15-235
TAX TYPE: INCOME TAX
TAX YEAR: 2011, 2012, 2013
DATE SIGNED: 11-15-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 15-235 Tax Type: Income Tax Tax Years: 2011, 2012 and 2013 Judge: Phan

Presiding:
Michael Cragun, Commissioner
Robert Pero, Commissioner
Rebecca Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE-1 FOR TAXPAYERS, Attorney at Law REPRESENTATIVE-2 FOR TAXPAYERS, Attorney at Law REPRESENTATIVE-3 FOR TAXPAYERS, Attorney at Law TAXPAYER-1
For Respondent:	REPRESENTATIVE-1 FOR RESPONDENT, Assistant Attorney General REPRESENTATIVE-2 FOR RESPONDENT, Assistant Attorney General RESPONDENT-1, Income Tax Audit Manager RESPONDENT-2, Corporate Franchise Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 10, 2016, in accordance with Utah Code §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners ("Taxpayers") timely filed an appeal of Utah individual income tax audit deficiencies issued against them for tax years 2011, 2012 and 2013 and the matter proceeded to this Formal Hearing.

2. The Notices of Deficiency and Audit Change had been issued on January 12, 2015 for each year at issue.[1] The amounts of audit deficiencies imposed with interest calculated to the notice payment dates are as follows:

Year	Audit Tax	Interest	Penalty	Total as of Notice Date[2]
2011	$$$$$	$$$$$	$$$$$	$$$$$
2012	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$

3. Although Respondent ("Division") had made some small changes in the audits which were in the Taxpayer's favor, the tax deficiency resulted from the Division's disallowance of the equitable adjustments the Taxpayers had claimed for each tax year on their Utah Resident Individual Income Tax Returns.

4. It was the equitable adjustments that were at issue in this hearing. The equitable adjustments were subtractions that the Taxpayers made from their Utah taxable income, although they were income amounts that the Taxpayers had included in their federal adjusted gross income. The equitable adjustments were claimed on Line 8 (Subtractions from Income) of their Utah Individual Income Tax Returns[3] and were as follows:

2011 $$$$$

2012 $$$$$

2013 $$$$$

5. With their 2011 Utah Individual Income Tax Return, the Taxpayers provided an attachment to Form TC-40A[4] in which they explained the equitable adjustment as follows:

> Adjustments have been made to exclude the foreign source business taxable income included in the Taxpayers' federal taxable income from the Taxpayers' Utah taxable

[1] Exhibit 1.
[2] Interest continues to accrue on any unpaid balance.
[3] Exhibits 2-4.
[4] Exhibit 2, pg. 000019.

> income. Utah is prohibited by the Commerce Clause in Article I, Section 8 of the United States Constitution from imposing a tax on the Taxpayers' foreign source business taxable income since doing so would discriminate against foreign commerce. Utah law unfairly attempts to tax foreign source income differently from the taxation of domestic source income taxed in other states. The Taxpayers receive a credit for income taxes paid to another state; however, since no such credit is allowed for foreign tax imposed on foreign source income, the Utah Tax on the Taxpayers' foreign source income (before foreign income tax) is discriminatory and therefore unconstitutional.

A similar statement was provided with the Taxpayers' returns for 2012 and 2013.[5]

6. The Taxpayers were Utah resident individuals for tax years 2011 - 2013.

7. TAXPAYER-1 (when referred to individually, TAXPAYER-1 will be referred to as "Taxpayer") is a shareholder directly of COMPANY-1, which is a STATE-1 limited liability company that has elected to be classified as an S corporation for federal and Utah tax purposes. Taxpayer is also one of several income beneficiaries of the TRUST. The TRUST is the majority shareholder (87%) of COMPANY-1. The TRUST for the benefit of the Taxpayer has elected to be a Qualified Subchapter S Trust ("QSST") for federal tax purposes. The Taxpayer is deemed to be the shareholder of COMPANY-1 with respect to the shares owned by the TAXPAYER-1 portion of the TRUST. As the shareholder of an S corporation, the Taxpayer included his allocable share of the income of COMPANY-1 on his federal income tax returns and they were part of his federal adjusted gross income for the years in question.

