

06-0844
Individual Income
Signed 02/15/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,	)	ORDER	
)		
Petitioners,	)	Appeal No.	06-0844
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income
AUDITING DIVISION OF THE	)	Tax Years:	2003
UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1 (by telephone)
For Respondent: RESPONDENT REPRESENTATIVE, 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 January 31, 2007.

At issue is Auditing Division's (the "Division") assessment of additional Utah individual income tax to the Petitioners for the 2003 tax year, which it imposed in a Statutory Notice of Audit Change ("Statutory Notice") dated May 9, 2006. The Division disallowed the \$\$\$\$ "at-home parent credit" that the Petitioners had claimed on their 2003 Utah tax return. In its Statutory Notice, the Division imposed \$\$\$\$ in additional income tax, plus interest. No penalties were imposed.

Several elements are required for a taxpayer to qualify for the \$\$\$\$ at-home parent credit, one of which is that the child for whom the credit is claimed must meet the definition of "qualifying child," as set forth in UCA §59-10-1005. The Division states that the Petitioners satisfy all the necessary elements to qualify for the credit in 2003, but one. The Division contends that the child for whom the credit was claimed is not a "qualifying child" for the 2003 tax year. For this reason, the Division disallowed the credit.

The Petitioners contend that their daughter, for whom they claimed the credit, was a “qualifying child” for the 2003 tax year. The Petitioners state that their daughter was born at approximately 5 p.m. on December 31, 2002, a fact that the Division does not dispute. A child is defined to be a “qualifying child” if he or she is “no more than 12 months of age on the last day of the taxable year for which the credit is claimed.” In the Utah Individual Income Tax Instruction booklet, Section 20 provides that “[t]o qualify for the credit . . . the child must be 12 months or younger on the last day of the taxable year for which the credit is claimed[.]” Because of the Petitioners’ daughter was born on December 31, 2002, the Petitioners asserts that she was 12 months of age, but not more than 12 months of age, on December 31, 2003, the last day of the tax year for which they claimed the credit. For these reasons, the Petitioners believe that they claimed the credit as provided by law and as directed in the Commission’s instruction booklet. For these reasons, the Petitioners ask the Commission to overturn the Division’s assessment.

Because the Petitioners’ daughter was born on December 31, 2002, the Division asserts that she was more than 12 months of age for a “portion” of December 31, 2003 and, as a result, does not qualify for the exemption. As a result, the Division claims that the Petitioners’ daughter could only have been a “qualifying child” for the 2002 tax year and that the Petitioners should have claimed the credit on their 2002 tax return, had they meet all other criteria that year. However, the Division also states that the period during which the Petitioners could file an amended 2002 tax return and claim the credit for that tax year has expired.

APPLICABLE LAW

Utah Code Ann. §59-10-1005(2) (2006) provides that a taxpayer, upon meeting the qualifications provided in the statute, may “claim on the taxpayer’s individual income tax return a nonrefundable credit of \$100 for each qualifying child[.]”

For purposes of the at-home parent credit, a “qualifying child” is defined in Section 59-10-1005(1)(c) (2006) to mean “a child who is no more than 12 months of age on the last day of the taxable year for which the credit is claimed.”

DISCUSSION

At issue is whether the Petitioners, whose daughter was born on December 31, 2002, should have claimed the at-home parent credit on their 2002 tax return, as the Division argues, or on their 2003 tax year, as the Petitioners contend. To qualify for the credit, Section 59-10-1005(1)(c) provides that the child must be “no more than 12 months of age on the last day of the taxable year for which the credit is claimed.” The Utah income tax instruction booklet provides that “[t]o qualify for the credit . . . the child must be 12 months or younger on the last day of the taxable year for which the credit is claimed[.]” The Division argues that the Petitioners’ daughter was more than 12 months of age for a “portion” of December 31, 2003 and, as a result, is not a “qualifying child” for the 2003 tax year. However, one could also argue that the Petitioners’ daughter was no more than 12 months of age for the “other portion” of December 31, 2003 and, thus, is a “qualifying child” for the 2003 tax year.

The Commission has addressed this dilemma in a prior decision, *xxxxxx v. Auditing Division*, USTC Appeal No. 05-1405, in which it ruled that the at-home parent credit had to be taken in the tax year that coincides with the year of the child’s birth. In that case, however, the taxpayer whose child had been born on December 31st claimed that the law provided a “loophole” so that he could claim the credit in each of two consecutive years, i.e., both the year the child was born and the year after the date of birth.

In this case, the Petitioners did not attempt to claim the credit in two separate years. They only claimed it in one year, specifically the year subsequent to their daughter’s date of birth, which does not appear to be unreasonable, given the instructions that accompany the Utah income tax return. Furthermore, the

Division states that it would appear, from the information available at the Initial Hearing, that the Petitioners would have qualified for the credit had they taken it on their 2002 tax return. Unfortunately, the period during which the Petitioners could amend their 2002 tax return and claim the credit has expired.

The federal courts have held that “equitable recoupment” may be justified if the following requirements are met:

1. A payment of tax was made in a year that is now barred by the statute of limitations;
2. An assessment of tax has now been made arising out of the same transaction, item, or taxable event as the one that gave rise to the overpayment;
3. The transaction, item or taxable event has now been inconsistently subjected to two taxes; and
4. If the transaction, item or taxable event involves two or more taxpayers, there is sufficient identity of interest that they should be treated as one.

Upon review of the facts in this appeal, the Commission concludes that this would be an appropriate situation to apply the doctrine of equitable recoupment to allow the Petitioners to have the credit applied to their 2003 tax return. First, the information available at the Initial Hearing indicates that the credit would be allowed for the 2002 tax year were it not barred by the statute of limitations. Second, the assessment at issue relates to the same taxable event, specifically the at-home parent credit that may be taken in only one tax year. Third, to sustain the assessment would deny the Petitioners the credit for either the 2002 or 2003 tax year. For these reasons, the Commission finds that there are equitable reasons for allowing the credit and overturning the Division’s assessment under these limited and specific circumstances.

ORDER

Based upon the foregoing, the Commission finds that it is equitable to allow the Petitioners to use the at-home parent credit as a defense to offset the 2003 assessment. Accordingly, the Commission grants the Petitioners’ appeal and overturns the Division’s assessment of additional tax and interest. It is so ordered.

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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 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

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

DATED this _____ day of _____, 2007.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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