

02-0604  
AUDIT  
TAX YEAR: 1998  
SIGNED: 06-18-2003

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
Petitioners,	)	<b>AND FINAL DECISION</b>
	)	
v.	)	Appeal No.    02-0604
	)	Account No.  #####
AUDITING DIVISION OF	)	
THE UTAH STATE TAX	)	Tax Type:    Income Tax
COMMISSION,	)	
	)	Judge:       Phan
Respondent.	)	

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**Presiding:**

Marc B. Johnson, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER 1  
For Respondent:  RESPONDENT REP. 1, Assistant Attorney General  
                  RESPONDENT REP. 2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 12, 2003. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner is appealing an audit deficiency of additional individual income tax issued by Statutory Notice of Audit Change issued on March 27, 2002.

2. The tax year in question is 1998.
3. The amount of deficiency at issue is \$\$\$\$\$ in tax as well as the interest accrued thereon.
4. The deficiency is a result of Respondent's disallowance of a net operating loss carry forward. The loss had been incurred in 1994.
5. In 1994 Petitioner was not a resident of Utah for tax purposes. The loss at issue was, however, from a Utah source. Petitioner did not have Utah source income during the year to offset the Utah loss. In 1994 Petitioner was a resident of STATE 1 which does not have a state individual income tax. Petitioner used the Utah source loss to offset his individual income tax at the federal level for tax year 1994. Petitioner was unable to deduct the loss from any state taxable income for the 1994 tax year.
6. In 1995 Petitioner moved to Utah and became a Utah resident for tax purposes. He filed a part year resident individual income tax return in 1995 and Utah resident individual returns for tax years 1996, 1997 and 1998. Although not part of the audit, Petitioner had deducted losses incurred prior to 1994 on the Utah income tax returns filed for 1995, 1996 and 1997. For the 1998 tax year Petitioners deducted the loss from the Utah source which had been incurred in 1994 and claimed on Petitioners' 1994 federal income tax return.

#### APPLICABLE LAW

1. Utah Code Ann. Sec. 59-10-112 provides the statutory definition of "state taxable income 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.

2. Utah Code Ann. Sec. 59-10-122 provides as follows:

(1) For purposes of the tax imposed by this chapter, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

3. Equitable adjustments may be made pursuant to Utah Code Ann. Sec. 59-10-

115(4) as follows:

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.

4. The Utah Tax Commission has adopted a rule concerning equitable

adjustments at Utah Admin. Rule R865-9I-4.A. as follows:

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. Sec. 59-10-115 or as determined by the tax commission consistent with provisions of the Individual Income Tax Act.

#### CONCLUSIONS OF LAW

1. Utah "state taxable income" for resident individuals for each individual tax year is based

on federal taxable income for that tax year with the statutory modifications, subtractions and adjustments. *See* Utah Code Ann. Sec. 59-10-112 & 59-10-122.

2. The statutory modifications, subtractions and adjustments are provided at Utah Code Ann. Section 59-10-114. There is no provision in that section that would allow Petitioners to take a loss on their Utah individual income tax return in a year other than when the loss was claimed on their federal income tax return. Petitioners' argue that since the modifications, subtractions and adjustments listed in that section do not include any special provisions to exclude the net operating loss in a different year, the deduction should be allowed. Petitioners' argument on this point is misguided. The statutes are clear. Utah taxable income is based on federal taxable income for the same tax year. The only modifications, subtractions or adjustments that can be made to the federal taxable income are those specifically delineated in the statute.

3. Utah Code Ann. Sec. 59-10-120(3) does not apply to this situation and Petitioners are reading this provisions out of context as the provision applies to a change of residential status within the taxable year. However, the denial of the loss deduction is not the result of Petitioners' change of residency status. It is because it was claimed on the federal return for a prior tax year than claimed on the state return. Had Petitioners remained residents of STATE 1, but in 1998 earned income from a Utah source, and had Petitioners attempted to offset the 1998 gain with the 1994 loss, the results would be the same under the law. The 1994 loss claimed on the 1994 federal return may not properly offset a gain on the Utah return in a later year, regardless of Petitioners' residency status. There is simply no statutory provision that would allow this.

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4. The facts in this matter do not support an equitable adjustment pursuant to the provisions of Utah Code Ann. Sec. 59-10-115. Provisions of subsection (1) through (3) of Utah Code Ann. Sec. 59-10-115 are not applicable to the circumstances in this matter as the Commission does not find that there has been a double tax detriment with the denial of the 1994 loss on the 1998 return. The Tax Commission has found in prior hearings that an equitable adjustment does not apply in circumstances which the Commission determines to be similar to the case at hand despite Petitioners' argument to the contrary.<sup>1</sup>

DECISION AND ORDER

After reviewing the evidence presented at the hearing and the arguments of the parties in this matter the Commission sustains the audit deficiency of additional tax and interest. It is so ordered. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
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.

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<sup>1</sup>Tax Commission Order, Appeal No. 01-1469 & 02-0009.

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DATED this \_\_\_\_ day of \_\_\_\_\_, 2003.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

**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.

*JKP/02-0604.fof*