

16-75

TAX TYPE: CIRCUIT BREAKER TAX

TAX YEAR: 2015

DATE SIGNED: 8/23/2016

COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL

EXCUSED: J. VALENTINE

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 16-75</p> <p>Account No. #####</p> <p>Tax Type: Circuit Breaker Tax Exemption</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney
General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 21, 2016 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioner is appealing the decision of Respondent (“Division”) regarding the Renter Credit (Circuit Breaker) application he had filed for tax year 2015. The Division had issued its Statutory Notice on January 11, 2016, allowing a renter’s credit in the amount of \$\$\$\$ based on the Division’s conclusion that Petitioner’s “household income” was \$\$\$\$\$. It was Petitioner’s position that he qualified for a credit in the amount of \$\$\$\$ based on a household income of \$0.

After the Initial Hearing was held in this matter, but before this decision was issued, the Utah Court of Appeals issued its decision in *Khan v. Tax Commission*, 2016 UT App 142. This decision is directly on point to the issues herein and in fact was Petitioner’s appeal from the Tax Commission’s Formal Hearing Decision on the circuit breaker renter credit for a previous tax

year. In *Khan*, the Court of Appeals sustained the amount of 2011 renter's credit set by the Tax Commission.

APPLICABLE LAW

Utah Code 59-2-1209 provides for a renter's credit in pertinent part, "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." The statute goes on to prescribe the percentage of rent allowed as a credit for various household incomes.

Utah Code 59-2-1202(5) defines "Household income" as "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 59-2-1202(6)(a) provides:

- (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.

Utah Code 59-2-1202(6)(b) provides:

For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts 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;

DISCUSSION

At the Initial Hearing, Petitioner argued that he had \$0 household income because a loss carry forward from prior years should be deducted for the purposes of determining his "household income." It was the Division's position that carry forward losses are not allowed in the determination of "household income" under the circuit renter credit provisions.

Petitioner has tried for several years to claim his loss carry forward against his other income for the purposes of determining household income and each time the Division, and then the Commission, have ruled against Petitioner on this issue. Utah Code 59-2-1202(5) provides that "household income" is all "income." Utah Code 59-2-1202(6) defines "income" to be 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). The nontaxable income listed in Subsection (6)(b) includes amounts excluded from adjusted gross income under the Internal

Revenue Code as a loss carry forward claimed during the year on the federal return. The result of this is that a loss carry forward is not subtracted from the other income Petitioner received during the year for purposes of determining his “household income” under Utah Code 59-2-1202(5).

This issue has now been addressed by the Utah Court of Appeals in *Khan v. Tax Commission*, 2016 UT App 142. In that case, the court notes that PETITIONER argued that the Commission should have deducted the entire \$\$\$\$ that he reported in loss carry forwards.¹ In addressing this argument the court noted that PETITIONER “may only claim up to \$\$\$\$ of the entire capital losses each year.”² The court goes on to find, “More importantly, the loss carry forwards is not a deduction that offsets PETITIONER’s income for the purpose of determining his renter’s refund, but is instead added to his AGI to determine his household income.”³

The decision from the Court of Appeals is directly on point and resolves the issue raised by Petitioner. Petitioner’s request for additional refund should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Petitioner’s appeal of the Circuit Breaker-renters credit for tax year 2015 is denied. 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, or emailed, 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

or emailed to:
taxappeals@utah.gov

¹ *Khan v. Tax Commission*, 2016 UT App 142, ¶12.

² *Khan v. Tax Commission*, 2016 UT App 142, ¶16.

³ *Khan v. Tax Commission*, 2016 UT App 142, ¶17.

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

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice of 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 applied.