8. COMPANY-1 is a holding company that is the sole shareholder of CORPORATION, a STATE-1 corporation ("CORPORATION"). CORPORATION has elected to be classified as a Qualified S Subsidiary ("QSSUB") for federal and Utah tax purposes. Thus, for tax purposes, CORPORATION is a disregarded entity and its business is considered to be the business of COMPANY-1. All of COMPANY-1's business income is from CORPORATION. CORPORATION is engaged in the textile rental business both directly and through wholly owned subsidiaries in the United States and several foreign countries.[6] All of the CORPORATION subsidiaries that are engaged in business in the United States have elected to be classified as QSSUBs. Substantially all of the income of the (X) rental business, both domestic and foreign, is "flow through income" that is allocated to the shareholders of COMPANY-1 for federal and Utah tax purposes, and the shareholders are responsible for the payments of the federal and Utah income tax liability on the COMPANY-1 income.

9. Roughly 2% or less of COMPANY-1's business income was apportioned to Utah during the years in question and roughly 98% to other states and foreign countries. CORPORATION has facilities in 30 states and thirteen or fourteen countries. It has 17,300 employees worldwide and 430 employees in Utah. CORPORATION's general office is located in Utah.

[5] Exhibits 3 & 4.
[6] Exhibit 1.

APPLICABLE LAW

A tax is imposed on the state taxable income of a resident individual under Utah Code §59-10-104(1)[7].

Utah Code §59-10-103(1)(w) defines "state taxable income" as follows, in pertinent part:

> (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…

Utah Code §59-10-103(1)(a)(i) provides that "adjusted gross income" for a resident individual "is as defined in Section 62, Internal Revenue Code."

During the audit years,[8] Utah Code §59-10-115 provided for an equitable adjustment in some limited situations as follows:

> (1) The commission shall allow an adjustment to adjusted gross income of a resident or nonresident individual if the resident or nonresident individual would otherwise:
> (a) receive a double tax benefit under this part; or
> (b) suffer a double tax detriment under this part.
> (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to adjusted gross income required by Subsection (1).

Utah Code §59-10-1003 provides for credit for taxes paid to another state as follows:

> (1) Except as provided in Subsection (2), a claimant, estate, or trust may claim a nonrefundable tax credit against the tax otherwise due under this chapter equal to the amount of the tax imposed:
> (a) on that claimant, estate, or trust for the taxable year;
> (b) by another state of the United States, the District of Columbia, or a possession of the United States; and
> (c) on income:
> (i) derived from sources within that other state of the United States, District of Columbia, or possession of the United States; and
> (ii) if that income is also subject to tax under this chapter.
> (2) A tax credit under this section may only be claimed by a:
> (a) resident claimant;

[7] The Commission cites to the 2012 version of the Utah Code on provisions of substantive law, which is similar for all three tax years at issue.

[8] After the audit period, effective beginning with the 2017 tax year, this statute was revised to add an equitable adjustment on foreign source taxable income for certain pass-through entity taxpayers where the income is from heavy gauge metal tank manufacturing. The new provision at Utah Code Subsection 59-10-115(3)(a) (2017) provides: "For a pass-through entity taxpayer generating taxable income primarily from establishments classified in Code Section 3342, Metal Tank (Heavy Gauge) Manufacturing, of the 2002 or 2007 North American Industry Classification System of the Federal Executive Office of the President, Office of Management and Budget, an adjustment described in Subsection (2) includes net foreign source taxable income generated from Metal Tank (Heavy Gauge) Manufacturing establishments."

(b) resident estate; or
(c) resident trust.

(3) The application of the tax credit provided under this section may not operate to reduce the tax payable under this chapter to an amount less than would have been payable were the income from the other state disregarded.

(4) The tax credit provided by this section shall be computed and claimed in accordance with rules prescribed by the commission.

