS to consider the matter.

One such case is *USTC Appeal No. 06-1408* (Initial Hearing Order Nov. 5, 2007),<sup>5</sup> where the petitioner in that case had been told that the IRS considered the federal matter final and closed and where the petitioner proffered documentation showing that the IRS's revised FAGI was incorrect. In that case, the Commission reversed the Division's assessment, stating that:

The Utah Code sections specify that state taxable income is federal taxable income **as defined in the Internal Revenue Code**, they do not tie the state taxable income to the federal taxable income **as determined by the IRS**. Certainly the Tax Commission will give great deference in the interpretation of the Internal Revenue Code to the IRS, as they are the experts in this area. However, where there is a clear error and the taxpayer was unable to have the merits reviewed by the IRS due to the statute of limitations or for other procedural reasons, the Commission concludes that it is appropriate to give consideration to the definitions provided in the Internal Revenue Code. (emphasis added).

Because the IRS appears to have denied the taxpayers' federal appeal, at least in part, on the basis of missing a statute of limitations, it may be appropriate for the Commission to make an independent determination of the taxpayers' 2013 FAGI. However, for reasons explained earlier, the taxpayers have provided no evidence to show that any of the changes the IRS made to the taxpayers' 2013 FAGI, which are reflected in the Division's assessment, are incorrect. Accordingly, the Commission should sustain the Division's assessment of 2013 Utah individual income taxes and interest in its entirety.

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Kerry R. Chapman  
Administrative Law Judge

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<sup>5</sup> Redacted versions of this and other selected decisions can be viewed on the Tax Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

Appeal No. 17-450

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment for the 2013 tax year in its entirety. 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 \_\_\_\_\_, 2019.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.