

APPEAL #: 23-1208
TAX TYPE: CORPORATE FRANCHISE TAX
TAX YEAR: 2021
DATE SIGNED: 1/14/2025
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p>Petitioner,</p> <p>v.</p> <p>BUSINESS TAXES AND DISCOVERY DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 23-1208</p> <p>Account No: 45-3464426</p> <p>Tax Type: Corporate Franchise Tax</p> <p>Tax Year: 2021</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP-1, Representative
PETITIONER REP-2, Representative
PETITIONER REP-3, Representative
PETITIONER REP-4, Representative
PETITIONER REP-5, Representative

For Respondent: RESPONDENT REP-1, Assistant Attorney General
RESPONDENT REP-2, Assistant Attorney General
RESPONDENT REP-3, Director, Business Taxes and Discovery
Division
RESPONDENT REP-4, Audit Manager
RESPONDENT REP-5, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission based on an appeal filed pursuant to Utah Code §59-1-501 by Petitioner (“TAXPAYER”) of an audit deficiency issued by Respondent (“Division”). On August 26, 2024, the matter came before the Tax Commission for this Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Statutory Notice of Audit Deficiency had been issued by the Division on DAE, and was for the audit period of DATE

through DATE. The sole issue before the Tax Commission at the Initial Hearing was whether the Division had properly disallowed a loss carryforward claimed by TAXPAYER on its 2021 Utah Corporation Franchise Tax Return.

APPLICABLE LAW

Utah Code Ann. § 59-7-101¹ defines a “unitary group,” “Utah net loss deduction” and “water’s edge combined report” as follows:

(34) (a) "Unitary group" means a group of corporations that: (i) are related through common ownership; and (ii) by a preponderance of the evidence as determined by a court of competent jurisdiction or the commission, are economically interdependent with one another as demonstrated by the following factors: (A) centralized management; (B) functional integration; and (C) economies of scale.

(b) "Unitary group" includes a captive real estate investment trust.

(c) "Unitary group" does not include an S corporation.

(37) "Utah net loss deduction" means the amount of Utah net losses from other taxable years that a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.

(39) (a) "Water's edge combined report" means a report combining the income and activities of: (i) all members of a unitary group that are: (A) corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code, in accordance with Subsection (39)(b); and (B) corporations organized or incorporated outside of the United States meeting the threshold level of business activity; and (ii) an affiliated group electing to file a water's edge combined report under Subsection 59-7-402(2).

(b) There is a rebuttable presumption that a corporation which qualifies for the Puerto Rico and possession tax credit provided in Section 936, Internal Revenue Code, is part of a unitary group.

Utah Code § 59-7-110 provides for net loss carryforward deductions as follows:

(1) A taxpayer shall determine the amount of Utah net loss that the taxpayer may carry forward to offset income of another taxable year as provided in this section.

(2) Subject to the other provisions of this section, a taxpayer:

(a) may carry forward a Utah net loss from a taxable year to a future taxable year; and

(b) may not carry back a Utah net loss from a taxable year.

(3) A taxpayer that carries forward a Utah net loss shall carry forward the Utah net loss to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years that a taxpayer applied or was required to apply to offset income, is not less than zero.

¹ The applicable statutes cited in this decision is the law in effect for tax year 2021.

(4) (a) Subject to Subsection (4)(b), the amount of Utah net loss that a taxpayer may carry to the year identified in Subsection (3) is the lesser of: (i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that a taxpayer carried to previous years; or (ii) the remaining Utah taxable income before net loss deduction of the year identified in Subsection (3) after deduction of Utah net losses from previous years that a taxpayer carried or was required to carry to the year identified in Subsection (3).

(b) (i) For a taxable year beginning on or after January 1, 2021, the amount of Utah net loss that a taxpayer may carry forward to a taxable year may not exceed 80% of Utah taxable income computed without regard to the deduction allowable under this section. (ii) A taxpayer may carry a remaining Utah net loss to one or more taxable years in accordance with this section.

(5)

(a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to the date of acquisition. (ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of the state of incorporation.

