

02-0009  
AUDIT  
TAX YEAR 1999  
SIGNED: 10-23-2002

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No.    02-0009
v.	)	
	)	
AUDITING DIVISION OF	)	Tax Type:    Income Tax
THE UTAH STATE TAX	)	
COMMISSION,	)	Judge:        Phan
	)	
Respondent.	)	

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER REP.  
                    PETITIONER

For Respondent:  RESPONDENT REP. 1, Assistant Attorney General  
                    RESPONDENT REP. 2, Manager, Income Tax Auditing

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 August 26, 2002.

Petitioner is appealing an income tax audit deficiency issued by Respondent for the 1999 tax year. The amount of the additional income tax was \$\$\$\$ and at the time of the audit the amount of the interest was \$\$\$\$\$. Interest continues to accrue until the balance is paid.

The facts in this matter were not in dispute. The issue presented in this appeal is a legal one. Petitioner is not a resident of Utah and much of his income is not Utah source income. Petitioner is, however, a shareholder in a Utah COMPANY 1. The COMPANY 1 incurred losses in Utah from 1994 through 1998. Petitioner took the losses during the years the losses were incurred to offset gains at the federal level on his federal income tax returns. However, since he did not have gains in Utah during these years, he could not deduct the losses against any state income. In 1999, Petitioner recognized Utah taxable income and he deducted the Utah losses from the years 1994 through 1998 to offset his 1999 income.

Respondent disallowed the deduction for the 1999 tax year, as Petitioner's state taxable income did not comport with Petitioner's federal taxable income as claimed on his federal income tax return for 1999. Respondent points to Utah Code Ann. Sec. 59-10-116 which indicates that the state income tax of a nonresident individual is based on the federal adjusted gross income for the taxable year that the income was received.

Petitioner argues that a strict reading of the statute would fly in the face of the provisions allowing equitable adjustments and he asked that the Commission give him consideration on an equitable adjustment basis rather than just look at the plain language of the law.

#### APPLICABLE LAW

Pursuant to Utah Code Ann. §59-10-112, State Taxable Income is defined as "federal taxable income (as defined by §59-10-111) with the modifications, subtractions, and adjustments provided in §59-10-114.

Utah Code Ann. Sec. 59-10-116 (1) provides in pertinent part:

For purposes of this section: (a) "state income tax percentage" means a percentage equal to a nonresident individual's federal adjusted gross income for the taxable year received from Utah sources, as determined under Section 59-10-117, divided by the nonresident individual's total federal adjusted gross income for that taxable year; and (b) "state taxable income" means the product of a nonresident individual's (i) federal taxable income, as defined in Section 59-10-111, with the modifications, subtractions and adjustments provided for in Section 59-10-114; and (ii) tax imposed under Section 59-10-104. . .

Utah Code Ann. §59-10-115(4) provides:

"(4) The commission shall by rule prescribe for adjustments to state taxable income of the taxpayer in circumstances other than those specified by Subsections (1), (2), and (3) of this section where, solely by reason of the enactment of this Chapter, the taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. Anything in this section or this chapter to the contrary notwithstanding, the Commission may not make any adjustment pursuant to this section which will result in an increase or decrease of tax liability the amount of which is less than \$25."

Utah Administrative Code, Rule R865-9I-4.A. provides:

"A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. §59-10-115 or as determined by the tax commission consistent with provisions of the Individual Income Tax Act."

#### DECISION AND ORDER

The Tax Commission is bound to follow the plain language of the law. The Commission can not ignore the law for equitable reasons unless this situation fits within the

Appeal No. 02-0009

statutorily provided equitable adjustments at Utah Code Ann. 59-10-115. The facts in this situation do not fit within subsections (1) through (3) of this statute. Subsection (4) authorizes the Tax Commission to prescribe by rule additional situations where equitable adjustments may be made. Pursuant to that authority, the Commission has issued Utah Administrative Rule R865-9I-4. The Tax Commission has already considered whether an equitable adjustment may be made in factual situations similar to Petitioners and concluded to the contrary. The decisions were issued in two similar appeals, Tax Commission Order, Appeal No. 01-1469 and Appeal No. Order 01-0627. There is no basis in this appeal to decide to the contrary of the Commission's previous decisions.

Based on the forgoing, Petitioner's appeal in this matter is denied. 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 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 \_\_\_\_\_, 2002.

\_\_\_\_\_  
Jane Phan

Appeal No. 02-0009

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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