Utah Code §59-1-1417 provides for burden of proof and statutory construction as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following . . .

(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.

DISCUSSION

The relevant facts were not substantially in dispute at this hearing. The issue is a question of law and primarily the issues raised by the Taxpayers are constitutional. As noted by the Taxpayers' representative "the Taxpayers' position is really quite simple: Utah cannot constitutionally tax business income attributable to activities outside of Utah. And Section 59-10-115 can and must be construed to avoid the unconstitutional result of the Division's position."[9] The Taxpayers are Utah residents for Utah individual income tax purposes and are not contesting that the State of Utah may tax their dividend and investment income, which they refer to as nonbusiness or portfolio income. Their contention is with the CORPORATION business income that passes through to the Taxpayers' individual returns and is included in their federal adjusted gross income. They are arguing that it is unconstitutional for the State of Utah to tax the Taxpayers' business income attributable to activities outside of Utah, even though it is income included in the Taxpayers' federal adjusted gross income. The Taxpayers argue at the hearing that the same constitutional principles apply to not only the income attributable to foreign countries, but also income attributable to states with no income tax.[10] They distinguish the states that tax income from states that do not because Utah does allow a credit for individual income taxes paid to another state, so this credit is available for states that assess tax. Basically, the Taxpayers argue that most of the CORPORATION business income does not relate to Utah and Utah should only be able to tax business income attributable to Utah.

[9] Petitioners' Pre-Hearing Reply Brief, pg. 3.
[10] The Taxpayers had not taken the position regarding the income attributable to states that do not assess tax on their Utah returns for the audit years, so this position was not reflected in the audit deficiency amounts.

The Taxpayers point out that under Utah law, a corporation that is domiciled in Utah that is taxed as a C corporation, is subject to a Utah tax only on its business income that is attributable to its business activities in Utah. The Taxpayers represent that if COMPANY-1 was taxed as a C corporation, most of the income would be attributable to business activities conducted outside of Utah.[11] The Taxpayers represent that if their COMPANY-1 income was taxed like a C corporation and only the income attributable to Utah was subject to Utah tax, the tax amount would be substantially less for each year. They state for example, in tax year 2011 the tax on the COMPANY-1 income attributable to the Taxpayers under the Division's position would be $$$$$ of Utah individual income tax, while if the tax was calculated like a C corporation, it would only be $$$$$.[12]

The Taxpayers cite to the recent United States Supreme Court decision in *Comptroller of Treasury of Md. v. Wynne*, 135 S.Ct. 1787 (US 2015), and argue that it supports the position that "if a tax on a C corporation violates the Commerce Clause, then the same tax imposed on an individual also violates the Commerce Clause."[13] *Wynne* was a case involving individual income tax provisions in Maryland and a Maryland resident individual who was the shareholder in an S corporation that was engaged in business in Maryland and other states. Maryland allowed its residents to claim a credit for taxes paid to other states against their Maryland "state" individual income tax, but did not allow the credit against what was called the "county tax." Although this second tax was referred to as the "county tax" it also was collected by the state, but the tax rate was based on the county in which the person resided. In *Wynne* the Court notes the result of not allowing a credit for taxes paid to other states against the county tax was "that some of the income earned by Maryland residents outside the State is taxed twice. Maryland's scheme creates an incentive for taxpayers to opt for intrastate rather than interstate economic activity." The Court goes on to find, "We . . . hold that this feature of the State's tax scheme violates the Federal Constitution." *Id.* at 1792.

