19-964
TAX TYPE: CIRCUIT BREAKER TAX EXEMPTION
TAX YEAR: 2018
DATE SIGNED: 9/18/2020
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. 19-964 Account No. ##### Tax Type: Circuit Breaker Tax Exemption Tax Year: 2018 Judge: Phan

Presiding:
Rebecca L. Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a teleconference Formal Hearing 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 2018 tax year which is determined using income and rent information from "rent year" 2017.

2. On DATE, 2018, the Applicant submitted a Renter Refund Application Form TC-90CB ("2018 Application"), on which he requested a property tax renter's credit. [1]

[1] Respondent's Formal Hearing Exhibit 3.

3. On the 2018 Application, the Applicant indicated that he had paid $$$$$ in total rent for 2017, and that rent included the gas utility.

4. The "household income" that the Applicant claimed on his 2018 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 $$$$$ that the Applicant had claimed on his 2018 Application was incorrect. On $$$$$, 2019, 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, 2018, and determined the following errors from your supporting documentation. This increased the amount of your adjusted household income to $$$$$, which results in a Circuit Breaker Refund of $$$$$.
>
> 1) You were not allowed a capital loss of $$$$$ on Line 5. The current year capital gain was $$$$$ from your Federal return Schedule D, as such Line 5 was adjusted to $$$$$. 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 calculating the Applicant's "household income" for purposes of determining the correct amount of the renter's credit, the Division had made three changes to what the Applicant had claimed on his 2018 Application. First, the Division added the $$$$$ capital gain. Second, the Division

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[2] On Line 9 of the 2018 Application, Applicant had written in the words "Loss Carry Forward."

[3] Respondent's Formal Hearing Exhibit 1.

[4] Respondent's Formal Hearing Exhibit 2.

disallowed the deduction of $$$$$, which the Applicant had written on his 2018 Application was a "loss carry forward." Although the Applicant stated this as a loss, this amount could not be deducted and was not deducted from his federal return in full, but was limited to only the $$$$$ capital loss. Third, the Division had added, rather than subtracted, the $$$$$ capital loss, noting that it was a loss from a prior year, so it needed to be added back to the income. The Division had prepared an exhibit that showed how it had determined the Applicant's household income and credit amount as follows:[5]

2017 AGI	$$$$$
Social Security Benefits	$$$$$
Capital Gain	$$$$$
Capital Loss	$$$$$
Household Income	$$$$$

8. The "household income" of $$$$$ was supported by the Applicant's 2017 U.S. Individual Income Tax Return, Form 1040,[6] which the Division submitted as an exhibit at the hearing. Schedule D of the Applicant's return shows the capital gains and losses. For tax year 2017, on Part I of that form, the Applicant had shown a current year's short-term capital gain of $$$$$ and a current year's short-term capital loss of $$$$$. This resulted in a net short-term capital gain for that year of $$$$$. That was the amount the Division had added as a capital gain in is determination of household income. On the return there was no long-term capital gain or loss reported. From this evidence, it is clear that there was no current year's capital loss incurred in 2017. The fact that there was a net loss overall was because of the "short-term capital loss carryover" in the amount of $$$$$ which the Taxpayer then subtracted on Line 6, of Part I. Subtracting the $$$$$ short-term loss carryover from the $$$$$ of current year short-term capital gain indicated a net short-term capital loss of $$$$$. The amount of the net short-term capital loss that the Applicant is allowed to deduct on his federal return is limited as noted in Part III, Line 21 on that form to $$$$$. Based on this filing, it is clear that the $$$$$ loss was a loss incurred in a prior year and not in the current year, as the current year actually showed a capital gain. The Applicant had deducted the $$$$$ from his income in calculating his total income on his federal return, as allowed on the federal return, but for purposes of "household income" pursuant to Subsection 59-2-1202(5) & (6) the $$$$$ needs to be added to the Applicant's federal adjusted gross income. With these changes, the Division had concluded the correct "household income" was $$$$$.

9. 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

[5] Respondent's Formal Hearing Exhibit 5.
[6] Respondent's Formal Hearing Exhibit 6.

regards to the rent the Applicant had paid because the gas utility was included in the Applicant's rent. The Division determined the amount of the credit as follows:

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

10. 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 governing the removal of 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. Based on this, the rent amount of $$$$$ is the correct amount to be used for determining the credit.

11. At the hearing the Applicant focused on the $$$$$ capital loss arguing that it should be subtracted from his income rather than added to his federal adjusted gross income and argued for the $$$$$ "loss carry forward" to be deducted so that he had $$$$$ "household income" despite express statutory provisions and numerous tax decisions which have disallowed this. The Division's determination to not allow this "loss carry forward" deduction for purposes of determining "household income" under Utah Code §59-2-1202(5) is based on a well settled principle of law as noted by the *Tax Commission in Findings of Fact, Conclusions of Law and Final Decisions in Appeal Nos. 12-1075, 13-157, 15-290, 16-75, 17-615, and 18-796* (APPEAL NAMES REMOVED) The Division's treatment of the $$$$$ capital loss, which was a loss from a prior year or years and not a current year loss, is also based on a well settled principle of law as noted by the *Tax Commission in its Findings of Fact, Conclusions of Law and Final Decision in Appeal No. 18-796.* (UTAH COURT APPEAL REMOVED).

