

01-0670
INCOME
TAX YEAR: 1997
SIGNED: 09-23-2002
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioners,)	AND FINAL DECISION
)	
v.)	Appeal No. 01-0670
)	
AUDITING DICOMPANY 1 OF)	
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Bruce Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioners: PETITIONER 1
For Respondent: RESPONDENT REP.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 9, 2002. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners are appealing an audit deficiency of additional income tax for the 1997 tax year.
2. Petitioners were residents of STATE 1 during 1996 and 1997. They were also shareholders in COMPANY 1 ("COMPANY 1"), a Utah Subchapter S Corporation, during 1996 and

1997. In 1996 and 1997 Petitioners filed both a STATE 1 resident income tax return and a Utah non-resident return.

3. For the 1996 tax year Petitioners did not know that COMPANY 1 would withhold and pay on their behalf income tax to the State of Utah. COMPANY 1 did not issue the Schedule N to Petitioners until after Petitioners had filed their 1996 Utah non-resident income tax return. So at the time they filed their Utah return, on April 15, 1997, Petitioners, unaware that they could claim a credit of \$\$\$\$\$, paid the \$\$\$\$\$ in addition to the other tax they owed. Subsequently they received the Schedule N from COMPANY 1 which indicated that COMPANY 1 had paid to Utah the \$\$\$\$\$ on their behalf for the 1996 tax year.

4. Instead of amending their 1996 Utah individual income tax return to claim the credit, Petitioners thought they could treat the credit as an estimated prepayment towards their 1997 Utah income tax liability. They claimed the credit on their 1997 Utah return and attached the 1996 Schedule N, along with the amount listed by COMPANY 1 on the Schedule N issued for the 1997 tax year. Eventually this was audited by Respondent and the credit for the 1997 year was disallowed, although this treatment indicated that Petitioners had made an overpayment in 1996. It was Respondent's conclusion that Petitioners could not claim the 1996 credit on their 1997 return, that the 1996 credit had to be taken on the 1996 return. Petitioners would then have to pay the \$\$\$\$\$ plus interest to make up for the disallowance of the credit for 1997. However, by the time Respondent commenced the audit, Petitioners were beyond the statute of limitations for claiming a refund of the \$\$\$\$\$ overpayment for the tax year 1996.

APPLICABLE LAW

1. The amount withheld under this section shall be allowed to the recipient of the income as a credit against the tax imposed by this chapter. The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so

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beginning. (Utah Code Ann. Sec. 59-10-402(3).)

2. If a refund or credit is due because the amount of tax deducted and withheld from wages exceeds the actual tax due, a refund or credit may not be made or allowed unless the taxpayer or his legal representative files with the commission a tax return claiming the refund or credit: (I) within three years from the due date of the return, plus the period of any extensions of time for filing the return provided for in Subsection (7)(c); . . . (Utah Code Ann. Sec. 59-10-529 (7).)

DISCUSSION

Petitioners should have taken the credit of \$\$\$\$ in 1996, rather than assume it could be applied to the 1997 tax year. Because they failed to do so they technically had an overpayment in 1996 and a shortage in 1997. The audit deficiency is the result of the 1997 shortage. However, when this was brought to Petitioners' attention the statute of limitations barred them from claiming a refund of the overpayment for the prior year. This is a unique situation where the Petitioners have already paid the tax, just in a prior year. They are not requesting a refund, rather they are requesting that what they already paid be applied to the appropriate year.

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 overpayment in the year for which the statute of limitations has expired to be applied to the audit deficiency. Certainly there are equitable reasons for allowing the offset and it is the Commission's position that the offset would be allowed only when very limited and specific circumstances, such as the circumstances in this appeal, have been met.

CONCLUSIONS OF LAW

The doctrine of equitable recoupment can be applied to offset an audit deficiency with an

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overpayment, if each of the following criteria have been 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; and 3) the transaction, item or taxable event is now being subject to double taxation. Petitioners' situation meets all three criteria.

DECISION AND ORDER

Based upon the foregoing, although the Commission sustains the audit deficiency, the Commission orders that Respondent offset the audit deficiency with the overpayment made in the 1996 year. In addition the Commission orders Respondent to treat the payment as having been made prior to the date that it was due for the 1997 tax year, so that no accrual of interest is indicated. It is so ordered.

DATED this ____ day of _____, 2002.

Jane Phan
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 _____, 2002.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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Notice of Appeal Rights: 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 Ann. §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 Ann. §§59-1-601 and 63-46b-13 et. seq.

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