18-796
TAX TYPE: INCOME TAX /CIRCUIT BREAKER TAX EXEMPTION
TAX YEAR: 2017
DATE SIGNED: 1/12/2021
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. TAXPAYER SERVICES DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 18-796 Account No. #### Tax Type: Circuit Breaker Tax Exemption Tax Year: 2017 Judge: Phan

Presiding:
Lawrence C. Walters, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT-1, Assistant Attorney General
RESPONDENT-2, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing conducted by teleconference on DATE, 2020, in accordance with Utah Code §59-2-1217 and §63G-4-201 et seq. Based on the evidence and testimony presented at the hearing, the Commission hereby makes its:

FINDINGS OF FACT

1. At issue is the amount of the property tax renter's credit (which is sometimes referred to as "circuit breaker" relief) that Petitioner ("Applicant") is entitled to receive for the 2017 tax year which is determined using income and rent information from "rent year" 2016.

2. On DATE, 2017, the Applicant submitted a Renter Refund Application Form TC-90CB ("2017 Application"), on which he requested a property tax renter's credit. [1]

[1] Respondent's Formal Hearing Exhibit 1.

3. On the 2017 Application, the Applicant indicated that he had paid $$$$$ in total rent for 2016, and that rent included the gas utility.

4. The "household income" that the Applicant claimed on his 2017 Application was $$$$$ and he had filled out the following information on that form:

1. Wages/salaries/tips/other compensations (W-2, 1099Misc, etc.) . . . . . $$$$$
2. Total interest income, dividends (taxable and nontaxable) . . . . . $$$$$
3. Pensions, annuities (taxable and nontaxable) . . . . . $$$$$
4. Gross Social Security and railroad retirement (taxable and nontaxable). . . . . $$$$$
5. Capital gain/loss (exclude carryforwards/carrybacks) . . . . . ($$$$$)
6. Government assistance given directly to you . . . . . $$$$$
7. Unemployment, worker's compensation . . . . . $$$$$
8. Business, rental, farm income . . . . . $$$$$
9. Other income (see Utah Code 59-2-1202) . . . . . ($$$$$)[2]
10. Total household income from all sources for last year (add lines 1 through 9) . . . $$$$$

5. The Division, however, determined that the "household income" amount of $0 that the Applicant had claimed on his 2017 Application was incorrect. On DATE, 2018, the Division issued a Statutory Notice,[3] on which the following findings were stated:

> We have reviewed your Rental Refund Application (Circuit Breaker Application) form TC-90CB received DATE, 2017, and determined the following errors from your supporting documentation. This increased the amount of your adjusted household income to $$$$$, which results in a Circuit Breaker Refund of $$$$$.
>
> You were allowed a $$$$$ capital loss on Line 5 since this was the amount of your current year capital gain or loss. You were not allowed a loss carry forward listed on Line 9 "Other Income". Utah Code Section 59-2-1202 defines "Income" for the purposes of the Circuit Breaker Rebate to include the sum of your federal adjusted gross income and other nontaxable income which the code defines. One of the items specifically defined to be included is "loss carry forwards claimed during the taxable year in which a claimant files for relief." This means that while carry forward losses are allowed for the determination of your federal adjusted gross income, they are not allowed for the determination of your income for the Circuit Breaker Rebate.

6. The Applicant timely appealed the Division's decision and it is this appeal that is the subject of this Formal Hearing.[4]

7. In its original Notice calculating the Applicant's "household income" to be $$$$$ for purposes of determining the correct amount of the renter's credit, the Division had added the $$$$$ in interest income, the $$$$$ in pensions and annuities and the $$$$$ in social security and then had subtracted the $$$$$ capital loss that the Division had determined from the Applicant's federal income tax return Schedule D was a current year capital loss.

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2 On Line 9 of the 2017 Application, Applicant had written in the words "Loss Carry Forward."

