

16-1286  
TAX TYPE: INCOME TAX  
TAX YEAR: 2014  
DATE SIGNED: 5-30-2017  
COMMISSIONERS: M. CRAGUN, R. PERO. R. ROCKWELL  
EXCUSED: J. VALENTINE

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYER-1 & TAXPAYER-2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 16-1286  Account No. ##### Tax Type: Income Tax Tax Year: 2014  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 4, 2017, for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) are appealing the audit deficiency issued by Respondent (“Division”) in which the Division disallowed a Veteran Employment Tax Credit claimed on the Taxpayers’ Utah individual income tax return for tax year 2014. The Notice of Deficiency and Audit Change, issued on August 8, 2016, indicated a tax deficiency of \$\$\$\$\$. Interest accrued as of the date of the Notice was \$\$\$\$\$ and continues to accrue on any unpaid balance. No penalties were assessed with the audit.

APPLICABLE LAW

Utah law provides for a Veteran Employment Tax Credit at Utah Code Subsection 59-10-1031(2) as follows:

A claimant . . . may claim a nonrefundable tax credit as provided in this section against a tax under this chapter if the claimant . . . employs a recently deployed veteran, on or after January 1, 2012, who:

- (a)(i) is collecting or eligible to collect unemployment benefits . . . ; or (ii) within the last two years, has exhausted the unemployment benefits under Subsection (2)(a)(i); and
- (b) works for the claimant, estate, or trust at least 35 hours per week for not less than 45 of the 52 weeks following the recently deployed veteran’s start date for the employment.

Regarding tax credits, the law provides that the statutes are strictly construed. Utah Code Subsection 59-1-1417(2) provides as follows:

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:

. . .

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

### DISCUSSION

The facts in this appeal were not in dispute. The Taxpayers own a small business doing security equipment installations. The Taxpayers had hired a recently deployed veteran as an employee during tax year 2014 (“Veteran”) and had claimed the credit on their Utah Individual Income Tax returns. Although they had full time work for the Veteran, the Veteran was unable to work full time due to health issues, which the Taxpayer understood to have occurred because of the Veteran’s military service. The Taxpayer explained that they had to have another employee work during the period of time that the Veteran was unavailable due to these health issues. The Taxpayer also explained that they did like the idea of hiring veterans generally, as a good thing to do, and additionally because the employees needed to pass a security background check that was required for this type of work. Veterans were able to get this clearance quickly. The Taxpayer stated that they had hired other veterans even before they realized this credit was available.

It was not disputed that the Veteran employed during 2014 met the requirements of Utah Code Subsection 59-10-1031(2)(a). The Taxpayer had obtained a letter from the Department of Workforce Services establishing that he had met these qualifications. The issue was that the Veteran did not work enough hours to meet the requirements at Utah Code Subsection 59-10-1031(2)(b). The Taxpayer stated that now he understood the law and that he agrees the Veteran did not work at least 35 hours per week for 45 out of the 52 weeks. However, he asked for understanding and leniency on the number of hours worked because they did have full time work for the Veteran and the Veteran worked as best as he could considering his health issues, which had resulted from his service. He also points out that his business is a small business, so having to repay the credit is difficult.

It was the Division's position that Utah Code Subsection 59-10-1031(2)(b) requires that in order to qualify for the credit a recently deployed veteran must work at least 35 hours per week for 45 of 52 weeks during the year. The Division had looked through the pay stubs and concluded that the Veteran did not meet this requirement. He had worked about 49 to 50 hours in each two-week pay period. The representative for the Division did express that he felt the Taxpayer was doing a good thing in employing veterans. No penalties were assessed with the audit.

After reviewing the facts and the law in this matter, statutes providing for tax credits are strictly construed under Utah Code Subsection 59-1-1417(2). This means that in order to qualify for a tax credit, a taxpayer must meet all requirements for the credit. In providing this credit, the Utah Legislature did not provide for any exceptions on the hours worked or give the Tax Commission discretion to waive some of the requirement's for cause. It is clear from the plain reading of Utah Code Subsection 59-10-1031(2) that the credit was only intended for persons who employed the recently deployed veteran full time.<sup>1</sup> The Taxpayer does not meet this requirement and, therefore, does not qualify for the credit.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission denies the Taxpayers' appeal of the Utah individual income tax audit deficiency for tax year 2014. 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

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<sup>1</sup> As noted by the Utah Supreme Court in *MacFarlane v. State Tax Comm'n*, 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 purposes of the statute. The best evidence of that intent is the plain language of the statute and we decide this case on that basis." (Internal citations omitted.)

or emailed to:  
taxappeals@utah.gov

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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.**