(b) An acquired corporation may deduct the acquired corporation's net losses incurred before the date of acquisition against the acquired corporation's separate income as calculated under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before the acquisition.

(6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation that is acquired by a unitary group may deduct is calculated by:

(a) subject to Subsection (7): (i) except as provided in Subsection (6)(a)(ii), calculating the sum of: (A) an amount determined by dividing the average value of the acquired corporation's real and tangible personal property owned or rented and used in this state during the taxable year by the average value of all of the unitary group's real and tangible personal property owned or rented and used during the taxable year; (B) an amount determined by dividing the total amount paid in this state during the taxable year by the acquired corporation for compensation by the total compensation paid everywhere by the unitary group during the taxable year; and (C) an amount determined by: (I) dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; and (II) if the unitary group elects or is required to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(4) in taxable year 2019 or taxable year 2020, multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by, for the taxable year 2019, four, or, for the taxable year 2020, eight; or (ii) if the unitary group is required or elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

- (b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state for that taxable year in accordance with Section 59-7-311;
- (c) multiplying the amount calculated under Subsection (6)(b) by the business income of the unitary group for the taxable year that is subject to apportionment under Section 59-7-311; and
- (d) calculating the sum of: (i) the amount calculated under Subsection (6)(c); and (ii) the following amounts allocable to the acquired corporation for the taxable year: (A) nonbusiness income allocable to this state; or (B) nonbusiness loss allocable to this state.

(7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner as those amounts are derived for purposes of apportioning the unitary group's business income before deducting the net loss, including a modification made in accordance with Section 59-7-320.

Utah Code § 59-1- 403 addresses the confidentiality of tax return information as follows:

(2) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission: (i) a tax commissioner; (ii) an agent, clerk, or other officer or employee of the commission; or (iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except: (i) in accordance with judicial order; (ii) on behalf of the commission in any action or proceeding under: (A) this title; or (B) other law under which persons are required to file returns with the commission; (iii) on behalf of the commission in any action or proceeding to which the commission is a party; or (iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (2)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(3) This section does not prohibit:

- (a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;
- (b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and
- (c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer: (i) who brings action to set aside or review a tax based on the report or return; (ii) against whom an action or proceeding is contemplated or has been instituted under this title; or (iii) against whom the state has an unsatisfied money judgment.

Utah Code Sec. 59-7-402 provides the following reporting requirement:

(1) Except as provided in Section 59-7-403, if any corporation listed in Subsection 9-7-101(39)(a) is doing business in Utah, the unitary group shall file a water's edge combined report.

Utah Code Sec. 59-7-404 provides how unadjusted income is calculated for combined reporting as follows:

(1) A group filing a combined report under Section 59-7-402 or 59-7-403 shall calculate unadjusted income of the combined group by: (a) computing unadjusted income on a separate return basis; (b) combining income or loss of the members included in the combined report; and (c) making appropriate eliminations and adjustments between members included in the combined report.

(2) For purposes of this section, if an entity does not calculate federal taxable income, then unadjusted income shall be calculated based on the applicable federal tax laws.

Utah Admin. Code R865-6F-14(3) addresses certain circumstances where Utah law requires different treatment under state and federal statutes as follows:

The following are the major items that require different treatment under the state and federal statutes:

- (a) combined reporting,
- (b) consolidated returns,
- (c) dividend received deductions,
- (d) municipal bond interest,
- (e) capital loss deduction,
- (f) loss carry-overs and carry-backs, and
- (g) gross-up on foreign dividends.