The Taxpayers point out that in reaching its decision in *Wynne*, the Court had stated, "We have long held that States cannot subject corporate income to tax schemes similar to Maryland's, and we see no reason why income earned by individuals should be treated less favorably." *Id.* at 1792. It is the Taxpayers' position that *Wynne* makes it clear that taxes imposed by a state on resident individuals are subject to the same constitutional restrictions as taxes imposed on a corporation and that a state tax on income taxable to a resident shareholder from activities by the S corporation in other jurisdictions is

[11] In Taxpayers' Prehearing Brief, pg. 8, these differences were stated as follows for each tax year: for 2011, of the $$$$$ which was the Taxpayers' share of COMPANY-1 Income, $$$$$ was attributable to non-Utah sources; for tax year 2012, of the $$$$$Taxpayers' share, $$$$$ was attributable to non-Utah sources; and for 2013, of the $$$$$ Taxpayers' share, $$$$$ was attributable to non-Utah sources.
[12] See Taxpayers' Prehearing Brief, pg. 9. For tax year 2012, this difference asserted by the Taxpayers was from $$$$$ to $$$$$ and for tax year 2013, the difference was from $$$$$ to $$$$$.
[13] Petitioners' Pre-Hearing Reply Brief, pg. 2.

subject to the limitations imposed under the Commerce Clause.[14] The Taxpayers argue that Utah's individual income tax as it pertains to the Taxpayers, violates the Commerce Clause of the United States Constitution under the four part test set out in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). The Taxpayers also argue that the Utah tax law as it pertains to the Taxpayers, violates the Foreign Commerce Clause of the United States Constitution based on the decisions in *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159 (1983) and *Kraft General Foods, Inc. v. Iowa Dep't of Revenue and Finance*, 505 U.S. 71 (1992).

The Taxpayers argue that Utah Code Sec. 59-10-115 is a safety valve to solve these asserted constitutional flaws in the Utah Individual Income Tax Act. The Taxpayers acknowledge that the Division's interpretation of Utah Code Sec. 59-10-115 does not allow for an equitable adjustment in this matter because it is the Division's position that the equitable adjustment under Utah Code Sec. 59-10-115 is limited to situations where income is taxed twice by the State of Utah. However, the representatives for the Taxpayers argue the Taxpayers position to allow the equitable adjustment based on a double tax detriment from a different taxing jurisdiction is a plausible reading of the statute and that all the Taxpayers need to do is show that their alternative and constitutional reading is plausible and if plausible, the Commission must adopt it over the Division's reading which they assert is unconstitutional.[15]

It was the Division's position that the Taxpayers are asking that the Commission invalidate Utah Code Secs. 59-10-104 and 59-10-103 which impose an income tax on the state taxable income of Utah resident individuals and specifically define "state taxable income" to be the individual's federal "adjusted gross income." It was not disputed in this matter that the Taxpayers were Utah resident individuals during the tax years at issue and the income they are arguing that should be excluded from Utah income tax was income that the Taxpayers had included on their federal returns in their federal adjusted gross income. The Division argues that although an equitable adjustment is provided under Utah Code Sec. 59-10-115 to adjusted gross income, it is only if the individual would otherwise "suffer a double tax detriment ***under this part*** (emphasis added)." The Division points out that "this part" refers to Part 1 of Chapter 10, Individual Income Tax Act. The Division indicates that the Tax Commission has uniformly interpreted this provision to limit the equitable adjustment to situations where the individual would be taxed twice by the State of Utah under Part 1 of the act, and did not allow the adjustment in situations where the individual was taxed only once by the State of Utah, but also taxed by a foreign jurisdiction or by another state on the same income. The Division cites to *Utah State Tax Commission Findings of Fact,*

[14] See Petitioners' Pre-Hearing Brief, pg. 13.
[15] The Taxpayers' representatives cite to *Elks Lodges No. 719 (Ogden) & No. 2021 (Moab) v. Dep't of Alcoholic Beverage Control*, 905 P.2d 1189, 1202 (Utah 1995).

