

13-2045
TAX TYPE: INCOME TAX
TAX YEAR: 2010
DATE SIGNED: 4-23-2014
COMMISSIONERS: B. JOHNSON, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 13-2045 Account No. ##### Tax Type: Income Tax Tax Year: 2010 Judge: Nielson-Larios
---	--

Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, by telephone
For Respondent: RESPONDENT-1, Auditing Division, in person
RESPONDENT-2, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 8, 2014 for an Initial Hearing in accordance with Utah Code § 59-1-502.5. Respondent (“Division”) audited the Utah income tax return of Petitioner (“Taxpayer”) for the 2010 tax year and issued on September 23, 2013 a Notice of Deficiency and Audit Change (“Notice”) reflecting the following amounts:

<u>Tax Year</u>	<u>Audit Tax</u>	<u>Interest</u>	<u>Penalties</u>	<u>Total</u>
2010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest was calculated from April 18, 2011 to October 23, 2013 and continues to accrue on any unpaid balance. The \$\$\$\$\$ of audit tax is the result of the Division’s disallowing a \$\$\$\$\$ Utah Educational Savings Plan Credit (“Credit”) claimed by the Taxpayer. The Taxpayer challenges this assessment and asserts that he qualifies for the Credit.

APPLICABLE LAW

Utah Code § 59-1-1417(1) (2013) provides the following in pertinent part:

In a proceeding before the commission, the burden of proof is on the petitioner [taxpayer]
For the Credit, Utah Code § 59-10-1017 (2010) states, in pertinent part:

- (1) As used in this section:
 - (a) "Account owner" is as defined in Section 53B-8a-102.
-
- (2) Except as provided in Section 59-10-1002.2, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax credit equal to the product of:
 - (a) the lesser of:
 - (i) the amount of a qualified investment the claimant, estate, or trust:
 - (A) makes during the taxable year; and
 - (B) does not deduct:
 - (I) for a claimant, on the claimant's federal individual income tax return; or
 - (II) for an estate or trust, on the estate's or trust's federal income tax return for estates and trusts; or
 - (ii) the maximum amount of a qualified investment for the taxable year if the amount described in Subsection (2)(a)(i) is greater than the maximum amount of a qualified investment for the taxable year; and
 - (b) 5%.
- (3) A tax credit under this section may not be carried forward or carried back.

Utah Code § 53B-8a-102 (2010) states in pertinent part:

As used in this chapter:

- (1) "Account agreement" means an agreement between an account owner and the Utah Educational Savings Plan entered into under this chapter.
- (2) "Account owner" means a person, estate, or trust, if that person, estate, or trust has entered into an account agreement under this chapter to save for the higher education costs on behalf of a beneficiary.

. . . .

Utah Administrative Code R865-9I-49 (2010) states the following about the TC-675H forms:

- (1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.
- (2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:
 - (a) the amount contributed to the trust by the account owner; and
 - (b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.
- (3) The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.
- (4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.
- (5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

DISCUSSION

Based on the testimony and evidence presented, the Taxpayer has not shown he was the account owner for the 2010 tax year. For this case, the burden of proof is on the Taxpayer.

The Taxpayer asserts that in 2010 he was the account owner of Utah Educational Savings Plan (“UESP”) accounts for his two children. The Taxpayer explained that in 2010 his father, NAME, set up these accounts for the Taxpayer so the Taxpayer could save for his children’s education. The Taxpayer explained that his father filed paper applications to open the UESP accounts. The Taxpayer explained that he made the initial contributions to these accounts by check. The Taxpayer explained that at the end of December 2010, UESP sent a notification that the accounts were set up and that he could access the accounts through the internet. The Taxpayer said that he then tried to access the accounts through the internet, but was unable to do so he called UESP and explained he could not log in. Through this phone call, he explained the identifying information in the UESP accounts did not match his information, but instead matched his father’s. The Taxpayer explained that during the phone call, the UESP representative instructed the Taxpayer to send his information to UESP by email and the representative would update the accounts. The Taxpayer explained he sent this information as instructed and he was able to access the accounts online within a couple of days. The Taxpayer said he never completed a change of ownership form and that his father was not involved in any account ownership change. The Taxpayer said he talked with his father and his father said he did not know why UESP used his father’s name for the account owner. The Taxpayer said that he did not have a copy of his email to UESP, changing the identifying information. He explained that he had checked his files, but he no longer had the email. He said he also requested a copy of emails or other notes attached to the UESP accounts, but UESP said it did not have any such notes or emails because UESP did not keep them. The Taxpayer explained that in January or February 2011 he received through his father the TC-675H form that UESP issued to his father. A copy of the TC-675H was submitted as evidence. (Respondent’s Ex. at 10.) The Taxpayer stated that his father did not claim the Credit on his tax return. The Taxpayer explained that he claimed the Credit on his taxes because he thought everything was okay with the account. He said the account information was correct when he accessed it through the computer. When he was later notified by the Division about the audit, he contact UESP about the ownership of the accounts and UESP responded with a letter dated September 3, 2013, which was submitted as evidence. (Respondent’s Ex. at 11.) In that letter, UESP states the following for the two UESP accounts:

- [The accounts were] opened on December 21, 2010
- The owner of [the accounts] was originally NAME
-
- Ownership of the account[s] was changed to TAXPAYER-1 on February 22, 2011.

The Taxpayer said that he did not know why UESP wrote that the ownership was changed February 22, 2011 because in December 2010 he could access the accounts online. The Taxpayer also explained how he and the Division had tried to resolve this appeal before the initial hearing but they were unable to do so. The Taxpayer asserted that he is the account owner regardless of the TC-675H form.

The Division explained that it disallowed the Credit because the Taxpayer was not the account owner of the UESP accounts in 2010. The Division explained that under § 59-10-1017(2) the account owner is the person who may claim the Credit. For the definition of “account owner,” the Division cited § 59-10-1017(1)(a) and § 53B-8a-102(2). The Division explained that under R865-9I-49, UESP is required to file with the Utah State Tax Commission TC-675H forms that indicate “the amount contributed . . . by the account owner.” The Division explained that the TC-675H form for the 2010 tax year shows the account owner as NAME. Furthermore, the letter from UESP dated September 3, 2013 shows the ownership change in occurred on February 22, 2011. The Division explained that it checked for a corrected TC-675H form from UESP, but did not find one. The Division said that UESP has issued corrected TC-675H forms in the past to correct information for other UESP accounts unrelated to this appeal. The Division asks the Commission to sustain the audit assessment in full.

The Taxpayer has not shown that he was the account owner of the UESP accounts in 2010. Under § 59-10-1017(2) the account owner is the person who may claim the Credit. Under § 53B-8a-102, the account owner is the “person [who] has entered into an account agreement” with UESP. The Taxpayer did not show he entered into account agreements with UESP when the accounts were opened in 2010. Evidence such as copies of the original UESP account agreements was not submitted. Thus, the evidence does not show UESP erroneously opened the accounts in NAME’S name. The Taxpayer has also not shown that the ownership of the UESP accounts was changed to him in 2010. The Taxpayer testified that in December 2010 he had access to the accounts online as the account owner, but he submitted no other evidence showing such. On the other hand, the evidence supporting the ownership change as occurring in 2011 includes the TC-675H, which lists NAME as the account owner for 2010, and the UESP letter dated September 3, 2011, which states the ownership change occurred on February 22, 2011. Because the Taxpayer has not shown he was the account owner in 2010, he has likewise not shown that the Division’s audit assessment is incorrect. Thus, the Division’s assessment should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing analysis, the Commission sustains in full the Division's assessment for the 2010 tax year.

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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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.