

10-2338
INCOME
TAX YEARS: 2007 & 2008
SIGNED: 03-12-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION, OF THE UTAH STATE TAX COMMISSION</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 10-2338</p> <p>Account No. #####</p> <p>Tax Type: Income Tax Tax Year: 2007 and 2008</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, Manager, Income Tax Auditing
RESPONDENT REP. 3, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 8, 2011, in accordance with Utah Code §59-1-501 and §63G-4-201 et al. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (Taxpayer) is appealing audit deficiencies for tax years 2007 and 2008. The Statutory Notices of Deficiency and Audit Change were issued on August 4, 2010 for both tax years. The amount at issue is as follows:

Year	Tax Amount	Interest	Total as of Notice ¹
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on the unpaid balance.

2. The audit deficiencies for both years result from Respondent (Division's) denial of targeted business tax credits claimed by the Taxpayer on her Utah Individual Income Tax Return for each year at issue. The amount of the credit claimed for 2007 had been \$\$\$\$ and the amount claimed for 2008 had been \$\$\$\$.

3. The Taxpayer explained that she had heard about these credits from a friend who is an accountant. She acknowledged that she did not look into the requirements for these credits personally.

4. The Taxpayer testified that during the years at issue she operated a (WORDS REMOVED) business. The address of the business was ADDRESS 1, CITY 1. She indicated that this was a small business with employees and it was her contention that she had used the credits towards the development of her business.

5. The business was located in Salt Lake County during the years at issue and continues to be so located.

6. The Taxpayer acknowledged that she did not obtain a copy of a TC-40TB, nor did she submit the form to the Governor's Office of Economic Development for certification.

7. The Taxpayer testified that after filing her 2007 return and receiving a refund of the credit in the amount of the \$\$\$\$ which she had claimed, she assumed that she must have qualified for the credit. It was her position that the Tax Commission should not have paid out the refund to her if she did not qualify for the credit. After receiving a refund for the 2007 tax year, the Taxpayer again claimed the credit in 2008, this time in the amount of \$\$\$\$.

8. The Taxpayer testified that having to repay this amount was a serious financial hardship for her business.

9. The Division pointed out that there is no enterprise zone in Salt Lake County and Salt Lake County has a population of more than 25,000 people.

10. A representative for the Division explained that the Division does not audit every return before a refund claimed on the return is issued.

11. The Utah 2007 Individual Income Tax TC-40 Forms and Instruction booklet explained the Targeted Business Tax Credit as follows:

A refundable credit is available to business providing a community investment project as defined in Utah Code 63-38f-501 through 63-38f-503. Obtain a certified copy of form TC-40TB, Targeted Business Tax Credit. Keep this form and all related documents with your records.

Contact the Governor's Office of Economic Development, 324 S State, Suite 500, SLC, UT 84111, telephone (801) 538-8775, goed.utah.gov/incentives/

enterprise_zones to obtain form TC-40TB, certification or for additional information.

12. A similar instruction was provided in the Utah 2008 Individual Income Tax TC-40 Forms and Instruction booklet.

APPLICABLE LAW

The Utah statutes providing for the targeted business income tax credits are found at Utah Code Ann. 63M-1-501 through 504 (2008).²

Utah Code Ann. §63M-1-503 provides that a number of criteria must be met in order to qualify for a targeted business income tax credit, as follows in pertinent part:

(1) (a) For taxable years beginning on or after January 1, 2002, a business applicant may elect to claim a targeted business income tax credit available under Section 63M-1-504 if the business applicant:

(i) is located in:

(A) an enterprise zone; and

(B) a county with:

(I) a population of less than 25,000; and

(II) an unemployment rate that for six months or more of each calendar year is at least one percentage point higher than the state average;

(ii) meets the requirements of Section 63M-1-412;

(iii) provides:

(A) a community investment project within the enterprise zone; and

(B) a portion of the community investment project during each taxable year for which the business applicant claims the targeted business tax incentive; and

(iv) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is not engaged in the following, as defined by the State Tax Commission by rule:

(A) construction;

(B) retail trade; or

(C) public utility activities.

....

² Prior to 2008, these statutes were found at Utah Code Ann. §63-38f-501 through 503 (2007).

(2) (a) A business applicant seeking to claim a targeted business income tax credit under this part shall file an application as provided in Subsection (2)(b) with the local zone administrator by no later than June 1 of the year in which the business applicant is seeking to claim a targeted business income tax credit.