DISCUSSION

The facts as presented at the Initial Hearing were not in dispute between the parties. Prior to DATE, TAXPAYER was part of the unitary group of its former parent entity. TAXPAYER provided the name of this prior group in its Petitioner's Brief, Proposed Findings of Fact ¶3. However, for purposes of this decision, the parent entity is referred to as "Prior Unitary Group Taxpayer." Prior to DATE, TAXPAYER did not file separate tax returns; its income and losses were included in the Prior Unitary Group Taxpayer's combined returns. While TAXPAYER was part of the Prior Unitary Group Taxpayer, the Prior Unitary Group Taxpayer had reported a Utah net operating loss on the Prior Unitary Group Taxpayer's Utah return for tax year 2019 and for the short year return for the period ending DATE.²

On DATE, TAXPAYER separated from the Prior Unitary Group Taxpayer in a spin-off transaction. TAXPAYER's representatives stated that when it spun off from the Prior Unitary

² Petitioner's Brief, Proposed Findings of Fact ¶ 6.

Group Taxpayer, a portion of the outstanding stock of TAXPAYER was acquired by the public, TAXPAYER became a public company and the transaction was governed by Internal Revenue Code §355.³ TAXPAYER filed its first Utah tax return for the DATE through DATE tax period, but for that period TAXPAYER claimed no Utah losses on that return. However, for its 2021 Utah tax return, TAXPAYER claimed a Utah net operating loss (“NOL”) carryforward in the amount of \$\$\$\$\$. The Division audited TAXPAYER’ 2021 Utah return and disallowed the net operating loss carryforward.

At the Initial Hearing, TAXPAYER challenged this disallowance of the net operating loss carryforward. The issue of whether or not the disallowance was appropriate is the sole issue before the Tax Commission in this appeal. At the hearing, TAXPAYER’ representatives acknowledged that the NOL deduction amount TAXPAYER claimed for the first time on its 2021 Utah tax return was for losses that the Prior Unitary Group Taxpayer had reported on the Prior Unitary Group Taxpayer’s Utah returns for tax year 2019 and for the short year return for the year ended DATE.⁴ TAXPAYER’ representatives stated that some portion of that NOL had resulted from TAXPAYER’ operations in Utah and argued that the Utah NOL TAXPAYER had claimed on its 2021 Utah tax return was the amount of TAXPAYER’ share of the Prior Unitary Group Taxpayer’s Utah net operating losses.⁵ TAXPAYER had performed a calculation to determine that \$\$\$\$\$ of the Prior Unitary Group Taxpayer’s NOL was generated by TAXPAYER.⁶ TAXPAYER’ representatives argued that the calculation of the Prior Unitary Group Taxpayer’s NOL attributable to TAXPAYER was calculated in accordance with Utah Code §59-7-110(6) and (7).

TAXPAYER’ representatives argued that allowing it to use its portion of the NOL was in furtherance of the intent of the law and claimed that “[i]t is clearly stated in the Utah tax law that when a corporation is acquired it may deduct the acquired corporation’s net losses incurred before the date of acquisition.”⁷ TAXPAYER’ representatives noted that there is not a statutory definition of "acquire" and argued that “the conventional meaning is ‘to buy or retain for oneself.’”⁸ TAXPAYER’s representatives argued that on DATE, a portion of the outstanding stock of TAXPAYER was acquired by the public, making TAXPAYER an "acquired corporation.” TAXPAYER’s representatives argued that since the stock of TAXPAYER was acquired by the public, its portion of the NOL should also be carried forward in accordance with Utah Code Ann. §59-7-110(5)(b). TAXPAYER’ representatives asserted that “the corporations that comprise

³ Petitioner’s Brief, Proposed Findings of Fact ¶ 4.

⁴ Petitioner’s Brief, Proposed Findings of Fact ¶ 6.

⁵ Petitioner’s Brief, Proposed Findings of Fact, ¶¶ 6-7 and Ex. A.

⁶ Petitioner’s Exhibit A.

⁷ Petitioner’s Brief, pg. 4.

⁸ Petitioner’s Brief, pg. 4.

