

10-2507
 INCOME
 TAX YEAR: 2007
 SIGNED: 01-11-2011
 COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN
 EXCUSED: R. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 10-2507 Account No. ##### Tax Type: Income Tax Year: 2007 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, Taxpayer
 For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, from Auditing Division

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 January 4, 2012.

PETITIONER (“Petitioner” or “taxpayer”) is appealing Auditing Division’s (the “Division”) assessment of additional individual income tax for the 2007 tax year. On August 30, 2010, the Division issued a Statutory Notice of Audit Change to the taxpayer, in which it imposed additional tax and interest (calculated as of September 29, 2010) for the 2007 year, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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The Division imposed the assessment after it disallowed an “equitable adjustment” deduction in the amount of \$\$\$\$ that the taxpayer claimed on his 2007 Utah return.

The taxpayer explains that he had \$\$\$\$ of tuition payments during the 2007 tax year. On the basis of the \$\$\$\$ of tuition payments, the taxpayer stated that for federal tax purposes, he had the option of either taking a \$\$\$\$ tuition deduction or a \$\$\$\$ lifetime learning credit on his federal return. The taxpayer opted to take the \$\$\$\$ credit on his federal return. The taxpayer explained that had he opted to take the \$\$\$\$ deduction against his federal adjusted gross income, his Utah taxable income would have automatically been reduced by \$\$\$\$, as well. However, because he opted to take the \$\$\$\$ federal credit, there was no place on the Utah return to receive any benefit for his tuition payments other than in the equitable adjustment line of the return. For these reasons, he claimed an equitable adjustment deduction equal to the amount of his 2007 tuition payments, specifically \$\$\$\$\$, on his 2007 Utah return.

At the hearing, the taxpayer stated that he now believed that it would have been more appropriate for him to have taken a Utah equitable adjustment deduction in the amount of \$\$\$\$ because he would have been limited to a \$\$\$\$ deduction on his federal return had he not opted for the federal credit. The taxpayer recognizes that Utah law, unlike federal law, does not provide for a state lifetime learning credit. The taxpayer contends that the Tax Commission should, at least, allow a state deduction from income for those taxpayers who opt to take the federal credit so that Utah does not impede the workings of the federal tax system and the federal tax decisions of students. For these reasons, he asks the Commission to approve a \$\$\$\$ deduction on his 2007 Utah return instead of the \$\$\$\$ deduction he originally claimed.

The Division asks the Commission to sustain its audit assessment in its entirety. The Division states that Utah law neither provides for a state tax credit nor a deduction against state taxable income for those taxpayers who opt to claim a federal lifetime learning credit instead of a federal deduction. The Division states that this situation is not unique and that the Commission has addressed other situations where a taxpayer

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claimed a federal tax credit when he or she had the option of claiming either a federal credit or a federal deduction.¹ Because of these decisions and because Utah law does not provide for a state tuition deduction where a taxpayer opts to claim a federal lifetime learning credit instead of a federal tuition deduction, the Division asks the Commission to find that the taxpayer is not entitled to a tuition deduction for Utah income tax purposes and to sustain its assessment.

APPLICABLE LAW

Utah Code Ann. §59-10-103 (2007)² defines “adjusted gross income,” “federal taxable income,” and “‘taxable income’ or ‘state taxable income,’” as follows:

- (1) As used in this chapter:
 - (a) "Adjusted gross income":
 - (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or
 - (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.
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 - (w) "Taxable income" or "state taxable income":
 - (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115;
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UCA §59-10-115(1) (2007) provides for an adjustment to adjusted gross income, as follows:

- (1) The commission shall allow an adjustment to federal taxable income of a taxpayer if the taxpayer would otherwise:
 - (a) receive a double tax benefit under this part; or
 - (b) suffer a double tax detriment under this part.

1 See *USTC Appeal No. 09-2968* (Int. Hearing Order May 26, 2010), in which the Commission found that taxpayers were not entitled to a state deduction when they chose to take a federal credit instead of a federal deduction concerning a claim of right. See also *USTC Appeal No. 08-0590* (Findings of Fact, Conclusions of Law, and Final Decision Aug. 5, 2010), in which the Commission found that taxpayers were not entitled to a state deduction when they chose to take a federal credit instead of a federal deduction concerning their foreign tax payments. These prior decisions may be found at <http://tax.utah.gov/commission/decisions>.

2 The 2007 version of Utah law is cited in the decision, unless otherwise indicated.

UCA §59-1-1417 (2011) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
 - (a) required to be reported; and
 - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

At issue is whether the taxpayer is entitled to a 2007 state deduction for tuition payments when he opted to claim a \$\$\$\$ lifetime learning credit instead of a \$\$\$\$ tuition deduction for 2007 federal tax purposes.

Utah “taxable income” is defined in Section 59-10-103(1)(w) to mean a taxpayer’s federal adjusted gross income after the “additions and subtractions required by Section 59-10-114” and the “adjustments required by Section 59-10-115.” There are no adjustments in UCA §59-10-114 that apply to tuition payments or to situations where a taxpayer opts to claim a federal tax credit instead of a federal tax deduction. Furthermore, there is no double tax detriment for which an equitable adjustment is warranted under Section 59-10-115. Accordingly, Utah law does not authorize a taxpayer to claim a state deduction for tuition payments when he or she has claimed a federal credit instead of a federal deduction in regards to these payments. This finding is consistent with other cases in which the Commission has considered the effect on Utah taxes of a taxpayer’s decision to opt for a federal tax credit instead of a federal tax deduction.

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The taxpayer contends that regardless of Utah's current statutory scheme, the Commission should grant the deduction because it has the authority and responsibility not to impede the workings of the federal tax system and the federal tax decisions of students. It is the Utah Legislature, not the Commission, who has the authority to enact Utah's tax laws. The Legislature has not provided for a state deduction under the circumstances present in this case. Nor has the taxpayer provided any case law or other precedent to show that a state's tax laws must allow a state deduction under these circumstances. As a result, the taxpayer is not entitled to any state deduction regarding his 2007 tuition payments. Accordingly, the Division's assessment should be sustained in its entirety.

Kerry R. Chapman
Administrative Law Judge

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DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division assessment in its entirety. 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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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