

13-157

TAX TYPE: CIRCUIT BREAKER TAX EXEMPTION

TAX YEAR: 2012

DATE SIGNED: 10-7-2014

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO

EXCUSED: D. DIXON

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER,

Petitioner,

vs.

TAXPAYER SERVICES DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL DECISION**

Appeal No. 13-157

Account No. #####

Tax Type: Circuit Breaker Tax Exemption

Tax Year: 2012

Judge: Jensen

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**Presiding:**

Robert Pero, Commissioner

Clinton Jensen, Administrative Judge

**Appearances:**

For Petitioner: TAXPAYER, Taxpayer

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General  
RESPONDENT, for the Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing April 10, 2014 in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. Petitioner (the "Taxpayer") filed a form TC-40CB, claiming a "circuit breaker" renter refund of \$\$\$\$ for the 2012 tax year.
2. Upon receipt, Respondent (the "Division") allowed a credit, but reduced its amount to \$\$\$\$ on the basis of the Taxpayer's income. The Division then completed an audit of the refund. On February 4, 2013, the Division issued a letter further reducing the refund amount to \$\$\$\$\$. The

Division added IRA conversions in the amount of \$\$\$\$ to line 2c of form TC-40CB. The Division also added the current year capital gain of \$\$\$\$ to line 2e of the form TC-40CB.

3. The Taxpayer argued that the amounts added by the Division to Line 2c should not be included because he did not receive and have use of the funds. He explained that he converted \$\$\$\$ from a traditional IRA to a Roth IRA.
4. The Taxpayer argued that the capital gain carry-forward on Line 2e is non-taxable and should not be allowed in determining his income for purposes of the refund.
5. The Division does not dispute that the Taxpayer did not have use of the funds converted from the traditional IRA to a Roth IRA. However, it is the Division's position that the IRA transfer was a taxable event and is properly included in the Taxpayer's federal adjusted gross income.
6. It is the Division's position that it properly included as income the short-term capital gain of \$\$\$\$ and denied a capital loss carryover from a previous tax year.
7. The Taxpayer's \$\$\$\$ IRA rollover was included in the Taxpayer's federal adjusted gross income.

#### APPLICABLE LAW

Utah Code Ann. §59-2-1209(1) provides for a renter's credit, as follows in pertinent part:

- (a) Subject to Subsections (2), (3), and (6), for calendar years beginning on or after January 1, 2007, a claimant may claim a renter's credit for the previous calendar year that does not exceed the following amounts:

If household income is	Percentage of rent allowed as credit
\$0 - \$9,159	9.5%
\$9,160 - \$12,124	8.5%
\$12,215 - \$15,266	7.0%
\$15,267 - \$18,319	5.5%
\$18,320 - \$21,374	4.0%
\$21,375 - \$24,246	3.0%
\$24,247 - \$26,941	2.5%

- (b) (1) For calendar years beginning on or after January 1, 2008, the commission shall increase or decrease the household income eligibility amounts under Subsection (1)(a) by a percentage equal to the percentage difference between the consumer price index for calendar year 2006...

Utah Code Ann. §59-2-1202(5) defines "Household income" as follows:

"Household income" means all income received by all persons of a household in:

- (a) the calendar year preceding the calendar year in which property taxes are due; or
- (b) for purposes of the renter's credit authorized by this part, the year for which a claim is filed.

Utah Code Ann. §59-2-1202(6) defines “income” as set forth below:

- (a) (i) “Income” means the sum of:
  - (A) Federal adjusted gross income as defined in Section 62, Internal Revenue Code; and
  - (B) All nontaxable income as defined in Subsection (6)(b).
- (ii) “Income” does not include:
  - (A) Aid, assistance, or contributions from a tax-exempt nongovernmental source;
  - (B) Surplus foods;
  - (C) Relief in kind supplied by a public or private agency; or
  - (D) Relief provided under this part, Section 59-2-1108, or Section 59-2-1109.
- (b) For purposes of Subsection (6)(a)(i), “nontaxable income” means amount excluded from adjusted gross income under the Internal Revenue Code, including:
  - (i) capital gains;
  - (ii) loss carry forwards claimed during the taxable year in which a claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;
  - (iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the residence for which the claimant files for relief under this part, Section 59-2-1108, or Section 59-2-1109;
  - (iv) support money received;
  - (v) nontaxable strike benefits;
  - (vi) cash public assistance or relief;
  - (vii) the gross amount of a pension or annuity, including benefits under the Railroad Retirement Act of 1974, 45 U.S.C. Sec 231 et seq., and veterans disability pensions;
  - (viii) payments received under the Social Security Act;
  - (ix) state unemployment insurance amounts;
  - (x) nontaxable interest received from any source;
  - (xi) workers’ compensation;
  - (xii) the gross amount of “loss of time” insurance; and
  - (xiii) voluntary contributions to a tax-deferred retirement plan.

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

#### CONCLUSIONS OF LAW

The Taxpayer’s taxable IRA conversion in the amount of \$\$\$\$\$ is to be included in his “household income”. Whether or not the Taxpayer received and had use of the funds during the year at issue is not relevant for the purpose of determining the renter refund. Because the \$\$\$\$\$ was included in the Taxpayer’s federal adjusted gross income, it is required to be included in his “household income” under Utah Code Ann. §59-2-1202.

The loss carry forward is not a deduction for purposes of determining “household income” for the renter refund. Utah Code Ann. §59-2-1202(6) defines income to be the sum of federal adjusted gross income and non-taxable income defined in subsection (b). Subsection (6)(b)(ii) specifically includes loss

carry forwards. Even though it is a deduction for the purposes of determining a taxpayer's federal tax liability, it is not a deduction when determining income for purposes of the renter refund.

For the 2012 tax year, the Division correctly calculated income and rents from 2011. It included IRA rollover as income, excluded loss carry forward from a previous tax year, and properly included current year capital gain. On the basis of these figures, the Taxpayer's "household income" for the 2011 year used to calculate the credit at issue is \$\$\$\$\$. On the basis of these figures, the Division properly calculated the Taxpayer's 2012 credit at \$\$\$\$\$.

Clinton Jensen  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayer's 2011 household income for the 2012 circuit breaker tax year was \$\$\$\$\$, and that he is entitled to a refund in the amount of \$\$\$\$\$. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

John L. Valentine  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

Robert P. Pero  
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.