13-1382
TAX TYPE: PERSONAL INCOME TAX
TAX YEAR: 2010
DATE SIGNED: 11-30-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 13-1382 Account No. ##### Tax Type: Personal Income Tax Tax Year: 2010 Judge: Jensen

Presiding:
D'Arcy Dixon Pignanelli[1], Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney for the Taxpayer
TAXPAYER, Taxpayer
REPRESENTATIVE-2 FOR TAXPAYER, Taxpayer

For Respondent: REPRESENTATIVE-1 FOR RESPONDENT, Assistant Attorney General
REPRESENTATIVE-2 FOR RESPONDENT, Assistant Attorney General
RESPONDENT-1, Income Tax Audit Manager
RESPONDENT-2, Income Tax Audit Manager
RESPONDENT-3, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 8, 2014. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. Petitioner (the "Taxpayer") is appealing the assessment of Utah individual income tax and interest for the 2010 tax year.

[1] Commissioner Pignanelli is no longer with the Commission and took no part in deliberations for this case.

2. On April 11, 2013, the Auditing Division of the Utah State Tax Commission (the "Division") sent a Statutory Notice of Deficiency. The Statutory Notice indicated that the Taxpayer owed additional tax and interest as follows:

Year	Tax	Penalties	Interest[2]
2010	$$$$$	none	$$$$$

3. The Division based its audit on the assertion that the Taxpayer had improperly claimed a credit for purchase of a vehicle fueled by cleaner burning fuels on his 2010 Utah income tax return.

4. The vehicle for which the Taxpayer claimed the cleaner burning fuels credit is a VEHICLE MAKE AND MODEL, a vehicle equipped to operate on compressed natural gas or CNG (the "VEHICLE").

5. The Taxpayer did not buy, register, or regularly drive the VEHICLE. NAME-1 and NAME-2 bought the VEHICLE from the CITY-1 Car Lot on or about March 1, 2010 and registered it in Utah in their names later in March 2010. NAME-2 typically drove the VEHICLE.

6. Although the Taxpayer was a stranger to the transaction in which the NAME-1 & 2 bought, registered, and drove the VEHICLE, he is not a stranger to NAME-1 & 2. The Taxpayer is a friend of NAME-1 & 2 to whom NAME-1 & 2 wanted to give their cleaner burning fuels credit for buying the VEHICLE. NAME-2 testified that she and her husband NAME-1 had already claimed the same credit for another vehicle and thus had no use for the credit.

7. After NAME-1 & 2 purchase of the VEHICLE, but before the Taxpayer claimed a credit for the VEHICLE, an employee of the Utah Division of Environmental Quality signed a TC-40V form, which is the document that Utah law requires be signed to certify that a vehicle uses cleaner burning fuels and that no one has previously taken the credit for that vehicle.

8. The Division audited the Taxpayer's 2010 Utah tax return and removed the credit for the purchase of the vehicle fueled by cleaner burning fuels.

9. The Division does not dispute that the VEHICLE was fueled by cleaner burning fuels or that its purchase would qualify for a credit. But its position is that the Taxpayer cannot claim credit for the purchase of the VEHICLE because the Taxpayer did not buy or register it.

10. The Taxpayer timely appealed the Division's audit. The Taxpayer's position is that so long as the VEHICLE qualifies for the cleaner burning fuels credit and no one else has claimed the credit, NAME-1 & 2 had a claim that they could give away if they so chose.

11. The Taxpayer cites the provisions of Utah code creating the cleaner burning fuels credit, claiming that because the plain language of the statute does not provide a prohibition on assignment of the

[2] Interest continues to accrue on any unpaid balance.

credit, the credit is assignable. The Taxpayer notes that the 2014 Utah legislature created a prohibition on assignment of the credit for tax years starting after January 1, 2015. The Taxpayer argues that this demonstrates that if the legislature had wanted to prohibit assignment of the credit, it could have done so. On that basis, the Taxpayer's position is that the absence of the assignment prohibition before 2014 means that there was not an assignment prohibition until the legislature created it.

