

06-1024
Income Tax
Signed 07/11/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	FINDINGS OF FACT,
Petitioner,)	CONCLUSIONS OF LAW,
)	AND FINAL DECISION
v.)	
)	Appeal No. 06-1024
AUDITING DIVISION OF)	Tax Type: Income Tax
THE UTAH STATE TAX)	Tax Period: 2000-2004
COMMISSION,)	Account No. #####
)	Judge: Phan
Respondent.)	

Presiding:

Pam Hendrickson, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Attorney at Law
PETITIONER 1, CPA
PETITIONER REPRESENTATIVE 2, CPA
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing
RESPONDENT REPRESENTATIVE 3, Tax Auditor
RESPONDENT REPRESENTATIVE 4, Tax Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 25, 2007. Based upon the evidence and testimony presented at the hearing the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Commission in this matter is Petitioners' appeal of Utah individual income tax audit deficiencies for tax years 2000 through 2004. The Statutory Notices of Audit Change had been issued on July 5, 2006 for each of the years at issue. Petitioners timely filed an appeal of the audits.

2. The amount of the deficiencies at issue are as follows:

Year	Tax	Interest as of Notice Date ¹
2000	\$\$\$\$\$	\$\$\$\$\$
2001	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$

3. For each of the years at issue the additional tax resulted from Respondent’s disallowance of a portion of the enterprise zone credit that Petitioners had claimed on their returns. This disallowance of the portion of the credit was the only issue presented to the Commission in this appeal.

4. During the years at issue in this matter, Petitioner PETITIONER 1 was a partner in the accounting firm COMPANY A. PETITIONER 1 also had an interest in COMPANY B. Both of these businesses were located in the area of CITY, Utah and were within the geographical boundaries of an area designated as an “enterprise zone.”

5. During the period at issue PETITIONER 1’s businesses made purchases of a variety of items of equipment and a number of vehicles. Respondent allowed much of the enterprise zone credits that Petitioners claimed on their Utah Individual Income Tax Returns. The disallowed portion of the credit pertained only to motor vehicle purchases, and then only in relation to the amount paid for the vehicle by the “trade-in” of another vehicle. Respondent allowed the credit on an amount equal to the portion of the additional investment, or the cash balance paid on delivery of the vehicle. The parties presented one transaction as a typical example of the transactions at issue. In September 2000, Petitioner’s accounting firm purchased a 2001 Chevrolet Suburban from a motor vehicle dealership in STATE. The purchase price was \$\$\$\$\$. As part of the payment of the purchase price, the firm traded in a 1998 Chevrolet Suburban. The trade in allowance for that vehicle as indicated on the purchase agreement was \$\$\$\$\$. Therefore, the cash balance that the accounting firm paid on delivery was the difference between the purchase price and the trade in

1 Interest continues to accrue on any unpaid balance until the deficiency is paid in full.

allowance, or \$\$\$\$\$. In the audit for that tax year Respondent had allowed the Enterprise Zone Credit for the purchase of the 2001 Suburban based on the \$\$\$\$\$ and disallowed the credit for the portion of the purchase price that was paid with the trade-in.

6. There were other vehicle purchases during the other audit years at issue for PETITIONER 1's businesses. It was Respondent's position during the hearing that in regards to the vehicle purchases, Petitioner should not receive a credit on the portion of the purchase price that was paid with a trade-in, but should be allowed the credit for the cash balance paid at the time of purchase. However, for some of the vehicle purchases, the amount of the credit may have been calculated from the amount booked for federal depreciation purposes. Respondent indicated this discrepancy resulted from not having sufficient information in regards to some of the individual purchases.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104 as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

State taxable income is defined in Utah Code Ann. §59-10-112 as follows:

"State taxable income" in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114 . . .

The Utah Legislature has provided for a credit on certain investments made in rural areas that have been designated as "Enterprise Zones" at Utah Code Sec. 63-38f-413(1) which provides in pertinent part the following:

Subject to the limitations of Subsections (2) through (4), the following nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an enterprise zone:

(g) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5% of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable property.

A further limitation is provided at Utah Code Sec. 63-38f-412 which provides:

The tax incentives described in this part are available only to a business entity for which at least 51% of the employees employed at facilities of the business entity located in the enterprise zone are individual who, at the time of employment, reside in the county in which the enterprise zone is located.

Additionally certain types of business may not claim the credit as indicated by Utah Code Sec. 63-38f-413(5) as follows:

The Tax Credits under Subsections (1)(a) through (g) may not be claimed by a business entity engaged in retail trade or by a public utilities business.

Utah Administrative Rule R865-9I-37(B) provides some further clarification in regards to the investment tax credit as follows:

For purposes of the investment tax credit, an investment is a qualifying investment if: 1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone. 2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

CONCLUSIONS OF LAW

1. There was no dispute in this matter that Petitioner's business was located within an area that had been designated "enterprise zone" pursuant to Utah Code Sec. 63-38F-404 et seq. Additionally, Petitioners' business met the 51% requirement, having employees who resided within the zone as discussed at

Utah Code Sec. 63-38f-412. Respondent also acknowledged that under the facts and circumstances in this matter relating to Petitioners' businesses, the purchases of Suburbans were "depreciable property" under Utah Code Sec. 63-38f-413(1)(g). Respondent did not challenge that the purchase of a Suburban by an accounting firm would constitute an investment.