3 Respondent's Formal Hearing Exhibit 2.

4 Respondent's Formal Hearing Exhibit 3.

8. However, for the Formal Hearing the Division submitted a new calculation and a new "household income" based on the Tax Commission's decision from the Initial Hearing in this matter. It was the Division's understanding of the Tax Commission's Initial Hearing Order[5] that the Tax Commission had determined it was not proper to deduct the current year loss. For the Formal Hearing, the Division submitted a new calculation as follows:[6]

2016 AGI	+ $$$$$
Social Security Benefits	+ $$$$$
Capital Gain	+ $$$$$
Capital Loss	+ $$$$$
Household Income	$$$$$

9. The Division did submit the Applicant's 2016 U.S. Individual Income Tax Return, Form 1040,[7] as an exhibit at the hearing. Schedule D of the Applicant's return shows the capital gains and losses. For tax year 2016, on Part I of that form, the Applicant had shown current year's short-term capital losses of $$$$$ on Line 1a and $$$$$ on line 2. This totaled the $$$$$ that the Division had allowed as a deduction when originally calculating the household income on its Statutory Notice. On Line 6 of Part I of his Schedule D, the Applicant had claimed a short-term capital loss carryover in the amount of $$$$$, which is a carryover loss from prior years. On his 2016 Federal Schedule D, the Applicant then had added his $$$$$ in current year losses to the $$$$$ in carryover losses for a total net short-term capital loss of $$$$$ on Line 7 of Part 1. The Applicant claimed no long-term capital gains or losses on Part II of the Schedule D. Although the Applicant had reported $$$$$ in total capital losses on his Schedule, the amount of the capital loss that the Applicant is allowed to deduct on his federal return is limited as noted on his Schedule D, Part III, Line 21 to $$$$$ and that $$$$$ loss limit flows through to Line 13 of the 1040. Based on his federal Schedule D, the Applicant did incur $$$$$ in current year losses in 2016, however, he was only able to subtract $$$$$ of those losses on his 2016 federal return from his other income in the computation of his federal adjusted gross income.

10. At the hearing the representative for the Division did explain that it had previously been the Division's interpretation of the statutory provisions to allow the federal capital loss deduction in the

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[5] The Tax Commission had issued its Initial Hearing Order in this appeal on DATE, 2019. In the Initial Hearing Order, at page 9, the Commission had stated "that instead of subtracting another $$$$$$ of current year capital losses from APPLICANT'S 2016 FAGI (the Division's original approach) or making no adjustment to the $$$$$$ capital loss with which APPLICANT'S 2016 FAGI was derived (the Division's revised approach), the Division should have added $$$$$$ to APPLICANT'S 2016 FAGI to account for loss carry forwards when deriving his "household income" for 2017 property tax renter's credit purposes (which has the effect of not allowing any capital loss when deriving APPLICANT'S "household income").

[6] Respondent's Formal Hearing Exhibit 6.

[7] Respondent's Formal Hearing Exhibit 5.

computation of the federal adjusted gross income for a current year's losses when determining the household income. However, because of the Initial Hearing Order the Division had recalculated the Applicant's "household income" and added back the $$$$$ capital loss deduction. Based on that order, the Applicant's 2016 "household income" was $$$$$.

11. A "household income" of $$$$$ put the Applicant in the income bracket level where he could qualify for a property tax renter credit of %%%%%. The Division also made an adjustment in regards to the rent the Applicant had paid because the gas utility was included in the Applicant's rent. The Division redetermined the amount of the credit as follows: [8]

Rent Paid	$$$$$
Subtract %%%%% Adjustment for Gas Utility	($$$$$)
Total Rent Paid	$$$$$
	X %%%%%
Credit Amount	$$$$$

12. The Division explained the reason for the adjustment for the gas utility included in the rent was that "Gross rent" as defined at Subsection 59-2-1202(2)(a) means "rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence, **exclusive of charges for any utilities**, services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the rental agreement" (emphasis added). Based on this provision the Division made the reduction for the gas utility in order to determine the Applicant's "rent" for purposes of Subsection 59-2-1209(1). The Division explained at the hearing that there is no statute or rule stating how the Division should remove utility charges from rent. The Division stated that the Tax Commission had conducted a study several years ago that indicated that the rental amount should be reduced by %%%%% if the rental amount included gas. The Applicant, who has the burden of proof, did not provide evidence to indicate that %%%%% was an inappropriate adjustment to make for the gas utility. At the hearing, the Applicant did discuss for future years obtaining the actual amount of his rent that was being paid by his landlord for this utility and the Division did indicate that it would be willing to look at that type of information for future years going forward.