12. The Taxpayer directs the Commission to revisions that the Utah legislature made in 2005, 2008, 2011, and 2013 with effective dates in 2006, 2009, 2012 and 2014 to the Utah statute providing for a cleaner burning fuels credit as evidence that had the legislature desired to make a change to the statute to prohibit assignment of the credit, it had ample opportunity to do so.

13. The Taxpayer points to a 2014 addition to the Utah Administrative Rules providing that the name of the person claiming the cleaner burning fuels credit must appear on the purchase documentation of the vehicle for which the person is claiming the credit. The Taxpayer takes the position that if the Commission wanted to make that requirement before 2014, it could have done so and that failing to do so before 2014 means that before 2014, parties were free to assign the credit.

14. The Taxpayer cites language in the statute creating the cleaner burning fuels credit indicating the credit may be taken one time per vehicle as further proof that the credit should be applied to a vehicle rather than to a person.

15. The Taxpayer argues that even if Utah law does not allow the assignment of the tax credit at issue in this case, the equitable doctrine of estoppel prevents the Division from taking the position that the Taxpayer cannot receive an assignment of a cleaner burning fuels credit.

16. On November 12, 2008, NAME-1 sent an email to NAME-3, an employee of the Utah Division of Environmental Quality, inquiring as follows: "I have a (X) truck I got for my brother in law. It is registered in his name but his tax liability is not good enough to take the credit can I take the credit or will it have to be registered to me[?]"

17. In response to the November 12, 2008 email from NAME-1, NAME-3 responded with an email indicating "[i]t does not have to be registered in your name. However, I will need to obtain the following documents." NAME-3 then provided a list of documents that he would need before he would sign a TC-40V.

18. NAME-1 made an attempt to confirm with the Utah State Tax Commission the information he had received from NAME-3. A letter that NAME-1 wrote identified someone named NAME-4 as the representative with whom NAME-1 spoke. The letter indicated that "NAME-4 asked [NAME-1] to wait while she checked with other parties" and that NAME-4 returned to say that "as far as

they understood, the information . . . from [NAME-3] was correct" but went on to note that NAME-1 "would need to write [a letter to] obtain in writing a Private Letter Ruling in this matter."

19. The Division cited Utah law for the proposition that courts are to construe statutes that create tax credits and exemptions against the credits or exemptions.

20. The Division provided a copy of a TC-40V form with the same 2/09 edition date as the TC-40V form that the Taxpayer would have filled out to claim the cleaner burning fuels credit. Under the instructions section, the form provided as follows:

> The credit may only be taken once per vehicle. It must be certified and claimed in the taxable year in which the item is purchased or converted.
>
> . . .
>
> **Procedures**
>
> 1. If you have purchased a qualifying vehicle or converted a vehicle or special mobile equipment engine, submit the required documentation with a completed form TC-40V to the Division of Air Quality. Information for obtaining clean fuel certification is located in the Utah Administrative Code as follows:
>   [Administrative Code sections cited]
> 2. The taxpayer must receive certification from the Division of Air Quality. The credit is not valid unless both an authorized signature and certification stamp are present.
> 3. Complete the calculation of the credit on Part A. Carryover credits may be recorded on lines 10 through 15.
> 4. Refer to the return instructions to determine the line number on which to record this credit. **The credit code is "05" for all returns.**
> 5. Do not send this form with your return. Keep this form and all related documents with your records.

21. The Division relies on the instructions to the TC-40V form as proof that only the purchaser of a vehicle can claim the credit. It adds emphasis to the word "you" as used in the phrase outlining procedures "If you have purchased a qualifying vehicle . . . ." It compares this with the use of the word "you" and "your" throughout the form to demonstrate that the person described as "you" completing the form is the same "you" that purchased a qualifying vehicle.

22. Responding to the Taxpayer's claim for estoppel, the Division maintains that Utah law provides that lower level employees of an agency cannot bind the agency or set agency policy. It maintains that there is no evidence that NAME-3 has a position of authority and is unlikely to be able to bind the Division of Environmental Quality. But even if he does have that authority, the Division argues that he does not work for the Utah State Tax Commission and thus has no authority to set policy for or otherwise bind the Tax Commission.

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. Utah Code Ann. §59-10-104(1).