12. "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 nontaxable items specified in Subsection (6)(b). Subsection 59-2-1202 (6)(b) states what items of nontaxable income is to be added to the federal adjusted gross income including some amounts excluded from adjusted gross income under the Internal Revenue Code. These items of income include: "(i) capital gains" and "(ii) loss carry forwards." As is clear from the Applicant's federal return, the $$$$$ results from a loss carry forward, and should be added to the Applicant's federal adjusted gross income for purposes of determining his "household income." Additionally, there is no basis in the law to make the $$$$$ subtraction from his federal adjusted gross income and other nontaxable income as that is defined in Subsection (6)(b). On that basis, the Division is correct in this matter that the Applicant's "household income" was $$$$$.

13. Using the $$$$$ as the "household income" and the $$$$$ as the rent amount, the Division has correctly calculated the amount of the renter's credit to be $$$$$.

APPLICABLE LAW

Utah Code §59-2-1209(1) (2018)[7] 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 | 5.5% |
> | $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.

[7] All substantive law citations are to the 2018 version of Utah law, unless otherwise indicated.

. . . .

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.
> (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."

For the instant matter, Utah Code §59-1-1417(1) provides guidance concerning which party has the burden of proof and guidance on statutory construction as follows:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner . . . .
> . . . .
> (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 statue 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

1. Pursuant to Subsection 59-1-1417(1), the Applicant has the burden of proof in this matter and pursuant to Subsection 59-1-1417(2)(b) when applying the law in this matter which involves a credit, the Tax Commission is to construe the statute strictly against the Applicant.

2. Subsection 59-2-1209(1)(a) provides that a claimant may claim a property tax renter's credit equal to a certain percentage of his "rent" that is based on certain household income eligibility amounts. Pursuant to Subsections 59-2-1202(2), (5), and (6), for 2018 property tax renter's credit purposes, the Division determined that the Applicant's "household income" was $$$$$, and his "rent" was $$$$$.

3. 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 disallowed his claimed loss carry forward of $$$$$, which was a loss of which he was only allowed to deduct $$$$$ on his 2017 federal return as a capital loss, and because the Division had added back to his federal adjusted gross income the $$$$$ capital loss that had been the portion of the loss carry forward he was allowed to deduct on his 2017 federal return. However, in making these deductions to determine the Applicant's "household income" for purposes of determining the amount of renter's credit under Utah Code Section 59-2-1209, the Division has followed the express language of the statutory provisions regarding the renter's credit and the Division's interpretation 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. (REMOVED APPEAL NAME AND INFORMATION).*

13. The Applicant does not cite to any case that supports his interpretation of the law and despite the case law that indicates the Division has correctly made this calculation, the Applicant refuses to

acknowledge that Utah Code Subsections 59-2-1202(5) & (6) clearly state that "household income includes all income" received during the prior year and specifically that the income "is the sum of" the federal adjusted gross income plus certain items of nontaxable income that are added to the federal adjusted gross income. In his response to the Division's legal argument in which the Division cited the legal precedent that is applicable in this matter, the Applicant states that the Utah Court of Appeals' decision "was not supported by numerous undisputed evidence; hence, it was erroneous and flawed." He goes on to state that he "alleges fraud upon the court committed by the Respondent and by the Appeals Court."[8] However, the Utah Court of Appeals has reviewed the Applicant's claims in two different appeals and issued its decisions, and these decisions support the interpretation applied by the Division and set the legal precedent to be applied in this appeal. The Division's position is both consistent with the express provisions of the law and with the legal precedent.

4. 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). The Applicant had established that he had paid $$$$$ in total rent, but the rent included the gas utility for the apartment. Because the rent included a utility the Division subtracted %%%%%, or $$$$$ from the total rent payments of $$$$$. As noted by the Division, "Gross rent" is defined at Subsection 59-2-1202(2)(a) to mean "rental actually paid in cash or its equivalent solely for the right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities . . . ." There is not a statute or rule on how to adjust the rent when utilities are included. The Division's %%%%% is based on a study conducted several years ago. However, at the Formal Hearing the Applicant did not provide a better basis to determine the amount of the utility adjustment. For instance he did not provide a statement or invoice from the lessor of his apartment that showed how much the gas had been for his apartment, or a study on typical utility costs for apartments. There was no other basis provided to the Commission for the utility adjustment and so the Tax Commission upholds the %%%%% used by the Division. Based on this, $$$$$ is the correct amount of "rent" to be used for determining the credit.

5. Based on the Applicant having a "household income" of $$$$$ and rent amount of $$$$$, the Division has correctly calculated the credit to be $$$$$.

After reviewing the facts and the law in this matter, the Applicant's appeal should be denied.

Jane Phan
Administrative Law Judge

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[8] Petitioner's Posthearing Opposition to Respondent's Prehearing Brief, pg. 3.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the amount of the 2018 property tax renter's credit to which Petitioner is entitled is the $$$$$ as determined by the Division and the Petitioner's appeal is denied. It is so ordered.

DATED this ___________day of __________________, 2020.

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.