Conclusions of Law and Final Decision, Appeal No. 08-0590 (August 5, 2010);[16] *Utah State Tax Commission Order, Appeal No. 05-1787* (September 5, 2006); *Utah State Tax Commission Initial Hearing Order, Appeal No. 12-915* (April 15, 2014); *Utah State Tax Commission Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 14-374* (November 11, 2015).[17]

The Division's position is consistent with how the Utah State Tax Commission has interpreted and applied Utah Code Secs. 59-10-104, 59-10-103(1) and 59-10-115 in Utah for many years. Under Utah law, apportionment factors do not apply to a Utah resident individual for income tax purposes. Utah Code Secs. 59-10-104 and 59-10-103(1) impose a tax on a resident individual's state taxable income which is based on the individual's federal "adjusted gross income." Utah law does provide an equitable adjustment under Utah Code Sec. 59-10-115 to the federal adjusted gross income if the resident individual would receive a double tax detriment under Part 1 of the Utah Individual Income Tax Act. The Taxpayers' argument that they should be allowed to take an equitable adjustment on income that was also subject to tax by foreign jurisdictions has been specifically rejected by the Tax Commission over the years in the decisions noted above. The Tax Commission has been consistent in its application of these provisions. Under Utah Code Sec. 59-1-1417, the Commission must construe a statute providing an exemption or credit strictly against the taxpayer and the equitable adjustment is similar to an exemption or credit. The Taxpayers expansion of the equitable adjustment provided at Utah Code Sec. 59-10-115 to their income is not a plausible interpretation and without specific limitations would have a substantial impact on Utah's Individual Income Tax Act.

In order to find that the Taxpayers are entitled to take an equitable adjustment, the Tax Commission would have to expand the equitable adjustment beyond what the Utah Legislature has specifically allowed at Utah Code Sec. 59-10-115.[18] The Tax Commission declines to do so, especially in light of the fact that the Utah Legislature has recently considered Utah Code Sec. 59-10-115 with respect to foreign source income and revised that section in a very limited and specific manner. Beginning with tax year 2017, the Utah Legislature adopted Utah Code Subsection 59-10-115(3) which enacts an equitable adjustment for taxable income of a pass through entity taxpayer in one specific industry, that

[16] The Petitioners in *Appeal No. 08-0590* appealed the Commission's ruling to the Utah Third District Court, which upheld the Tax Commission's decision disallowing the equitable adjustment for income that was subject to tax in Canada. *See XXXX v. Utah State Tax Comm'n*, Case No. 100917302. The District Court ruling was appealed to the Utah Supreme Court, which sent the matter to the Utah Court of Appeals where it was eventually settled. *See XXXX v. Utah State Tax Comm'n*, Case No. 20120708 (Utah Ct. App).

[17] See also *Utah State Tax Commission Initial Hearing Order Appeal No. 15-1332* (June 27, 2016). These and other decisions issued by the Utah State Tax Commission are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

[18] See *MacFarlane v. Utah State Tax Commission*, 2006 UT 25, ¶19, '"(While we recognize the general rule that statutes granting credits must be strictly construed against the taxpayer, the construction must not defeat the purpose of the statute.)' The best evidence of that intent is the plain language of the statute." (Citing *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984).

being the heavy gauge metal tank industry. Certainly the Utah Legislature could have made this change more broadly applicable but chose not to do so. Additionally, if prior to this revision, Utah Code Sec. 59-10-115 had been intended to be applied as broadly as the Taxpayers are arguing at this hearing, the provision allowing the adjustment for the metal tank industry would not have been necessary because it would already have been available for all industries generally on the foreign source pass through income.

Ultimately the Division is correct on the point that the Taxpayers' are requesting relief that would first require the Tax Commission to do something it lacks jurisdiction to do, invalidate Utah individual income tax provisions. The Utah Supreme Court has previously held that the Utah State Tax Commission lacks authority to determine the constitutionality of Utah laws. *See Nebeker v. Tax Comm'n*, 2001 UT 74; 35 P.3d 180 (2001). Regardless, the Division points out that the State of Utah's individual income tax statutes already comply with the Court's decision in *Comptroller of Treasury of Maryland v. Wynne,* 135 S.Ct. 1787 (2015), because Utah allowed the credit for taxes paid to other states while Maryland did not provide for such a credit. The Taxpayers' arguments based on the decision in *Wynne* go far beyond what the Court actually held in that case. The Tax Commission should decline to expand its longstanding interpretation of Utah Code Sec. 59-10-115 or invalidate other provisions of the Utah Individual Income Tax Act based on the Taxpayers' assertions regarding the application or effect of the Court's holding in *Wynne*.