Utah Code Ann. §59-10-1009(2) provides for a cleaner burning fuels tax credit as follows, in pertinent part:

> Except as provided in Subsection (2)(b), for taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2010, a claimant, estate, or trust may claim a nonrefundable tax credit against tax otherwise due under this chapter in an amount equal to:
>
> (a) $750 for the original purchase of a new vehicle that is not fueled by compressed natural gas if the vehicle is registered in Utah and meets air quality and fuel economy standards;
> (b) for the purchase of a vehicle fueled by compressed natural gas that is registered in Utah, the lesser of:
> (i) $2,500; or
> (ii) 35% of the purchase price of the vehicle;
> (c) 50% of the cost of equipment for conversion, if certified by the board, of a motor vehicle registered in Utah minus the amount of any clean fuel conversion grant received, up to a maximum tax credit of $2,500 per vehicle if the motor vehicle:
> (i) is to be fueled by propane, natural gas, or electricity;
> (ii) is to be fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(c)(i); or
> (iii) will meet the federal clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec 7521 et seq.;

Utah Code Ann. §59-10-1009(4) places certain limitations on the cleaner burning fuel credit, as follows:

> Except as provided by Subsection (5), the tax credit under this section is allowed only:
> (a) against any Utah tax owed in the taxable year by the claimant, estate, or trust;
> (b) in the taxable year in which the item is purchased for which the credit is claimed; and
> (c) once per vehicle.

Utah Code Ann. §59-1-1417 (2014) sets forth the burden of proof and statutory construction rules for proceedings before the Commission as follows:

> (1) 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:
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
> (b) 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
> (c) 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:
> (i) required to be reported; and

(ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

(2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:

(a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and

(b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

CONCLUSIONS OF LAW

There is no dispute regarding the facts in this case. This case presents only issues of statutory interpretation regarding the persons who have the right to claim a cleaner burning fuels credit under the statute creating the credit. If the Commission determines that parties had the right to assign cleaner burning fuel tax credits for the 2010 tax year, the Commission will not need to consider the issue of equitable estoppel. The Commission need only reach the estoppel issue if it determines that the Utah statute creating credits for cleaner burning fuels does not allow assignment of those credits.

Does Utah Code Ann. §59-10-1009 allow for the assignment of the tax credits it creates?

To determine whether Utah Code Ann. §59-10-1009 allows for the assignment of the tax credits it creates, the Commission must interpret the statute. Utah law provides specific requirements for the interpretation of tax statutes. Statutes imposing a tax are to be construed in favor of taxpayers and against imposing the tax. Utah Code Ann. §59-1-1417(2)(a) (2014). Statutes providing tax exemptions or credits are to be construed in favor of the taxing authority and against granting the exemption or credit. Utah Code Ann. §59-1-1417(2)(b) (2014). This policy follows established case law from the Utah Supreme Court. *See MacFarlane v. Utah State Tax Comm'n*, 134 P.3d 1116, 1121 (Utah 2006). There are, however, limits to these rules of statutory construction. "'[T]he rule of strict construction should not be utilized to defeat the intent of the legislative body [and that the] best evidence of that intent is the plain meaning of the statute." *Id.* citing *State Dep't of Assessments and Taxation v. Belcher*, 553 A.2d 561 (Md. 1989) and *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903 (Utah 1984). Courts interpreting statutes do so on the basis of a presumption "that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning." *Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-Day Saints* 2007 UT 42, ¶46, 164 P.3d 384 (quoting *State v. Barrett,* 2005 UT 88, ¶29, 127 P.3d 682).

Appling these standards, it is clear that in creating a cleaner burning fuels credit in Utah Code Ann. §59-10-1009, the Utah legislature neither specifically allowed nor disallowed assignment of the credit there created. That is not true of all statutes that create tax credits. Some statutory enactments of credits include language specifically providing for assignment of the credits. *See, e.g.,* Utah Code Ann.

§59-7-614 and Utah Code Ann. §59-10-1014 (renewable energy systems tax credits specifically assignable). From statutes such as these, it is clear that if the Utah legislature wants to create an assignable credit, it has a mechanism available to it to do so. Just as the Commission reads statutes under the presumption that the Utah legislature "used each word advisedly," it also notes that there may be meaning in the legislature's choice to not use words that would allow for assignment of a given credit.