TAXPAYER, incurred NOLs prior to the transaction.”⁹ TAXPAYER’ representatives argued that “the corporations that incurred losses should be allowed to use the losses after the transaction, consequently, TAXPAYER should be allowed to use the losses that it incurred prior to the transaction.”¹⁰ TAXPAYER’ representatives acknowledged that if TAXPAYER is not allowed to use the losses, the losses remain with the Prior Unitary Group Taxpayer. TAXPAYER’ representatives asserted that this would frustrate the purpose of Utah Code Ann. §59-7-110(5)(b), because the losses then could not be used by the corporations that incurred the losses. TAXPAYER’ representatives also asserted that “[a]pplying the [Division’s] logic, Utah Code Ann. §59-7-110(5)(b) could only apply if the acquired corporation was not previously part of a unitary group and there is nothing in the law that limits the application of Utah Code Ann. §59-7-110(5)(b) to the acquisition of a taxpayer that filed a separate corporate return.”¹¹

TAXPAYER’ representatives also argued that Utah Code Subsections 59-7-110(5)(a) and (5)(b) should not be read in concert. TAXPAYER’ representatives argued that they are two separate and distinct limitations, asserting that Subsection (5)(a) applies when a corporation acquires another corporation and Subsection (5)(b) applies when a corporation is acquired and provides limitations on how it must use the NOLs that were incurred prior to being acquired.¹²

TAXPAYER’ representatives offered an additional argument. TAXPAYER’ representatives asserted that for federal tax purposes, NOLs attributed to spun-off entities remain the NOLs of those entities and can be used to offset income generated by those entities. TAXPAYER’ representatives argued “the same should hold true for Utah purposes based on IRC conformity.”¹³

The Division, in response to TAXPAYER’ representatives’ arguments, first pointed out that TAXPAYER bears the burden of proof in this proceeding, citing Utah Code §59-1-1417(1). The Division also pointed out the direction from the Utah Supreme Court in State v. Thurman, 2022 UT 16, 18, 508 P.3d 128, that the “best evidence of the legislature’s intent is the plain language of the statute itself . . .” and “the legislature used each term advisedly according to its ordinary and usually accepted meaning.” The Division asserted that the Commission should “presum[e] all omissions to be purposeful.” *Id.* The Division also cited Ivory Homes, 2011 UT 54, 21, which stated, “When interpreting statutory language...our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation; our interpretation

⁹ Petitioner’s Brief, pg. 4.

¹⁰ Petitioner’s Brief, pg. 4-5.

¹¹ Petitioner’s Reply, pg. 2.

¹² Petitioner’s Reply Brief, pg. 2.

¹³ Petitioner’s Brief, pg. 5.

of a statute requires that each part or section be construed in connection with every other part or section so as to produce a harmonious whole.” The Division’s representatives noted that the Tax Commission must follow the plain, unambiguous language of the statute, but if potential ambiguity exists, pursuant to Utah Code §59-1-1417(2)(b), the Commission must “construe a statute providing an exemption from or credit against the tax...strictly against the taxpayer.”

It was the Division’s position that under Utah’s statutory framework, TAXPAYER was not the taxpayer that reported the Utah net losses in tax years 2019 and 2020. That taxpayer was the Prior Unitary Group Taxpayer. Because TAXPAYER was not the taxpayer who reported the NOLs, the Division argued that TAXPAYER was not the taxpayer who could claim the net loss carryforward deduction on its Utah return. Rather, the NOL deduction would need to be claimed by the Prior Unitary Group Taxpayer. The Division stated in its brief, “In short, under Utah’s statutory framework the unitary group is treated as a single taxpayer. It is the unitary group that has taxable income and a resulting tax liability.”¹⁴ The Division pointed out that pursuant to Utah Code Sec. 59-7-110(2), “a taxpayer: (a) may carry forward a Utah net loss from a taxable year beginning on or after January 1, 2008, to a future taxable year until the Utah net loss is exhausted...” and Subsection 59-7-110(3) requires the taxpayer to “carry forward the Utah net loss to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years that a taxpayer applied or was required to apply to offset income, is not less than zero.”¹⁵ The Division pointed out that TAXPAYER’ filing history shows that it did not file returns prior to the tax year beginning DATE, and thus had no identified Utah net losses from 2019 or a short year 2020 that could be carried forward.¹⁶ The Division also pointed out that the Prior Unitary Group Taxpayer is the taxpayer allowed to carry forward that loss pursuant to §59-7-110(2).