13. At this Formal Hearing, the Applicant testified that he was mainly arguing only that the $$$$$ capital loss should not have been added back to his federal adjusted gross income and other nontaxable income to get to his "household income." It was his position that the $$$$$ capital loss he had claimed on his federal 1040 was all a current year loss that he had properly deducted on his federal tax

[8] Respondent's Exhibit 6.

return, and it should not have been added back as the Division was now arguing at the Formal Hearing. Regarding the $$$$$ capital loss carryover, the Applicant acknowledged the facts in this year's appeal were similar to the facts in the appeal that he filed and for which the Utah Court of Appeals issued its decision *NAME OF UTAH COURT OF APPEALS REMOVED*. In addition, he acknowledged that the Court of Appeals found that the capital loss carryforward could not be deducted from the other income for purposes of determining his household income. He stated that the Court of Appeals decision in *NAME OF UTAH COURT OF APPEALS REMOVED* "was erroneous and flawed" and that he was appealing that decision, but did not dispute that the decision did currently provide legal precedent.

APPLICABLE LAW

Utah Code §59-2-1209(1) (2017)[9] provides for a property tax renter's credit, as follows in pertinent part:

> (1) (a) Subject to Subsections (2) and (3), for a calendar year 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 a credit |
> |---|---|
> | $0 — $9,159 | 9.5% |
> | $9,160 — $12,214 | 8.5% |
> | $12,215 — $15,266 | 7.0% |
> | $15,267 — $18,319 | %%%%% |
> | $18,320 — $21,374 | 4.0% |
> | $21,375 — $24,246 | 3.0% |
> | $24,247 — $26,941 | 2.5% |
>
> (b) (i) For a calendar year 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 the preceding calendar year and the consumer price index for calendar year 2006.
>
> (ii) For purposes of Subsection (1)(b)(i), the commission shall calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.
>
> . . . .

For purposes of determining the property tax renter's credit, "gross rent," "household income," and "income" are defined in Utah Code §59-2-1202(2), (5) and (6), as follows:

> . . . .
> (2) (a) "Gross rent" means rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities, services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the rental agreement.

[9] All substantive law citations are to the 2017 version of Utah law, unless otherwise indicated.

(b) If a claimant occupies two or more residences in the year and does not own the residence as of the lien date, "gross rent" means the total rent paid for the residences during the one-year period for which the renter files a claim under this part.

. . . .

(5) "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.

(6) (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 or Part 18, Tax Deferral and Tax Abatement.
(b) 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;
(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 §59-2-1217 provides that "[a]ny person aggrieved by the denial in whole or in part of relief claimed under this part, except when the denial is based upon late filing of claim for relief, may appeal the denial to the commission by filing a petition within 30 days after the denial."

CONCLUSIONS OF LAW

1. Circuit breaker property tax relief is similar to a property tax exemption in that it does reduce the amount of the tax paid by a property owner. As noted by the Utah Supreme Court in

Corporation of the Episcopal Church in Utah v. Utah State Tax Commission and County Board of Equalization of Salt Lake County, 919 P.2d 556, 558 (1996), "Exemptions are strictly construed. The rule should not be so narrowly applied, however, that it defeats the purpose of the exemption. The burden of establishing the exemption lies with the entity claiming it, although that burden must not be permitted to frustrate the exemption's objectives (internal citations omitted)."

2. Subsection 59-2-1209(1)(a) provides that a claimant may claim a property tax renter's credit based on household income eligibility amounts. Pursuant to Subsections 59-2-1202(2), (5), and (6), for 2017 property tax renter's credit purposes, the Division argued at the hearing that the Applicant's "household income" was $$$$$. The Applicant argues that the Division has incorrectly calculated his "household income" pursuant to Utah Code Subsections 59-2-1202(5)&(6) because the Division had added back the $$$$$ current year capital loss that he had been entitled to deduct on Line 13 of his Federal Form 1040. It was his contention that this ($$$$$ represented a current year loss and not a loss carry forward. However, in its calculation for this Formal Hearing the Division added back the $$$$$, which basically offset the deduction the Applicant had made on his Federal Return. "Household income" is defined at Utah Code Subsections 59-2-1202 (5) and (6) to be "all income received by all persons of a household" in the calendar year preceding the calendar year in which property taxes are due. The subsection goes on to define "income" as "***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)(emphasis added)." This means that to determine household income the Division must add to the federal adjusted gross income certain nontaxable items specified in Subsection (6)(b). Subsection 59-2-1202 (6)(b) states several items of nontaxable income that need to be added to federal adjusted gross income. Pursuant to Subsection 59-2-1202 (6)(b) these include among others: "(ii) loss carry forwards . . .," "(vii) the gross amount of a pension or annuity . . ." and "(viii) payments received under the Social Security Act." The statute is silent on current year losses.