The Commission considers the opportunities that the legislature may have had in 2005, 2008, 2011, and 2013 to amend the statute as possible proof that the legislature may have intended that the tax credit at issue be assignable until the legislature specifically forbade it in 2014 for the 2015 tax year.[3] The Commission has considered statutory language providing that the credit is to be applied once per vehicle. However, on the basis of the plain language of Utah Code Ann. §59-10-1009 creating a tax credit without creating a right of assignment, the Commission declines any invitation to create a right of assignment that the Utah legislature did not.

At most, the Taxpayer has succeeded in showing a possible ambiguity in Utah Code Ann. §59-10-1009. Finding Utah Code Ann. §59-10-1009 ambiguous would lead to the same result as the Commission has already reached in this case since Utah Code Ann. §59-1-1417(2)(b) requires the Commission to "construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer." To the extent that filling the void between claimant and a qualifying vehicle purchase in Utah Code Ann. §59-10-1009 requires that the Commission construe an ambiguity, it would resolve that ambiguity against the Taxpayer.

Because the Commission construes Utah Code Ann. §59-10-1009 as not providing for assignment of the credits it creates, the Division's arguments that TC-40V instructions prohibit assignment are moot. Because the argument is moot, the Commission does not consider TC-40V instructions as possible legal authority prohibiting transfer of cleaner burning fuel credits. Nevertheless, the Commission may consider the same instructions as they bear upon the issue of equitable estoppel.

Can employees of the Tax Commission or employees of other agencies set Commission practice?

The Division argues that Commission employees cannot set agency practice or bind the Commission in matters of tax administration. Utah law is clear that agencies such as the Tax Commission should not be bound by "the unappealed decisions of its subordinates." *Orton v. Utah State Tax Commission,* 864 P.2d 904, 909 (Utah App. 1993). The Utah Supreme Court reached the same conclusion in *Morton International Inc. v. Utah State Tax Comm'n*, 814 P.2d 581 (Utah 1991). *Morton* involved a

[3] The Commission notes that while the Taxpayer provided evidence of the 2014 changes to Utah Code Ann. §59-10-1009, he did not provide evidence such as citation to committee hearings or floor debates that would support a conclusion that the 2014 changes were intended to be a change in the Utah law as opposed to a codification of existing practice.

taxpayer claiming that the Commission was taking a position in one case that ran counter to the actions of individual auditors in other cases. *Morton,* 814 P.2d at 595. The court ruled that "the decisions of individual auditors do not constitute 'agency practice' [and that to] hold otherwise would be to bind the Commission by the unappealed decisions of its subordinates." *Id.*

Applying Utah law as set forth in *Orton* and *Morton*, it is clear that Tax Commission employees cannot determine agency practice applicable to Utah taxing entities and taxpayers. It is even clearer that an employee of another agency cannot determine Tax Commission practice.

Is the Division estopped from reversing assignments of the tax credits at issue in this case?

That an employee of a sister agency cannot establish practice for the Utah State Tax Commission is not the end of analysis for purposes of application of the doctrine of equitable estoppel. If an employee of Utah State Government provides misinformation that directly misleads a taxpayer, the Commission may have to honor representations made if failing to honor those representations would result in manifest injustice.

Equitable estoppel against a state agency is the exception rather than the rule. *Holland v. Career Service Review Bd.*, 856 P.2d 678, 682 (Utah 1993). However, in *Eldredge v. Utah State Retirement Bd.*, 795 P.2d 671, 675 (Utah Ct. App. 1990) the court concludes that courts should apply the doctrine "where it is plain that the interest of justice so require." *Eldredge* sets forth three elements for equitable estoppel as follows: 1) a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted; 2) reasonable action or inaction by the other party taken on the basis of the first party's statement, admission, act, or failure to act; and 3) injury to the second party that would result from allowing the first party to contradict or repudiate such statement, admission, act, or failure to act. *Id.*

Before the Commission is in a position to apply the elements of estoppel, it must ascertain the party against which estoppel is properly presented in this case. The Division seeks to distance itself from the incorrect statements of a DEQ employee regarding agency practice. The Taxpayer, on the other hand, argues that both entities are part of Utah State Government. The Taxpayer argues that the State of Utah, as a governmental body, misled him.