In its Prehearing Brief, the Division walked through the applicable statutes that govern how a unitary group is required to file a Utah return and there was no indication from the parties that the Prior Unitary Group Taxpayer had not complied with these requirements when filing its 2019 and short period 2020 returns, on which the losses were claimed. The Division pointed to Utah Code §59-7-402(1) which, unless a worldwide election has been made, requires a unitary group to file a single water’s edge combined return. Utah Code §59-7-101(39) provides that a “water’s edge combined report” means a report that combines the income and activities of all of the members of the unitary group, with some exceptions. Unadjusted income is determined by computing income on a separate return basis, but then combining income or loss of the members

¹⁴ Respondent’s Prehearing Brief, pg. 7.

¹⁵ Respondent’s Prehearing Brief, pg. 7.

¹⁶ Respondent’s Prehearing Brief, pg. 7.

in the combined report as required by Utah Code §§59-7-101(33) and 59-7-404(1). The Division pointed out that after the combination of members in the calculation of unadjusted income, all remaining steps in completing the Utah return are performed on a combined basis including “all additions to and subtractions from unadjusted income in Utah Code §§59-7-105 and 106.”¹⁷ Utah tax for the unitary group is then based on the unitary group’s Utah taxable income, as defined at Utah Code §59-7-101(38), and is computed on a combined basis. Utah Code §59-7-101(36) defines “Utah net loss” as “the current year Utah taxable income before Utah net loss deduction, if determined to be less than zero.” A “Utah net loss deduction” is “the amount of Utah net losses from other taxable years that a taxpayer may carry forward to the current taxable year in accordance with Section 59-7-110.” Utah Code §59-7-101(37).

TAXPAYER’ representatives argued that it is entitled to deduct the loss carryforward as an “acquired corporation” under Utah Code Subsection 59-7-110(5)(b), but the Division argued TAXPAYER’ interpretation was contrary to the statute’s plain language. The Division pointed out that TAXPAYER did not acquire a corporation with existing Utah net operating losses and TAXPAYER was not acquired by a unitary group. Instead, TAXPAYER was spun-off, a portion of its stock was sold to the public, and it became a separate taxpayer. The Division argued that pursuant to Ivory Homes, 2011 UT 54, 21, the Commission must consider each part or section of the statute “be construed in connection with every other part or section so as to produce a harmonious whole.” Therefore, the Commission must look at both Subsections 59-7-110(5)(a) and (b). Subsection 59-7-110(5)(a) provides that “a corporation acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to the date of acquisition.” Then, Subsection 59-7-110(5)(b) provides that the “acquired corporation may deduct the acquired corporation’s net losses incurred before the date of acquisition against the acquired corporation’s separate income . . . if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before the acquisition.” Based on this statutory language, the Division explained:¹⁸

Looking at subsection (5) as a whole, where subsection (5)(b) refers to an “acquired corporation” it does so in light of subsection (5)(a) where a corporation acquires the assets or stock of another corporation. That is not the case for TAXPAYER. Rather than being acquired by another corporation, TAXPAYER left the fold of its parent and struck out on its own. Prior to the spin-off TAXPAYER did not file tax returns. Its income, loss, property, payroll, and sales would have been included and reported on the unitary combined return filed by [Prior Unitary Group Taxpayer].

¹⁷ Respondent’s Prehearing Brief, pg. 6.

¹⁸ Respondent’s Prehearing Brief, pg. 10-11.

