

May 19, 2006

Commissioner Pam Hendrickson
Utah State Tax Commission
210 N 1950 W
Salt Lake City, UT 84134

Re: Private Letter Ruling request regarding the application of the Utah state income tax deduction to accounts where the account owner is married and files a joint Utah state income tax return.

Dear Commissioner Hendrickson:

On behalf of the Utah Educational Savings Plan (“UESP”), I request an expedited private letter ruling concerning the application of the Utah state income tax deduction for contributions to a UESP account by an account owner who is married and files a joint Utah state income tax return.

Background

As you know, UESP is Utah’s tax-advantaged college savings plan created pursuant to Section 529 of the Internal Revenue Code of 1986, as amended (“Section 529”, and a “529 plan” generally). UESP was established in 1996 by the Utah State Legislature in *Utah Code Annotated* (“UCA”) 53B-8a. The Legislature also granted a Utah state income tax deduction for contributions to UESP in UCA 59-10-114.

The United States Congress authorized the creation of 529 plans through the Internal Revenue Code because it recognized that favorable tax treatment was crucial to encourage citizens to save for the future college expenses of their children and grandchildren. The Utah State Legislature endorsed the creation of a Utah 529 plan, UESP, and recognized that an educated populace was important if the State of Utah were to remain competitive in the global marketplace. It is no accident that both the federal and state income tax codes have played a role in the creation and expansion of 529 plans generally and the success of UESP specifically.

Please note that UCA 53B-8a-114 reflects this legislative intent by providing for liberal interpretation of the law regarding UESP. It is UESP’s understanding based on the legislative history and the plain meaning of the statutes that the Utah State Legislature intended to encourage our Utah residents and taxpayers to save for the costs of higher education in a tax favored manner.

Reliance by UESP

In 2003, the former UESP Director sent an e-mail to your staff (see Attachment 1 to this letter)

Ms. Lynne Ward
August 3, 2006
Page 2.

asking for a ruling or interpretation of the tax law regarding UESP. The question presented was whether a couple who file a Utah state income tax return with a "married filing jointly" tax status each had to own a UESP account to take the full allowable state tax deduction for contributions made.

This question is crucial to Utah married couples because a UESP account can only have one account owner. We are not aware of any 529 plan that allows joint ownership of 529 plan accounts. Therefore, to not allow a married couple who file a joint income tax return to claim the full allowable state income tax deduction permitted under the Utah Code unless they each opened an account would be confusing and burdensome to Utah families.

The Tax Commission staff appropriately indicated in the attached e-mail response that each spouse did not have to own a separate UESP account to achieve the full deduction available to married couples filing a joint return (\$2,870 in calendar year 2003; \$3,120 in calendar year 2006). The response by the Tax Commission staff did not inform the Director or anyone at UESP that any further action was required by UESP not that a Private Letter Ruling request was required.

Upon receiving the Tax Commission's e-mail response, UESP informed its account owners that where a married account owner files a joint Utah state income tax return that couple can claim twice the individual Utah state income tax deduction provided by the statute so long as they have contributed at least that amount to the account. As a result, many husband and wife account owners with separate accounts for the same beneficiary combined the two accounts into one account.

In reliance on the Tax Commission staff response, beginning with the 2003 tax year, the TC-675H form issued by UESP (to inform Utah account owners and the Tax Commission of the eligible deduction) has included the full deduction available to married couples filing a joint return. We note that UESP submitted a draft of the 2005 TC-675H form for comment and review prior to finalizing the form. A copy of the TC-675H form is included as Attachment 2 to this letter.

Need for Documentation and Resolution

As part of our ongoing efforts to improve UESP and documents our files, we recently contacted your staff to research whether the Tax Commission had any formal documentation on this question. While your staff confirmed that a Private Letter Ruling had not been previously issued, they informally indicated that a married couple had to own two separate accounts for the same beneficiary in order to take advantage of the full \$3,120 deduction available in calendar year 2006.

In light of this possible change in position by the Tax Commission and to ensure that the issue

Ms. Lynne Ward
August 3, 2006
Page 3.

and the resolution are clear and on record, UESP respectfully requests a Private Letter Ruling confirming the 2003 interpretation provided by your staff upon which UESP and Utah families have relied since 2003.