CONCLUSIONS OF LAW

1. The Utah Individual Income Tax Act imposes an income tax on the "state taxable income" of Utah resident individuals. Utah Code Subsection 59-10-104(1). "State taxable income" is specifically defined as the individual's federal adjusted gross income subject to certain additions, subtractions and adjustments. Utah Code Subsections 59-10-103(1)(a) & (w). These provisions tax the resident individual on income included in his or her federal adjusted gross income whether it comes from sources outside of Utah or sources from within the state. Utah law does allow under Utah Code Sec. 59-10-1003 a credit for taxes paid to other states and that has been allowed in this matter.

2. The Utah Legislature has provided an adjustment under Utah Code Sec. 59-10-115 to the federal adjusted gross income if the resident individual suffers "a double tax detriment under this part." The Tax Commission consistently interpreted this equitable adjustment to apply only to situations where the individual would have been taxed twice on the same income by the state of Utah under the Part 1 of the Individual Income Tax Act and has not allowed this adjustment when the individual would be taxed once by Utah and also by a different government jurisdiction. *See Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 08-0590* (August 5, 2010); *Utah State Tax Commission Order, Appeal No. 05-1787* (September 5, 2006); *Utah State Tax Commission Initial Hearing Order, Appeal No. 12-915* (April 15, 2014); *Utah State Tax Commission Findings of Fact,*

Conclusions of Law, and Final Decision, Appeal No. 14-374 (November 11, 2015); and *Utah State Tax Commission Initial Hearing Order Appeal No. 15-1332* (June 27, 2016). The Taxpayers argue they should be allowed to take this adjustment on income they included in their federal adjusted gross income, but which they argue was business income attributable to other states or countries. The Taxpayers' position is contrary to the statutory provisions and the Commission's consistent application of these provisions. The Utah Legislature has not expanded this adjustment generally to income attributable to foreign sources or income from states that do not assess an individual income tax.

3. The Taxpayers argument that their interpretation of Utah Code Sec. 59-10-115 is "plausible" and under *Elks Lodges No. 719 (Ogden) & No. 2021 (Moab) v. Dep't of Alcoholic Beverage Control,* 905 P.2d 1189, 1202 (Utah 1995) should be upheld over the Division's interpretation is unpersuasive. The Taxpayers expansion of the equitable adjustment provided at Utah Code Sec. 59-10-115 to their income is not a plausible interpretation and without specific limitations would have a substantial impact on Utah's Individual Income Tax Act. The Utah Legislature has not provided an equitable adjustment or a credit applicable in this matter. In order to find for the Taxpayers, the Tax Commission would have to expand the credit beyond what the Utah Legislature has allowed and should decline to do so, especially in light of the fact that the Utah Legislature has recently looked at the statute, made a limited revision, but did not expand it in the manner the Taxpayers are requesting.

4. The Taxpayers argue that the imposition of Utah Individual Income Tax on business income they attribute to sources outside of Utah violates the Commerce Clause of the U.S. Constitution. The Utah State Tax Commission lacks authority to invalidate provisions of the Utah Individual Income Tax Act based on the constitutionality of Utah laws. *See Nebeker v. Tax Comm'n*, 2001 UT 74; 35 P.3d 180 (2001). Regardless, the Taxpayers' arguments based on the United States Supreme Court's decision in *Comptroller of Treasury of Md. v. Wynne*, 135 S.Ct. 1787 (US 2015) go far beyond what the Court actually held in that case.

After review of the facts and applicable law in this matter, the Taxpayers' appeal should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Taxpayers appeal pertaining to the individual income tax audit deficiencies for tax years 2011, 2012 and 2013. It is so ordered.

DATED this _____day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of Appeal Rights and Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be assessed. 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.