At the hearing, TAXPAYER' representatives made the assertion that the Utah Legislature would have intended a broad statutory interpretation of Utah Code Subsection 59-7-110(5)(b), but provided none of the legislative history regarding the enactment. The Division, however, presented information on the legislative history and the facts that led to the enactment of Subsection 59-7-110(5)(b), which are contrary to TAXPAYER' representatives unsupported assertion.¹⁹ The Division pointed out that Subsection 59-7-110(5)(b) was enacted after the Utah Supreme Court issued a decision overturning a Tax Commission finding in [Savage Indus. v. Utah State Tax Comm'n, 811 P.2d 664](#) (Utah 1991)²⁰ and there have been other statutory revisions since that decision was issued. The Division stated regarding the court's decision in [Savage](#), "The parent corporation in Savage was allowed to carry forward losses of its individual group members only where those members had identified and reported losses on their own Utah returns prior to acquisition."²¹ The facts in [Savage](#) were complicated, but it was clear that prior to the acquisition, the acquired corporations had filed separate Utah corporate franchise tax returns and reported Utah losses on those separate returns. [See Savage at 665-666](#). These are not the same facts presented to the Tax Commission in this appeal.

The Division's representatives also argued TAXPAYER' representatives' position would violate Utah Code §59-1-403 requirements that Commission employees and agents keep confidential information gained from tax returns filed with the commission. TAXPAYER' representatives claimed that the net loss carryforward deduction was TAXPAYER' portion of Utah losses claimed by the Prior Unitary Group Taxpayer on the Prior Unitary Group Taxpayer's returns. TAXPAYER' representatives' argument would require the Division to monitor the Prior Unitary Group Taxpayer's returns and monitor them on an ongoing basis until the losses are exhausted. The Division's representatives argued, "If there are questions regarding how one taxpayer used its Utah loss, it would be impossible to conduct an audit without exposing the other taxpayer's confidential information."²² The Division also pointed out that the separation between TAXPAYER and the Prior Unitary Group Taxpayer "appears to have been friendly," but notes that allowing TAXPAYER to claim a NOL carryforward deduction in this matter would set a precedent for where the split was acrimonious.²³

¹⁹ Respondent's Prehearing Brief, pg. 10-12.

²⁰ In Petitioner's Reply, pg. 3, TAXPAYER argued regarding [Savage Industries](#), "There is nothing in the holding that would indicate the applicability of subsection 5(b) is limited to an acquisition of a corporation by another corporation." However, as the Division has noted, Subsection 5(b) was not adopted until after the court's decision in [Savage Industries](#). Neither party cited a case where Subsection 59-7-110(5)(b) was an issue in that case.

²¹ Respondent's Prehearing Brief, pg. 12.

²² Respondent's Prehearing Brief, pg. 13.

²³ Respondent's Prehearing Brief, pg. 13.

TAXPAYER' representatives also argued the Tax Commission should adopt federal law in allowing TAXPAYER to claim a NOL carryforward deduction, and argued Utah law was silent. The Division, however, argued that Utah law was not silent and clearly defined a Utah net operating loss at Utah Code §59-7-101 and governed the use of Utah net operating losses at Section 59-7-110. The Division also pointed to Utah Admin. Code R865-6F-14(3)(f) where the Commission has defined loss carry-overs as a major item that requires different treatment under the state and federal statutes.

Upon reviewing the applicable law, and the parties' arguments and facts submitted at the Initial Hearing, the Commission concludes that the Division's disallowance of the NOL carryforward deduction was appropriate. Ultimately, TAXPAYER was not the taxpayer that identified the Utah net operating losses on its Utah returns. The losses were reported by the Prior Unitary Group Taxpayer on its 2019 and short year period 2020 Utah tax returns. The losses belong to the Prior Unitary Group Taxpayer. TAXPAYER has not provided a legal basis to allow it to claim a Utah NOL carryforward deduction belonging to a different taxpayer.

The Commission also agrees with the Division that federal law provisions should not be used in determining whether TAXPAYER may claim a Utah NOL carryforward deduction in this matter. Utah law is not silent on this issue and Utah Admin. Code R865-6F-14(3)(f) states that loss carry-overs are a major item that requires different treatment under the state and federal statutes. Based on these considerations, TAXPAYER' appeal of the audit deficiency should be denied.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Division correctly denied TAXPAYER' claim of a Utah NOL carryforward deduction of a net loss reported by the Prior Unitary Group Taxpayer. The Statutory Notice of Audit Deficiency issued by the Division for the audit period of DATE through DATE is sustained. 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

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

DATED this ____ day of ____ 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.