With one possible exception, all of the misinformation at issue in this case came from outside the Tax Commission. The one exception may arise from communications that NAME-1 had with a Commission employee in which NAME-1 attempted to confirm the information he had received from NAME-3 at DEQ. Other than that, there is no action that the Division or anyone else at the Commission took that provided misleading or false information. As the Division notes, the instructions that the Commission provided for the TC-40V are accurate and reflect the interpretation of Utah law as set forth in this decision.

Although there is little or no evidence that the Division or the Commission provided incorrect information in this case, the Commission is a part of state government. It comes as no surprise to the Commission that a taxpayer would view state government as one entity rather than discrete agencies. To some extent, the statutes creating the cleaner burning fuels credit foster this view by making the Tax Commission responsible for tax credits but making DEQ responsible for certifying vehicles for that credit. *See* Utah Code Ann. §59-10-1009. Under this statute, it is reasonable that a taxpayer would rely on the actions of one agency of state government to bind another agency of state government. For that reason, the Commission looks at this issue as a taxpayer would consider it – that Utah has one government and that Utah State Government is the entity against which estoppel is sought.

Viewing Utah State Government as the entity to be estopped, there is sufficient evidence to meet the first prong of the three-prong test for estoppel set forth in *Eldredge*. DEQ, as a part of state government, issued "a statement, admission, act, or failure to act by one party inconsistent with a claim later asserted" because the Division is seeking to take a position opposite the direct advice given to the precise question on which NAME-1 sought advice. *See Eldredge,* 795 P.2d at 675.

Because Utah State Government is the party to be estopped, the facts in this case support a finding that Taxpayer relied on the representations of DEQ. This satisfies the second element of estoppel, "reasonable action or inaction by the other party taken on the basis of the first party's statement, admission, act, or failure to act." *See id.*

The evidence for the third element of estoppel, "injury to the second party that would result from allowing the first party to contradict or repudiate such statement admission, act, or failure to act" is less clear in this case. To make a successful argument that the Tax Commission should be estopped, it is necessary for the Taxpayer to show more than ordinary injury. As explained by the Utah Court of Appeals, "[i]t is well settled that equitable estoppel is only assertable against the State or its institutions in unusual situations in which it is plainly apparent that failing to apply the rule would result in manifest injustice." *Orton v. Utah State Tax Commission*, 864 P.2d 904 (Utah App. 1993).

Applying the rule that meeting the third prong of estoppel requires proof that failing to apply estoppel would "result in manifest injustice" as described in *Orton,* the Commission finds that the NAME-1 & 2' actions do not meet this test. The evidence shows they had so little use for a cleaner burning fuels credit, they gave their credit away. There is no showing that failing to apply the doctrine of estoppel would result in any manifest injustice to them because they had little or no use for a cleaner burning fuels credit. As for the Taxpayer, the evidence is that the NAME-1 & 2 gave him a cleaner burning fuels credit. There is no evidence that the Taxpayer paid for the credit or otherwise gave up anything of value to receive it. While the Taxpayer would rather have the credit than not have it, the

Commission does not have sufficient evidence to support a conclusion that "it is plainly apparent that failing to apply the [estoppel] rule would result in manifest injustice." *See Orton v. Utah State Tax Commission*, 864 P.2d 904 (Utah App. 1993). Asserting a successful claim for estoppel requires meeting all three prongs of the test set forth in *Eldredge v. Utah State Retirement Bd*., 795 P.2d 671, 675 (Utah Ct. App. 1990). In this case, the Taxpayer arguably met two of the three prongs, but not all three. There is thus insufficient evidence to support the Taxpayer's claim for estoppel. Considering the totality of the evidence presented, there is good cause to sustain the Division's audit as set forth in the statutory notice.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the information presented at the hearing, the Commission sustains the Division's audit for income tax and interest. It is so ordered.

DATED this _____ day of __________________, 2015.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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 in accordance with 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 and 63G-4-401 et. seq.