....

(3) (a) The local zone administrator shall:

(i) evaluate an application filed under Subsection (2); and

(ii) determine whether the business applicant is eligible for a targeted business income tax credit.

....

Utah Code Ann. §63M-1-504 provides, as follows in pertinent part:

....

(8) The [GOED] shall issue a targeted business income tax credit eligibility form in a form jointly developed by the State Tax Commission and the office no later than 30 days after the last day of the business applicant's taxable year showing:

(a) the maximum amount of the targeted business income tax credit that the business applicant is eligible for that taxable year;

(b) any reductions in the maximum amount of the targeted business income tax credit because of failure to comply with a requirement of Subsection (3) or Section 63M-1-503;

(c) the allocated cap amount that the business applicant may claim for that taxable year; and

(d) the actual amount of the targeted business income tax credit that the business applicant may claim for that taxable year.

(9) (a) A business applicant shall retain the targeted business income tax credit eligibility form provided by the office under this Subsection (9).

(b) The State Tax Commission may audit a business applicant to ensure:

(i) eligibility for a targeted business income tax credit; or

(ii) compliance with Subsection (3) or Section 63M-1-503.

Utah Code §59-1-1417 (2010) provides that the burden of proof is upon the petitioner in proceedings before the Commission:

In a proceeding before the commission, the burden of proof is on the petitioner . . .

CONCLUSIONS OF LAW

1. The Taxpayer did not qualify for the Targeted Business Tax Credit for tax years 2007 or 2008. The credit is allowed only if the taxpayer meets the numerous criteria listed at Utah Code Sec. 63M-1-503. Requirements include that the business is located in an enterprise zone and in a county with a population of less than 25,000. The Taxpayer's business was located in Salt Lake County and not in an enterprise zone. Salt Lake County has a population greater than

25,000. The Taxpayer did not research even the basic qualifications for this credit. Had she done so it would have been clear to that she did not qualify. The Taxpayer claimed credits for which she did not qualify on her 2007 and 2008 Utah Individual Income Tax Returns.

2. Utah Code Sec. 63M-1-503(2) requires the taxpayer seeking to claim this credit to file an application for the credit and obtain approval or certification from the local zone administrator. The Taxpayer should have done this through the Governor's Office of Economic Development using the contact information provided in the Utah Individual Income Tax instruction booklet. In this matter the Taxpayer did not fill out or submit the application, which would have been a form TC-40TB, and did not obtain the approval from the Governor's Office of Economic Development prior to claiming the credit on her Utah Individual Income Tax Returns.

3. Utah Code Sec. 63M-1-504 provides that a taxpayer is to retain the approved and certified form TC-40TB for his or her records to show eligibility in case of an audit. Taxpayers are not required to send the form in with their return. This is also stated in the Utah Individual Income Tax TC-40 Forms and Instructions booklets for each of the years at issue. Utah Code Sec. 63M-1-504 provides that the Tax Commission may audit to ensure eligibility and compliance. The Taxpayer did not obtain the forms in first place because she had not filed the required application and her business would not have qualified for the credit had she applied.

4. The Taxpayer makes an argument in this matter that if she did not qualify for the credit, the Tax Commission should not have issued the refunds. As a taxpayer she did not understand why the Division did not audit her returns for eligibility prior to the refund check being sent to her. However, it is the practice and procedures at the Tax Commission that audits are not done for each return before the refund claimed on the return is paid. It was the Taxpayer's responsibility to make sure that she qualified for the credit before she claimed it on her return. The applicable law does require that a taxpayer obtain a certified TC-40TB in order to qualify for the credit. The TC-40TB is not submitted to the Tax Commission with the Utah Individual Tax Return. Instead the taxpayer is required to retain the form for his or her records. This Taxpayer failed to comply with the statutory provisions and claimed a credit on her return for which she did not qualify. There is no statutory basis for abatement of an audit because the refund was issued prior to the audit.

5. Financial hardship is not a basis for waiver of penalties or abatement of the tax or interest during an audit appeal proceeding. After the appeal is closed the Taxpayer may contact the Taxpayer Services Division at 801 297-7703 to discuss options based on financial hardship, including a monthly installment plan for payment of the deficiency.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission denies the Taxpayer's appeal in this matter. It is so ordered.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. §63G-4-302. 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 et seq. and §63G-4-401 et seq.