The practice of allowing the full \$3,120 deduction for a married couple filing jointly with one UESP account is reasonable as it merely simplifies the process for these account owners/taxpayers. Married taxpayers are not taking a larger deduction than is allowed by law by owning and contributing to a combined account, it simply means they only need to own one account instead of two to take advantage of the full deduction. To rule otherwise is to create a trap for the unwary and in contravention of the legislative intent reflected in the statute. We note that other sister states allow married couples that file joint income tax returns to claim double the standard deduction for contributions to their 529 plans without requiring those married account owners to have two accounts (see for example, Arkansas, Illinois, Kansas, Michigan, Mississippi, New York, Montana and Oklahoma). In addition, UESP and Utah families have relied on the Tc-675H form in claiming a full deduction when filing a joint income tax return. At a minimum, a change in this previously sanctioned and announced policy should be prospective only, effective on January 1, 2007.

As you carefully consider this request, please do not hesitate to contact me for clarification or if you have any questions. I am also e-mailing this request so as to provide you with an electronic copy to assist you in your response. Thank you for your prompt and thoughtful consideration.

Sincerely,

Lynne N Ward CPA
Director UESP

Enclosures

Cc: Craig Sandberg, Director Auditing Division

August 3, 2006

Ms. Lynne Ward
August 3, 2006
Page 4.

Ms. Lynne Ward,
Director
Utah Educational Savings Plan
PO Box 510423
Salt Lake City, Utah 84151-0423

Re: Private Letter Ruling 06-015
Application of tax deductions for contributions to a UESP account

Dear Ms. Ward,

This letter is in response to your request for tax guidance. This letter ruling is not intended as a statement of broad Tax Commission policy. It is an interpretation and application of the tax law as it relates to the facts presented in your request letter. If the facts are not correctly described in this letter ruling, please let me know so we can assure a more accurate response to your circumstances.

Facts

Utah Income Tax law allows a tax deduction for contributions to a Higher Education Savings Incentive Program. The deduction is in the amount included in the federal taxable income that was derived from money contributed to a Higher Education Savings Incentive Program, subject to the limitations set out in Title 53B of the Utah Code.

Utah Higher Education Savings Plans may only have one owner; it may not be owned jointly. This raises a question as to the tax treatment for married taxpayers who file a joint account.

In 2003, the UESP Director requested information from the Tax Commission as to whether UESP married participants who file joint tax returns could deduct the full allowable deduction for each spouse without setting up and contributing to separate accounts. In response, the Commission's staff indicated that the "deduction is per taxpayer and we allow double on a return for a married couple filing joint, as long as they have contributed at least that amount."

In reliance on this response, UESP informed account holders that married couples filing

jointly could claim twice the individual deduction amount so long as they contributed at least that amount into an account.

Recently, UESP brought this question to the Commission's staff again. This time, the staff indicated that a married couple filing jointly had to own two accounts, even if they are for the same beneficiary, in order to take full advantage of the deduction. You have asked for an opinion issued by the Commission to clarify the tax treatment of UESP accounts under the circumstances described here. You have also suggested that if our decision authorizes the deduction only to the spouse who is the account owner, that this policy be applied only prospectively.

Analysis

Utah law authorizes the UESP accounts pursuant to Title 53B of the Utah Code. However, the relevant income tax provisions relating to the UESP accounts under the circumstances described here are found in section 59-10-114 (2) (i) of the Utah Tax Code. A Utah taxpayer may subtract from federal taxable income any amount paid by an account owner to the program fund, subject to the limitations set out in Utah Code Section 53B-8a-106 (1) (d). Section 53B-8a-106 (1) (d) states that the maximum amount of investments that may be deducted is \$1,510 for each individual beneficiary (for 2005) "and an amount adjusted annually thereafter to reflect increases in the Consumer Price Index."

There is no specific statutory language pertaining to tax treatment for a married couple filing jointly. However, the statutory language is specific that the deduction is available to the "account owner." As you have pointed out, accounts cannot be owned jointly (see, Utah Code Ann. 53B-8a-102 (2)). Therefore, because the deduction is available only to the owner of the account, the owner's spouse is not entitled to an additional deduction.

Ruling

Each spouse of a married couple that files joint tax returns may claim an UESP deduction only if each spouse is the owner of an account and makes contributions to that account during the tax year. For both spouses to claim the deduction, each must own an account.

You have pointed out that various states allow each spouse to claim a deduction if they are filing jointly. We have not researched the laws of those states and we make no attempt to do so here. Comparing them with Utah's law on this issue is not relevant to our determination. We believe this is a matter that should be determined by the legislature.

Ms. Lynne Ward
August 3, 2006
Page 6.

Regarding taxpayers who have relied on erroneous advice from the Tax Commission, we agree that information from our office resulted in an error in the instructions that you published. Therefore, we have instructed our auditors to apply this ruling prospectively beginning with 2007 tax year. Taxpayers who have relied on contrary instructions in past tax years, including 2006, will not be subject to audit of this deduction.

For the Commission,

Marc B. Johnson
Commissioner

06-015
MBJ/IR