3. It had been the Division's position to not add back current year losses that were deducted on the federal 1040 return until the Tax Commission issued its Initial Hearing Order in this appeal. In its Initial Hearing Order the Tax Commission pointed out that the Division's prior position appeared "to be contrary to the Utah Court of Appeals' ruling in *NAME OF UTAH COURT OF APPEALS REMOVED*."[10] *APPLICANT* involved the Applicant's 2011 renter's credit which was based on his 2010 income and rents. In 2010, the Applicant had deducted the full $$$$$ limit as a capital loss on his federal Form 1040. In 2010, the Applicant had claimed on his Schedule D $$$$$ in current year short term loss and a short term capital loss carryover of $$$$$, for total capital losses of $$$$$. The Commission in its decision in *APPLICANT* had allowed the applicant the deduction for the current year loss of $$$$$, but added back

[10] *Utah State Tax Commission Initial Hearing Order, Appeal No. 18-796*.

the remaining $$$$$, which it attributed to the loss carryforward. On appeal of that decision, the Court of Appeals in *APPLICANT*, however, stated that the "Commission erroneously calculated APPLICANT's loss carry forwards as $$$$$, not the $$$$$ he claimed"[11] and that "APPLICANT's correct household income should be $$$$$, which is the sum of his $$$$$ [FAGI], $$$$$ in Social Security benefits, $$$$$ in nontaxable IRA distributions, and **$$$$$ claimed as loss carry forwards**" (emphasis added).[12] Based on this, it appears that the Court concluded that where the Applicant's 2010 capital loss carryover exceeded the $$$$$ capital loss limit, the entire $$$$$ capital loss claimed on the return was considered to be from the loss carry forward and not the current year loss. As it was considered to be part of the loss carry forward it needed to be added back to the federal adjusted gross income to determine "household income" for property tax renter's credit purposes.

4. Based on the Court's ruling in *APPLICANT* 2016, the Commission finds the $$$$$ capital loss the Applicant had claimed on his 2016 federal Form 1040 should be added to his 2016 federal adjusted gross income to account for loss carry forwards when deriving his "household income" for the 2017 property tax renter's credit purposes. Based on this the correct amount of "household income" is $$$$$.

5. At the Formal Hearing, the Applicant acknowledged that there was legal precedent regarding his loss carry forward in the amount of $$$$$, which he had claimed on Schedule D of his federal return. The Applicant no longer argued that his "household income" should be $0, due to all income being offset by this loss carry forward. For purposes of determining the amount of renter's credit under Utah Code Section 59-2-1209, Subsection 59-2-1202 (6)(b) provides that loss carry forwards are added to the federal adjusted gross income. The Division had followed the express language of the statutory provisions regarding the loss carry forward and added back any deduction for the loss carry forward claimed on the Applicant's federal return. The Division's interpretation on this issue has been upheld by the Tax Commission and the Utah Court of Appeals. See *Tax Commission in Findings of Fact, Conclusions of Law and Final Decisions in Appeal Nos. 12-1075, 13-157, 15-290, 16-75, 17-615, and 18-796* as affirmed by the Utah Court of Appeals in *NAME OF UTAH COURT OF APPEALS REMOVED* and *APPLICANT v. Tax Comm'n*, 2018 UT App. 13. The Applicant did indicate it was his position that the Utah Court of Appeals' decision "was erroneous and flawed" and that he was contesting that decision, but acknowledged it provided precedent in this matter.

6. In addition to "household income," in order to determine the amount of the property tax renter's credit the Commission must know the amount of the "rent" for purposes of Subsection 59-2-1209(1). Because the applicant's rent included the gas utility, the Division subtracted %%%%% from the

[11] *Khan v. Utah State Tax Comm'n*, 2016 UT App. 142, ¶ 18.
[12] *Id. at* ¶ 19

total rent payments. "Gross rent" is defined at Subsection 59-2-1202(2)(a) to mean "rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence**,** exclusive of charges for any utilities . . . **."** There is not a statute or rule on how to adjust the rent when utilities are included. The Division's %%%%% is based on a study conducted several years ago. However, at the Formal Hearing the Applicant did not provide a better basis to determine the amount of the utility adjustment.

7. Based on the Applicant having a "household income" of $$$$$ and rent amount of $$$$$, the correct amount of the property tax renter's credit is $$$$$.

After reviewing the facts and the law in this matter, the Applicant's appeal should be denied and the amount of the 2017 property tax renter's credit adjusted on this basis.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the amount of the 2017 property tax renter's credit to which Petitioner is entitled is $$$$$ and the Division is to adjust the credit accordingly. It is so ordered.

DATED this _____day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
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.