2. Upon review of Utah Code Sec. 63-38f-413(g), if the other criteria of the Enterprise Zone Act are met, a qualified taxpayer may receive a credit for an "investment" in plant, equipment or depreciable property. The Enterprise Zone Act does not limit "investment" by a holding period, tie the definition to federal depreciation schedules or place other restrictions that would prohibit the Petitioners from claiming the credit on the amount of their trade in allowance on a purchase of a new motor vehicle.

ANALYSIS

The only issue to be resolved on whether Petitioners should have been allowed the enterprise zone credit was whether the amount of the purchase price paid with a trade-in constituted amounts "in investment" under Utah Code Sec. 63-38f-413(g), or whether "investment" is limited to the increase in investment as argued by Respondent. Investment is not defined in the Enterprise Zone Act at Utah Code Sec. 663-38f-401 et al. Utah Admin. Rule R865-9I-37 clarifies that the qualified item purchased and the purchasing business must be located within the designated zone, but does not further define or limit "investment". Additionally, there is no case law or prior Tax Commission decision directly on this point. This is an issue of statutory construction and is of first impression before the Tax Commission.

As Petitioner points out when interpreting the provision of a statute one considers first the plain meaning of the statute. Petitioner cites *Hart v. Salt Lake County Comm'n*, 945 P.2d 125, 138 (Utah 1996) (citations omitted) in which the Court stated, "the primary rule of statutory interpretation is to give effect to the intent of the legislature in light of the purposes the statute was meant to achieve, and the best evidence of

the legislature's intent is the plain meaning of the statute. In *Hercules, Inc. v. Utah State Tax Comm'n.*, 21 P.3d 231 (Utah Ct. App. 2000) the court indicated that if a statute fails to define a word, one would use the dictionary definition or usual meaning. In *MacFarlane v. Utah State Tax Comm'n.*, 2006 UT 25 (2006) the Court stated, "In undertaking statutory construction, "we look first to the plain language of a statute to determine its meaning. Only when there is ambiguity do we look further." (citation omitted) Moreover, "when examining the plain language we must assume that each term included in the [statute] was used advisedly" (citations omitted). The Court in *MacFarlane* also noted, as would be applicable in the subject case that, the general proposition is that tax credit statutes are to be strictly construed against the taxpayer.

Considering these tenets of statutory construction, Utah Code Sec. 63-38f-413(1)(g) provides only that a taxpayer would get a credit "of 10% of the first \$250,000, in investment and 5% of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable property." The Commission must consider first the plain language of the statute. Although other terms are defined in the act, no definition is provided for 'investment.' Webster's II New Revised University Dictionary defines 'investment' as "an amount invested[;] a possession, as property, acquired for future income or benefit." It is commonly accepted that one can make an investment in a business with money or with property, either real or personal. To say that it has to be an additional expenditure over the original investment is ignoring that the taxpayer could have chosen not to use the funds to acquire the new depreciable item. Petitioner in this matter could have sold the Suburban and used the funds for some other purposes, rather than to invest in another item of the type that the legislature has determined would qualify for this credit.

Respondent points out that if 'investment' is not limited to the amount that would be an increase over a previously made investment a qualifying taxpayer could purchase a \$35,000 car one year and receive the credit on the full price. In year two that same taxpayer could trade that car for a new \$35,000 car,

receive a trade in allowance of \$27,000 for the original car and make a new investment in the amount of \$7,000 for the difference. However, for that \$7,000 in new investment, the taxpayer would receive the investment credit based on the full \$35,000 purchase price. The same type of trade in and investment credit could occur each year thereafter. Essentially, the taxpayer would be receiving annually a credit on \$35,000, while making only an annual expenditure of \$7,000 on a new vehicle.

Other transaction scenarios could result in credits in a similar manner. Petitioners could have sold the vehicle out right and then purchased a new one. The purchase of the new vehicle could have been immediate, or months or even years later. A business could purchase equipment and receive the credit, sell the equipment and purchase new equipment receive the credit again as long as the business was not a retail business. If the Commission were to try to interpret the statutes in a manner consistent with Respondent's request, the Commission would have to draw a line or set a holding period that is not in the statute. Additionally, the Commission notes that in some statutory provisions the Tax Commission is expressly granted rulemaking authority to define or implement provisions. There is no express language in the Enterprise Zone Act at Utah Code 63, Chapter 38F, Part 4.

It is clear the Utah Legislature could have tied the enterprise zone investment credit to federal depreciation, or required a holding period before the item purchased could be sold or, a period after the item is sold before a replacement purchase would qualify for the investment. The Commission notes that additionally the legislature could have placed tighter restrictions on the type of property that was purchased with the investment or the type of business that could qualify, but it did not do so. Respondent argues that the fact that a taxpayer could receive a repeat of the investment credit on a single outlay of funds is a strange result considering the credit was adopted for purposes of increasing economic activity in rural areas. Replacing old and outdated equipment, however, would appear to be well within the legislative intent. The legislature could

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certainly have limited the credit to “net” new investment or “increased investment.” It did not do so. The Tax Commission cannot interpret the statute in the manner requested by Respondent without inferring limitations that were not adopted by the legislature.

DECISION AND ORDER

Based on the foregoing, the Tax Commission abates the audit of additional income tax and interest as it pertains to the disallowed investment tax credits for the tax years 2000 through 2004. It is so ordered.

DATED this ____ day of _____, 2007.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

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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

Notice: Failure to pay within thirty days the balance that results from this order may result in additional penalties and interest. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. & 63-46b-13 et seq.

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