

17-738
TAX TYPE: INCOME TAX
TAX YEAR: 2016
DATE SIGNED: 07/23/2018
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS,	INITIAL HEARING ORDER
Petitioners,	Appeal No. 17-738
v.	Account No. #####
TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Income Tax
Respondent.	Tax Year: 2016
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1
TAXPAYER-2
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Assistant Attorney
General
REPRESENTATIVE FOR RESPONDENT-2, Deputy Director,
Taxpayer Services Division
REPRESENTATIVE FOR RESPONDENT-3, Agent, Taxpayer
Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 2, 2018 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Taxpayers”) had filed an appeal of a Notice of Change to Return which had been issued on April 18, 2017. After a Motion to Dismiss was filed by Respondent (“Division”) and an Order on Respondent’s Motion to Dismiss was issued on January 17, 2018, in which the Motion to Dismiss was denied, the appeal proceeded to this Initial Hearing. The issue before the Commission is a refund request. When the Taxpayers had originally filed their Utah return for tax year 2016 they had requested a refund in the amount of \$\$\$\$ of Utah withholding that had been paid to the Tax Commission on their

behalf by TAXPAYER-1's employer. The employer had indicated some of the \$\$\$\$ in income it had paid to TAXPAYER-1 had been Utah source income. This income was a severance payment. The Division had denied the refund and charged the Taxpayers an additional \$\$\$\$ in tax on this severance income, because TAXPAYER-1's employer had reported the income as Utah income. At issue in this Initial Hearing is whether or not the Commission should refund to the Taxpayers the \$\$\$\$ in tax they have now paid to the Commission on the \$\$\$\$ in severance payments.

APPLICABLE LAW

Utah imposes income tax on individuals who are part-year residents of the state, in Utah Code Subsection 59-10-120 as follows:

- (1) If an individual changes the individual's status during the taxable year from resident to nonresident or from nonresident to resident, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require the individual to file a return for the portion of the taxable year during which the individual is a resident and another return for the portion of the taxable year during which the individual is a nonresident.
- (2) The taxable income of the individual described in Subsection (1) shall be determined as provided in this chapter for residents and for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of the individual's resident and nonresident status respectively.

Utah Admin. Rule R865-9I-7 was adopted pursuant to Utah Code Sec. 59-10-120. Subsection R865-9I-7(3) provides in relevant part:

- (3) The Utah portion of a part-year resident's AGI shall be determined as follows:
 - (a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.
 - ...

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

DISCUSSION

The Taxpayer, TAXPAYER-1, worked for COMPANY for a number of years. He had been transferred to and from different locations as the Taxpayers had been in STATE-1 in 2012, then in STATE-2, and by March 2015, they were transferred to STATE-3. While in STATE-1, the Taxpayers had purchased a residence in CITY-1, Utah, where they planned to retire eventually. During this time, the Taxpayer was not employed by COMPANY at a location in

Utah. When they were transferred to STATE-3 in March 2015, they leased a residence and did not purchase one in STATE-3.

TAXPAYER-1 was laid off from COMPANY by October 2016 and by mid-October, they moved into their Utah residence. Their lease had ended on their STATE-3 residence and the Taxpayers stated that they moved to Utah to figure out what to do next. The Utah residence was the only residence that they owned at this time. Because they were still working out the severance payment settlement with COMPANY at the time they moved, they did not receive the severance payment before they moved to Utah. They provided their Utah address to COMPANY for mailing and to send the severance payment. They received the severance payment of \$\$\$\$ after they had moved to Utah. COMPANY marked the income as Utah income for purposes of withholding and paid over the withholding to the State of Utah on behalf of TAXPAYER-1.

The Taxpayers do not dispute that they had moved to Utah and had received the payment of the severance amount after they were residents of this state. However, the Taxpayers argue that the severance was due to TAXPAYER-1's years of employment with COMPANY, and none of that employment had ever been in Utah. The Taxpayers explain that they believed in paying their fair share of individual income taxes but felt that Utah taxing the severance that TAXPAYER-1 had earned while in STATE-3 and other states was not fair.

The Division argues that because the Taxpayers were residing in Utah when they received the severance payment, the payment is taxable to Utah under Utah Code Sec. 59-10-120 and Utah Admin. Rule R865-9I-7(3)(a). Utah Code Sec. 59-10-120 governs Utah income taxes for part-year resident individuals. Subsection (2) provides that the taxable income "shall be determined . . . as if the individual's taxable year for federal income tax purposes were limited to the period of the individual's resident and nonresident status respectively." The Tax Commission adopted Utah Admin. Rule R865-9I-7(3)(a) which clarifies, "Income from wages, salaries, tips and other compensation **earned or received** while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI (emphasis added)."

In this case it is clear that although the Taxpayers may have earned this compensation from employment in STATE-3 and other states, the severance check was issued by COMPANY after the Taxpayers were Utah residents. Therefore, they "received" the compensation while in a resident status in Utah. The Taxpayers had moved into their residence in Utah, which was the only residence they owned. In fact, they had owned this residence for several years while working in three other states and TAXPAYER-2 had both obtained a Utah Driver License and registered to vote in Utah in 2015.

Based on the facts presented at the hearing and the express provisions of Utah Code Sec. 59-10-120 and Utah Admin. Rule R861-9I-7, the Taxpayers were residents of Utah at the time the severance check was issued to them by COMPANY, so they “received” the severance payment when they were Utah residents and the Division was correct in this matter in finding the severance payment taxable to Utah. The Taxpayers’ refund request should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Taxpayers’ individual income tax refund request for the 2016 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

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner