

10-2409
INCOME
TAX YEAR: 2007 - 2008
SIGNED: 01-05-2012
COMMISSIONERS: R. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION

Respondent.

INITIAL HEARING ORDER

Appeal No. 10-2409
Account No. #####
Tax Type: Income Tax
Tax Years: 2007 and 2008

Judge: Phan

Presiding:

Jane Phan, Administrative 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 Commission for an Initial Hearing in accordance with Utah Code §59-1-502.5, on October 11, 2011. Petitioner (“Taxpayer”) had appealed a Utah Individual Income Tax audit deficiency issued by Respondent (“Division”) for tax years 2007 and 2008. The Statutory Notices of Audit Deficiency had been mailed on August 9, 2010. No penalties were assessed with the audit. The amount at issue is as follows:

Tax Year	Audit Tax Due	Interest	Total as of Notice Date ¹
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

The Utah statutes providing for the targeted business income tax credits are found at Utah Code 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) (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.

....

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

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 Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

The Taxpayer explained that she had heard about the targeted business tax credits and had claimed the credits for expense she had invested into her business on her 2007 individual income tax return. She indicated that when she received the refund back that she had claimed on that return she thought that meant she was approved for the credit. So then she claimed a further credit in 2008. It was her contention that if she did not qualify for the credit the refund should not have been issued to her. She also indicates that now she understands there were requirements which she did not meet. For example her business was an accounting business which she ran out of her home in CITY 1, which is not an enterprise zone and not located in a county with a population of less than 25,000. Additionally, she acknowledges that she did not receive a certificate of approval from the Governor's Office of Economic Development.

The Taxpayer also asks for relief based on financial hardship. She explained that at this time she is jobless, homeless, has no property and could not repay this money.

The Division noted that there are a number of statutory requirements that must be met by a taxpayer before they qualify for the credit. These are set out at Utah Code 63M-1-501 through 504 (2008). These provisions provide that the credit is only available to businesses that provide a community investment project in a designated enterprise zone and in a county with a population of 25,000 or less. There is no location in Salt

Lake County that would qualify. In addition, prior to claiming the credit, the taxpayer was required to file a TC-40TB application with the Governor's Office of Economic Development and receive a certificate of approval from that office. The statutory provisions require taxpayers to retain the certificate of approval for their records and do not require that it be mailed to the Tax Commission with the return. Additionally, the Division provided copies of the 2007 and 2008 Individual Income Tax TC-40 Forms and Instructions. These instructions that are provided with the Utah Individual Income Tax Return TC-40 state that a taxpayer must obtain a certified copy of form TC-40TB and refer them to the Governor's Office of Economic Development, providing a phone number, address and web-site. The Division representatives explained that when someone claims a refund on a return, the Division is not able to audit every return filed before the refund is issued. So in this case the refund was paid to the Taxpayer based on the fact that she had claimed she was entitled to receive it on her return. Later, when the return was audited, she was not able to provide the documentation that she should have had before claiming the credit.

Upon review of the information submitted, the Taxpayer now understands that she was not qualified to claim this credit on her returns, but argues that if she did not qualify, she should not have been issued the refunds for each year. She also argues financial hardship and states that she has no means to repay the credit at this time. The fact that the refunds claimed on returns may be issued before the return is audited is a policy determination of the State Tax Commission and Division based on a number of considerations. The process expedites the issues of refunds, rather than having taxpayers wait for possibly years until their refund claim is audited. Taxpayers are responsible for making accurate claims on their returns and for determining if they qualify for a credit before claiming it on their return. In the Taxpayer's case she did not meet even the most basic qualification for this credit, that of using the funds for a business located in a County with a population of 25,000 or less. Had the Taxpayer even looked into what was required for this credit, she would have realized that she did not qualify. The audit assessment of tax and interest should be sustained. The Taxpayer may contact the Taxpayer Services Division at 801 297-7719 to discuss financial hardship options including a monthly payment arrangement or Offers in Compromise.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing the Commission denies the Taxpayer's appeal. 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

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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
CITY 1, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner