

APPEAL # 18-1952  
TAX TYPE: INCOME TAX  
TAX YEAR: 2014, 2015, & 2016  
DATE SIGNED: 07/26/2022  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, J. FRESQUES

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BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1,  Petitioner,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 18-1952 Account No: ##### Tax Type: Income Tax Tax Years: 2014, 2015 &amp; 2016  Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER'S REPRESENTATIVE-1, CPA  
TAXPAYER-1

For Respondent: RESPONDENT'S REP.-1, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission pursuant to an appeal filed by Petitioner ("Taxpayer") under Utah Code §59-1-501 of a Utah individual income tax audit deficiency for tax years 2014 through 2016. An Initial Hearing was held in this matter on March 7, 2022, in accordance with Utah Code §59-1-502.5. The Initial Hearing was held by teleconference. Petitioner is appealing Utah individual income tax audit deficiencies for each of the tax years at issue. The Notices of Deficiency and Audit Change had been issued on September 26, 2018. No penalties were assessed with the audit. The amount of the audit tax deficiencies and the interest accrued thereon as of the date the Notices were issued are as follows:

Year	Tax	Interest <sup>1</sup>	Penalty	Total as of Notice Date
2014	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
2015	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$
2016	\$\$\$\$	\$\$\$\$	\$\$\$\$	\$\$\$\$

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code §59-10-104(1)(2015)<sup>2</sup> as follows:

For taxable years beginning on or after January 1, 2008, a tax is imposed on the state taxable income of a resident individual as provided in this section.

State taxable income is defined in Utah Code §59-10-103(1)(w) as follows:

- (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
  - (A) additions and subtractions required by Section 59-10-114;and
  - (B) adjustments required by Section 59-10-115 . . .

Utah Code §59-10-103(1)(a)(i) provides the statutory definition of “adjusted gross income”:

- (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code ...

Taxable income is defined in the Internal Revenue Code at 26 U.S.C. 63 as follows:

Except as provided in subsection (b), for purposes of this subtitle, the term “taxable income” means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Utah Law allows a nonrefundable taxpayer tax credits based on the taxpayer’s standard or itemized federal tax deductions at Utah Code Subsection 59-10-1018 (2) (2015) as follows:

- (2) Except as provided in Section 59-10-1002.2, and subject to Subsections (3) through (5), a claimant may claim a nonrefundable tax credit against taxes otherwise due under this part equal to the sum of:
  - (a) (i) for a claimant that deducts the standard deduction on the claimant's federal individual income tax return for the taxable year, 6% of the amount the claimant deducts as allowed as the standard deduction on the claimant's federal individual income tax return for that taxable year; or
  - (ii) for a claimant that itemizes deductions on the claimant's federal individual income tax return for the taxable year, the product of:
    - (A) the difference between:

<sup>1</sup> Interest continues to accrue on the unpaid balance.

<sup>2</sup> This Decision cites to provisions in effect for the 2015 tax year unless otherwise indicated. There were no substantive changes to the law that would affect the outcome of this decision between 2014 and 2016.

(I) the amount the claimant deducts as allowed as an itemized deduction on the claimant's federal individual income tax return for that taxable year; and

(II) any amount of state or local income taxes the claimant deducts as allowed as an itemized deduction on the claimant's federal individual income tax return for that taxable year; and

(B) 6%; and

(b) the product of:

(i) 75% of the total amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year, plus an additional 75% of the amount the claimant deducts as allowed as a personal exemption deduction on the claimant's federal individual income tax return for that taxable year with respect to each dependent adult with a disability or dependent child with a disability; and

(ii) 6%.

Utah Code §59-1-1417 provides that the burden of proof is upon the petitioner in proceedings before the Commission:

In a proceeding before the commission, the burden of proof is on the petitioner. . . .

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

### DISCUSSION

The Taxpayer filed Utah and federal individual income tax returns for each of the tax years at issue as those returns were due. The Internal Revenue Service ("IRS") audited the Taxpayer's federal returns and made a change to each return for the years at issue, which disallowed some, but not all, of the Taxpayer's itemized deductions. The Taxpayer and his representative explained they were never able to get the IRS to reconsider the federal audit. The Taxpayer's representative said this was because the IRS never issued its final "90 day letter," which started the appeal period with the IRS. As they never received the "90 day letter" the

Taxpayer's representative stated they were not aware of the audit decision within the time period to appeal the IRS audit decision. Because the audit was not appealed, the audit became final and the IRS assessed the additional tax and filed liens. The Taxpayer ended up paying the federal audit deficiency when he sold his home.

When the Taxpayer originally filed the Utah audit appeal, Respondent ("Division") had told the Taxpayer he needed to contest the IRS audit with the IRS and get these issues resolved. The Taxpayer had been allowed a number of years after the Utah audit had been issued and prior to this hearing to try to get this matter resolved with the IRS. The Taxpayer and his representative stated over this time period during scheduled Telephone Status Conferences that they were trying to get this into audit reconsideration with the IRS and they had sent in numerous letters and requests for audit reconsideration. They reported that the IRS never responded to their letters or submissions in any way, so they have not been able to get the IRS to reconsider its audit.

At this hearing, the Division's representative confirmed that the IRS Account History Transcripts showed that the IRS had assessed the tax amount and closed the examinations of the Taxpayer's accounts for all of the tax years at issue in 2018. She explained that based on the federal transcripts, it appeared that the IRS had closed the audits in 2018, there were no further claims pending and the Taxpayer had paid the IRS audit deficiencies. The Division's representative stated that the Division was not willing to look at the Taxpayer's itemized deductions independently from what the IRS had done because the IRS had audited the Taxpayer and had made its final decision to disallow a portion of the Taxpayer's itemized deductions. The Division's representative stated that whether or not itemized deductions are allowed is based on federal tax law. The Division's representative argued that Utah Code Section 59-10-1018 specifically limited the Utah itemized deductions to the amount "allowed" by the IRS as itemized on the federal return and it was the Division's position that the Division could not supersede the IRS's decision.

In instances where a Utah tax audit is the result of an IRS audit determination that either changed federal adjusted gross income or itemized deductions, the Tax Commission does prefer that a taxpayer contest the IRS audit with the IRS first and then if the IRS reconsiders its audit or changes it, the Auditing Division can generally follow the final IRS changes. For the Tax Commission to independently review a matter that is still pending at the IRS, the Utah tax deficiency will then again have to be reviewed and re-audited once the IRS issues its final decision. However, in this matter it does not appear that there is anything pending before the IRS.

The Tax Commission has in prior decisions independently examined what the IRS has done and has occasionally concluded sufficient evidence was presented by a taxpayer to support a

different federal adjusted gross income or amount of federal itemized deductions than as indicated on the Federal Account Transcript. In *Utah State Tax Commission Initial Hearing Order, Appeal No. 16-1545* (July 13, 2018)<sup>3</sup> the Tax Commission did consider the statutory language at Utah Code Sec. 59-10-1018 on which the Division relies in this matter and determined the language of Utah Code Subsection 59-10-1018(2)(a)(ii) did not preclude the Tax Commission from making an independent review of itemized deductions. However, the Tax Commission does give deference to the IRS's determination where the IRS audited a taxpayer's federal return and adjusted the federal adjusted gross income or itemized deductions.<sup>4</sup>

In this appeal, the result of the IRS audit was that the IRS had disallowed some of the Taxpayer's itemized deductions. The IRS had allowed some itemized deductions in full including the state and local income and property tax deductions and the mortgage interest deductions, but disallowed for each year all of the medical and dental expense deductions, all of the Form 2106 expenses and most of the gifts to charity. The Division's representative explained that the Division's audit followed exactly what the IRS had done and disallowed the portion of the itemized deductions in the amounts disallowed by the IRS. The amount of the disputed deductions that the Taxpayer had claimed on his federal returns, the portions of those deductions that were disallowed by the IRS and the amount of those deductions allowed by the IRS are as follows:

**2014 Disallowed Amounts from Specific Itemized Deductions**

	Amount Claimed By Taxpayer on Return <sup>5</sup>	Amount IRS Disallowed	Amount of Deduction Allowed By IRS <sup>6</sup>
Total Itemized Deductions		#####	#####
Charitable Contributions		#####	#####
2% MISC. Deductions (Sch A)		#####	#####
Medical & Dental Expenses		#####	#####

<sup>3</sup> This and other selected Commission decisions can be viewed in a redacted format on the Tax Commission's website at <http://www.tax.utah.gov/commission-office/decisions>.

<sup>4</sup> See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal Nos. 12-1345* (December 12, 2016) and *No. 06-1408* (Nov. 5, 2007). See also *Utah State Tax Commission Appeal Nos. 14-580, 13-1292, 12-2967, 12-2963, 11-2709 and 08-1482*.

<sup>5</sup> The Taxpayer did provide a copy of a 2014 Federal Return with Schedule A, but this copy matched the federal audit and did not appear to be the original return that the Taxpayer had filed with the IRS.

<sup>6</sup> This total includes the undisputed deductions which were allowed by the IRS, which were the residential mortgage interest, state income tax and property tax.

**2015 Disallowed Amounts from Specific Itemized Deductions**

	Amount Claimed By Taxpayer on Return	Amount IRS Disallowed	Amount of Deduction Allowed By IRS
Total Itemized Deductions	#####	#####	#####
Charitable Contributions	#####	#####	#####
2% MISC. Deductions Form 2106	#####	#####	#####
Medical & Dental Expenses	#####	#####	#####

**2016 Disallowed Amounts from Specific Itemized Deductions**

	Amount Claimed By Taxpayer on Return	Amount IRS Disallowed	Amount of Deduction Allowed By IRS
Total Itemized Deductions	#####	#####	#####
Charitable Contributions	#####	#####	#####
2% MISC. Deductions Form 2106	#####	#####	#####
Medical & Dental Expenses	#####	#####	#####

The Taxpayer has the burden of proof in this matter pursuant to Utah Code Sec. 59-1-1417. Additionally, the disallowances of the Taxpayer’s itemized deductions had been based on an audit performed by the IRS and the Tax Commission does give deference to the IRS in determining what is allowed or disallowed as itemized deductions as that is based on federal law. The Taxpayer then must present both the factual and the legal basis for why a deduction or claim should have been allowed pursuant to federal law. For this hearing, the Taxpayer did provide some documentation to support the deductions he was claiming for tax years 2014 and 2015. The Taxpayer did not provide this information for tax year 2016.<sup>7</sup> In addition, the Taxpayer did not provide a 2014 federal return or 2014 Schedule A or Form 2106 that matched the amount the Taxpayer was claiming at the hearing. Without the original 2014 federal return, Schedule A and Form 2106, there is not a basis from which to analyze the claims that the Taxpayer made at this Initial Hearing for 2014. Therefore, this decision focuses on the 2015

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<sup>7</sup> The Taxpayer had submitted 35 separate PDFs or spreadsheets either prior to the Initial Hearing or during the Initial Hearing. Some of these exhibits contained duplicate information. There were no exhibits, however, for tax year 2016 other than the 2016 state and federal returns that the Taxpayer provided at the hearing.

information where the Taxpayer had provided both a Federal Return that matched what the Taxpayer was claiming and some documentation to support some of the expenses.<sup>8</sup> The Division did not present any evidence in this matter to refute the documentation provided by the Taxpayer or to argue whether or not the Taxpayer was entitled to any of the specific deductions based on federal law.

**I. Form 2106 Expenses**

The largest disallowed item on the returns was the unreimbursed employee expenses claimed on Line 21 of the Schedule A, and reported on Form 2106. The expenses on Form 2106 included vehicle expenses, travel expenses, other business expenses and meals and entertainment expenses. For tax year 2015 the Line 21 Expenses the Taxpayer Listed on Schedule A and what they consisted of as claimed by the Taxpayer on Form 2106 were the following:

	Total Line 21 Expenses	Vehicle Expenses	Travel Expense	Other Expenses	Meals & Entertainment Subject to 50% Adjustment
2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

**A. *Form 2106 Vehicle Expenses***

Regarding vehicle expenses, IRS Publication 463 (2015), pg. 14 explains, “If you use your car for business purposes, you ordinarily can deduct car expenses.” From the very limited information provided at this hearing, it appears that the Taxpayer’s tax home was on the LOCATION-1 and his primary work location was the BUSINESS-1 CITY-1 auto dealership where he was the Used Car Manager. The Taxpayer stated that he also had an office at home where he worked after and before business hours at the dealership. The Taxpayer represented that he was also the Used Car Manager at the BUSINESS-1 dealership in CITY-2, STATE-1, which is about a ##### hour drive<sup>9</sup> from CITY-1, so he was required to travel to that location for business purposes. The Taxpayer also stated that as part of his job duties he needed to travel to used auto auctions, two of which were located on the LOCATION-1, one in CITY-3, STATE-1 and another in STATE-2. There was also a very generic letter from his employer, written in 2017 and not specifically retrospective to the tax years at issue, that said the employer did not reimburse the Taxpayer’s expenses. The letter did not list what expenses it was referring to. The letter did not state that the Taxpayer was required to drive his personal vehicle for his employment, that the employer did not reimburse this specific expense or that the employer did not provide the Taxpayer a vehicle to use for work purposes. IRS Publication 463 provides a taxpayer can use one

<sup>8</sup> Should the Taxpayer request a Formal Hearing, the Taxpayer may submit the missing documentation.

<sup>9</sup> From Google Maps.

of two methods to figure the vehicle expenses. The two methods are “standard mileage rate” or “actual car expenses.” Based on the Taxpayer’s 2015 Federal Form 2106, the Taxpayer’s deduction was based on “actual car expenses.”<sup>10</sup> The publication then lists actual car expenses to include: depreciation, licenses, lease payments, registration fees, gas, insurance, repairs, oil, garage rent, tires, tolls, parking fees. However, as noted on Form 2106 the deduction is limited by the percentage of business miles versus total miles the vehicle was driven during the tax year. For tax year 2015 the Taxpayer claimed three different vehicles driven for business purposes on his Federal Form 2106, but at varying percentages. One was a VEHICLE-1, which the Taxpayer claimed to have used for business %%% of its use during 2015. One was a VEHICLE-2, which he claimed was used for business %%% of its use during 2015 and the third one a VEHICLE-3, which he claimed was used for business %%% of its use.

Although the Taxpayer did provide some evidence relating to the vehicle expenses for 2015, his evidence was lacking some key information. For example, the evidence he submitted for tax year 2015 regarding the actual car expenses left questions regarding the correct percentage that each vehicle was used for business and there were no actual receipts for many of the items claimed, like car washes, lease payments, registration fees, gas or insurance. The Taxpayer provided Exhibit 17, which contained a handwritten mileage log, which was apparently the basis for determining the percentage of use for business assigned to each vehicle. The log only showed the business miles driven and which vehicle was used. The log did state for 2015 a total of ##### work miles, but this appeared to be combined for all three vehicles. This log included as work miles numerous notations that showed travel from “home” to “work.” IRS Publication 463(2015), pg. 14 states, “Daily transportation expenses you incur while traveling from home to one or more regular places of business are generally nondeductible commuting expenses.”<sup>11</sup> The Taxpayer has the burden of proof in this matter and has not shown that he was entitled to deduct the miles traveled from his home to his work location in CITY-1, because he has not established the facts or the legal basis under federal law to show that he was entitled to claim the miles from “home” to “work” as business miles. Because of this, the percentage of business use is in question.

The Taxpayer’s Exhibit 17 did provide some actual receipts that indicated either repairs or regular car maintenance. However, these are only a minimal percentage of the total vehicle

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<sup>10</sup> The Taxpayer might have been able to support a deduction based on standard miles.

<sup>11</sup> See also 2015 Publication 529 pg. 7, which states, “You can deduct expenses incurred in going between your home and a workplace if your home is your principal place of business for the same trade or business.” In this matter there is no evidence to establish that the Taxpayer’s home was his principal place of business as he was an employee of a vehicle dealership that had a business location that appeared to be his principal place of business.

expenses the Taxpayer had listed on Form 2106. There were no receipts for most of these expenses. One expense the Taxpayer was including was car washes. The Taxpayer had included in Exhibit 17 a handwritten list regarding the amount he had claimed as car wash expenses. The list showed a date, a name of a carwash business, a dollar amount and then one of the three vehicles. There were no actual receipts for any of these car washes included in this exhibit. Also regarding 2015, the Taxpayer provided Exhibit 18 which was a typewritten auto mileage log for 2015. It is not clear if this log contains exactly the same amount of miles as the handwritten one. There is no total miles driven for the year and it contains pages of entries. In addition there is also a typewritten version of the car washes, but again no actual receipts. Without actual receipts for lease payments, gas, insurance, licensing and car washes, this evidence is not sufficient to support the \$\$\$\$\$ in vehicle expenses for tax year 2015.<sup>12</sup>

**B. *Form 2106 Travel Expenses***

For tax year 2015 the Taxpayer had claimed \$\$\$\$\$ in travel expenses on his Form 2106. IRS Publication 463(2015), pg. 3. explains what is meant by “traveling away from home” as follows, “You are traveling away from home if: 1) Your duties require you to be away from the general area of your tax home (defined later) substantially longer than an ordinary day's work; and 2) You need to sleep or rest to meet the demands of your work while away from home.” Regarding tax year 2015, the Taxpayer provided Exhibit 14, which was titled Travel Expenses. This Exhibit included a table of “travel meals & entertainment” with the only description being it was an unreimbursed expense, a date and the total cost. All but one of the travel dates on this table were from DATE. The total for travel expenses on the Petitioner’s Exhibit 14 table was \$\$\$\$\$. At the bottom of Exhibit 14 was the notation that there was some additional \$\$\$\$\$ in unreimbursed travel expenses “with no documentation.” The \$\$\$\$\$ plus the \$\$\$\$\$ equals the \$\$\$\$\$ claimed on Line 3 of the Taxpayer’s 2015 Form 2106.

It appears from this documentation that the Taxpayer included travel meals on Line 3 of Form 2106. However, as noted on Line 3 of Form 2106, the amount included on this line should be “Travel expenses while away from home overnight, including lodging, airplane, car rental, etc. **Do not** include meals and entertainment (emphasis in the original).” With his Exhibit 14 the Taxpayer included receipts that totaled \$\$\$\$\$. One of the receipts was for airfare from Salt Lake City to CITY-5 on DATE and a return flight from CITY-3 back to CITY-4. The airfare totaled \$\$\$\$\$. The rest of the receipts appeared to be for meals during the time period from DATE to

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<sup>12</sup> The Taxpayer might have been able to support a deduction based on standard miles, but would need to either establish his trips from home to work and back were either business miles or remove them from the total business miles.

DATE and it did appear they were from locations in either STATE-2 or STATE-1, so coincided with this travel. The Taxpayer had explained that as part of his job he did travel to used vehicle auctions in CITY-3 and in STATE-2. Therefore, the Taxpayer’s proffer at the Initial Hearing does provide a business reason for this travel. However, only the airfare of \$\$\$\$\$ should have been included on Line 3, because the meals, which are subject to a 50% reduction, should have been included on Line 5. In addition, there was one receipt for which there was no evidence of what the business purpose for the travel had been or what the receipt was for. This was a receipt that the Taxpayer had listed on the table as being dated DATE and was from BUSINESS-2 in CITY-6, Utah. The receipt itself is mostly illegible except for the amount of \$\$\$\$\$. Based on IRS Publication 463 the Taxpayer is to provide the business purpose of any travel or entertainment expense and that information is lacking for this receipt. The documentation the Taxpayer provided supports \$\$\$\$\$ in travel expenses for tax year 2015 and that is the amount the Commission should accept on Line 3 of Form 2106 based on the evidence presented at this Initial Hearing for tax year 2015. The evidence submitted by the Taxpayer did support travel meals totaling \$\$\$\$\$, however, these travel meals should have been included on Line 5 of the Form 2106 and are subject to the 50% reduction.

**C. Form 2106 Other Expenses**

On his federal Form 2106, line 4, the Taxpayer listed \$\$\$\$\$ in Other Expenses. In the Federal Statements to the federal income tax return the following breakout was provided:<sup>13</sup>

LOGOED CLOTHING	\$ \$\$\$\$\$
CLEANING OF LOGOED CLOTHING	\$\$\$\$\$
GIFTS INCENTIVES AND REWARDS	\$\$\$\$\$
CELLPHONE BUSINESS PORTION	\$\$\$\$\$
CELLPHONE PURCHASE	\$\$\$\$\$
TABLET ELECTRONICS ACCESSORIES	\$\$\$\$\$
INTERNET ACCESS BUSINESS PORTION	\$\$\$\$\$
OFFICE SUPPLIES	\$\$\$\$\$
DESK	
COMPUTER	
CHAIR	
FILING CABINETS	
PRINTER	\$\$\$\$\$
OFFICE DECORATIONS	
LAPTOP	
PROTECTIVE SHOES 7 COATS	\$\$\$\$\$
NonVehicle Depreciation	\$\$\$\$\$
Business Use of Home	\$\$\$\$\$
<b>Total</b>	<b>\$ \$\$\$\$\$</b>

<sup>13</sup> The Taxpayer’s 2015 Federal Return with all of the schedules did not have numbered pages, but this information is on PDF #22.

i. Logoed Clothing

The Taxpayer explained at the hearing that as an employee of the car dealership he was required to wear a shirt and a hat with the dealership's logo. The Taxpayer did not document this with a letter or written statement from his employer, or employee contract. He also represented that he was required to pay for these clothing items himself, that they were not provided to him by his employer. However, he did not document this proffer. The Taxpayer presented Exhibit 13, which contained a table of Logoed Clothing purchased in 2015 and receipts for some of the purchases. The first receipt indicated that the Taxpayer had paid \$\$\$\$ for ##### logoed shirts. There was also a handwritten note that said "Embroider Pants X 7, \$27 Each" but there was no amount included in the total on this invoice for embroidering a logo on any pants or proof of payment for any pants. Additionally, there was no information from the Taxpayer that his employer required that he wear logoed pants to work or even that he purchased logoed pants. There were some additional receipts for purchases of logoed hats, for a total of \$\$\$\$ for hats. The logoed shirts and hats totaled \$\$\$\$\$. Exhibit 13 listed some \$\$\$\$ additional costs for logoed clothing for which there were no receipts. The \$\$\$\$\$ plus the \$\$\$\$ equals \$\$\$\$\$, which equals approximately to the \$\$\$\$\$ listed on the statement on the Taxpayer's return for logoed clothing. Generally, logoed clothing that an employee was required to wear to work that was not suitable for everyday wear was deductible in 2015. The Taxpayer has provided receipts showing he paid \$\$\$\$ for logoed shirts and hats, but he has not provided evidence from his employer that he was required to wear logoed shirts, logoed pants or logoed hats to work.<sup>14</sup> Therefore, the Taxpayer has failed to meet the burden of proof regarding the logoed clothing items and has not supported this deduction.

Additionally, if the cost to purchase the logoed clothing was deductible, the cost to have the clothing cleaned would also have been deductible. The Taxpayer provided Exhibit 20 which consisted of multiple receipts from BUSINESS-3 totaling \$\$\$\$ in cleaning costs. The receipts, however, were exclusively for the cleaning or pressing of pants. As the Taxpayer has not shown he was required to wear logoed pants by his employer, there is not sufficient evidence to support that the Taxpayer may deduct the \$\$\$\$ claimed as cleaning expense for logoed items.

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<sup>14</sup> Should the Taxpayer request this matter move forward to a Formal Hearing, the Taxpayer may submit additional evidence two weeks prior to that hearing to supply documentation from his employer that the employer required that he wear these items of logoed clothing during the years 2014 through 2016 and that the Taxpayer was required to pay for these items, that they were not provided by the employer.

ii. Gift and Incentives Awards

The Taxpayer stated at the hearing that as the Used Car Sales Manager, he often gave employees gifts and incentive awards. For 2015 he had claimed \$\$\$\$ as Gifts and Incentive Awards as a line item for “Other Expenses.” He did provide receipts of purchases of various items but never provided the employee’s name to whom the gift was given or an explanation of the business purpose. In Exhibit 17, which contained his 2015 handwritten Auto, Travel & Business Log, he had made some notations that may have pertained to this, for instance there is a notation dated DATE for \$\$\$\$ for NAME-1 tickets and the explanation “#1 Used Car Sales.” This notation did not state who the tickets were given to or whether or not the Taxpayer attended the concert with the recipient.<sup>15</sup> Petitioner’s Exhibit 19 contained a typewritten table of all of the “Gift Incentives and Rewards” but this table also did not state who the gift incentive or reward was given to<sup>16</sup> or the reason it was given, or even necessarily a description of what the gift incentive or reward had been. The NAME-1 tickets appear on this list as well. There did appear to be receipts attached for each of the amounts claimed on this list. The total from this list was \$\$\$\$ and not the \$\$\$\$ the Taxpayer had claimed on his return. Many of the receipts, however, were from BUSINESS-4 or BUSINESS-5 and contained a large number of items per receipt. For example, there is a receipt from BUSINESS-4 dated DATE and a total of ##### items on that receipt for a total cost of \$\$\$\$\$. The log noted a “Gift Incentives & Rewards” dated DATE for \$\$\$\$\$. One item on the BUSINESS-4 receipt was a \$\$\$\$ “Floral Vase.” There were what appears to be a number of floral vases from BUSINESS-4 on the Exhibit 19 list.

IRS Publication 463, pg. 13, provides guidance on how gifts are treated and notes that a person who gives gifts in the course of trade or business can deduct the cost of the gift, but also points out that there was a \$25 limitation in 2015, noting “You can deduct no more than \$25 for business gifts you give directly or indirectly to each person during your tax year.” An employer may be able to deduct as a business expense incentive rewards given to employees; however, the employer would generally be required to include the amount of such an award in the employee’s W-2. The Taxpayer, however, is not the employer and there was no indication the incentive awards were being accounted for in a W-2 or 1099 issued to the recipient. The Taxpayer has not established based on federal law that he was entitled to deduct anything in this category. Therefore, he has not shown that any portion of the \$\$\$\$ claimed as Gifts and Incentive Awards should have been allowed.

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<sup>15</sup> The pages on Exhibit 17 were not numbered, but this is at PDF page 7.

<sup>16</sup> There is a notation on the left side of this table that says “Number” and then numbers from G-1 to G-12, all of which had more than one line item on the table. It is not clear if G-1 referred to a specific person.

iii. Cell Phone

The Taxpayer had claimed as a line item on “Other Expenses” \$\$\$\$ for Cellphone Business Portion and \$\$\$\$ for cell phone purchase. The Taxpayer did submit Exhibit 12 regarding “Cell Phone and Internet Expenses.” This exhibit, however, provided copies of the Taxpayer’s BUSINESS-6 bills, which appeared to include cable TV, internet, home security service and home phone and internet phone. It did not appear to be a cell phone bill. Additionally, there was no evidence from the Taxpayer’s employer that the employer did not provide the Taxpayer a cell phone for business use. There was no evidence of a cell phone purchase for \$\$. The Taxpayer has not established he was entitled to the cell phone deductions.

iv. Business Internet

The Taxpayer had claimed as a line item on “Other Expenses” \$\$\$\$ for business internet. The Taxpayer had stated at the hearing that as part of his job responsibilities he needed to look at auto auction websites and used car sites and this was generally after or before the car dealership business office was open. However, there was no explanation for how the Taxpayer established \$\$\$\$ as the business portion of the internet service costs. This was presumably part of the charge in the bundled BUSINESS-6 bills, which totaled around \$\$\$\$ per month and were submitted in Exhibit 12. However, the only notation on those bills regarding internet service was “Additional BUSINESS-6 Internet Services” and the charge for that was \$\$\$\$ per month. Therefore, the \$\$\$\$ was not supported.

v. Miscellaneous Office Equipment

The Taxpayer had claimed three miscellaneous line items on “Other Expenses,” including a line titled “TABLETELECTRONICS ACCESSORIES” which was for \$\$. There was a line item for office supplies in the amount of \$\$\$\$ and one for a printer for \$\$. The evidence the Taxpayer provided to support these charges was included in an exhibit that was unnumbered by the Taxpayer, but marked for the purpose of the hearing as Petitioner’s Exhibit 24. Exhibit 24 seemed to include duplicate information from other exhibits, but at PDF page 15 there was a table titled Office Supplies 2015 and that table noted three purchases for which there were receipts totaling \$\$. It also listed Office supplies with no receipts and a total of \$\$. The Taxpayer has supported a deduction of \$\$\$\$ as office supplies.

vi. Protective Clothing

The Taxpayer had claimed as a line item on “Other Expenses” \$\$\$\$ for Protective Shoes & Coats. The Taxpayer provided at PDF pg. 19 of Exhibit 24 information regarding these expenses. The Taxpayer provided a receipt for \$\$\$\$ for a pair of BRAND-1 shoes. Exhibit 24

noted purchases of additional protective clothing and shoes with no receipts in the amount of \$\$\$\$\$. The Taxpayer did provide a copy of the receipt for the BRAND-1 shoes. However, he did not show that based on federal law he was entitled to deduct the cost of shoes as protective clothing or that the shoes were not of the type useful for ordinary use. The most common items allowed a federal deduction for protective clothing include hard hats, protective gloves and safety boots for construction workers. The Taxpayer has not shown that the Internal Revenue Service allowed a deduction for his purchase of shoes.

vii. Business Use of the Home

The Taxpayer had claimed on his 2015 federal income tax return a line item for “Business Use of the Home” in the amount of \$\$\$\$\$ as part of his “Other Expenses.” The Taxpayer provided no federal statutory citations or legal precedent to support the claim that he was able to deduct a portion of his residence as a business expense. IRS Publication 587 (2015) pg. 3, provides the following test for this deduction:

To qualify to deduct expenses for business use of your home, you must use part of your home:

- Exclusively and regularly as your principal place of business (see Principal Place of Business, later),
- Exclusively and regularly as a place where you meet or deal with patients, clients, or customers in the normal course of your trade or business,
- In the case of a separate structure which is not attached to your home, in connection with your trade or business,
- On a regular basis for certain storage use (see Storage of inventory or product samples, later), For rental use (see Pub. 527), or
- As a daycare facility (see Daycare Facility, later)

The Publication states additional requirements for an employee’s use of their residence to qualify for a deduction, including a showing that the business use of the home was for the “convenience of your employer.”

Based on these federal requirements, the Taxpayer has not shown that his home was his principal place of business or that any other requirements to qualify for a deduction were met. Therefore, the Taxpayer has not established that he is entitled to deduct this expense.

vii. Recalculation of line item “Other Expenses”

In total on the line item for “Other Expenses” the Taxpayer has supported only \$\$\$\$\$ for office supplies out of the \$\$\$\$\$ the Taxpayer claimed on the return.

***D. Form 2106 Meals and Entertainment Expenses***

For 2015 the Taxpayer had claimed \$\$\$\$\$ in meals and entertainment expenses on Line 5 of Form 2106. This amount was subject to a 50% limitation, so the deduction was reduced to

#####. Publication 463(2015) provides regarding meals and entertainment expenses, at page 10, the general rule that, “You can deduct ordinary and necessary expenses to entertain a client, customer, or employee if the expenses meet the directly-related test or the associated test.” The Publication then provides the following tests:

Directly-related test:

- Entertainment took place in a clear business setting, or
- Main purpose of entertainment was the active conduct of business, and You did engage in business with the person during the entertainment period, and You had more than a general expectation of getting income or some other specific business benefit.

Associated test:

- Entertainment is associated with your trade or business, and
- Entertainment is directly before or after a substantial business discussion.

At page 27 of IRS Publication 463(2015) a table is provided that explains what records a taxpayer needs to provide to support entertainment expenses. The Publication indicates the taxpayer needs to keep records to show the amount or cost, the date, the name and address of the entertainment and type of entertainment and the business purposes for the expense or the benefit gained or expected to be gained, and the nature of the business discussion or activity. Alternatively, if the entertainment was directly before or after a business discussion, the date, place, nature and duration of the business discussion and the identities of the persons who took part in both the discussion and the entertainment, including names, titles or other information that shows the recipients’ business relationship to the taxpayer. The Taxpayer did not provide this required information. The Taxpayer provided Exhibit 21 that includes a table that contains only the date, dollar amount and name of the restaurant, or for some of the expenses the name of a place of entertainment. Attached to the table were receipts and there appeared to be receipts for all of the entries on the table. The table provided the total from all of the entries of #####. It is not clear where the amount of #####, which was the amount claimed on the Form 2106, came from as the table only indicated ##### in expenses. Although the Taxpayer provided receipts, he failed to provide the information that the IRS requires to show that these expenses met either the directly related or associated tests set out in Publication 463. Therefore, the Taxpayer has not supported this line item for 2015.

**E. Form 2106 Expenses Recalculated Based on Evidence Submitted**

As noted in the subsections above, the Taxpayer has not shown that he is entitled to deduct most of the items that he claimed on Form 2106. The deductions that the Taxpayer has supported are the following:

	Total Line 21 Expenses	Vehicle Expenses	Travel Expense	Other Expenses	Travel Meals Subject to 50% Adjustment
2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$/50% = \$\$\$\$\$

However, the Form 2106 expenses are subject to the limitation that they must exceed 2% of federal adjusted gross income as noted on Lines 26 and 27 of Schedule A. For tax year 2015, 2% of the Taxpayer’s federal adjusted gross income was \$\$\$\$\$, and the total eligible Line 21 expenses of \$\$\$\$\$ as recalculated above do not exceed \$\$\$\$\$. Therefore, the Taxpayer may claim \$\$\$\$\$ on Line 21 of Schedule A.

**II. The Other Disallowed Items on Schedule A**

The IRS disallowed the Taxpayer’s medical and dental expense deduction in the amount of \$\$\$\$\$ and \$\$\$\$\$ of the total \$\$\$\$\$ gifts to charity.

**A. Medical and Dental Expenses**

On Schedule A Medical and Dental Expenses are subject to a 7.5% limitation. As calculated on the Taxpayer’s return, this amount is \$\$\$\$\$ meaning that the Taxpayer may deduct only an amount over the \$\$\$\$\$ limitation. The Taxpayer had claimed on Line 1 of Schedule A \$\$\$\$\$ in total medical and dental expenses. The Taxpayer then subtracted the \$\$\$\$\$ limitation and the result was the \$\$\$\$\$ he claimed on his return. As evidence of the medical expenses he had claimed for 2015 the Taxpayer provided Exhibit 16. Exhibit 16 contained a table listing all the receipts that the Taxpayer had for prescriptions and Massage/Physical Therapy, which totaled only \$\$\$\$\$. Petitioner then listed “Medical Expenses with No Receipts” and those items totaled \$\$\$\$\$. Therefore, the Taxpayer has not shown he was entitled to claim a medical and dental expense deduction in the amount of \$\$\$\$\$. The Taxpayer has shown only \$\$\$\$\$ in eligible expenses and that is below the 7.5% limitation amount.

**B. Gifts to Charity**

On the Taxpayer’s 2015 Schedule A, line 19, the Taxpayer had claimed \$\$\$\$\$ in total as gifts to charity. Of that amount, \$\$\$\$\$ was listed as gifts made by cash or check and the IRS had allowed that portion as a deduction. The remainder, in the amount of \$\$\$\$\$, was listed on Line

17, as gifts other than by cash or check. As required by the IRS, because this amount was more than \$500, the Taxpayer attached Form 8283 to the return. Form 8283 showed that all but \$\$\$\$ of this deduction was for donations of used personal property items the Taxpayer had made to BUSINESS-7. Form 8283 lists 10 separate donation dates made in 2015 to BUSINESS-7. The Taxpayer provided Exhibit 15 regarding these 2015 deductions. This exhibit included a BUSINESS-8 spreadsheet on which the Taxpayer had listed each donation by date and brief description of the donated items. However, there were no receipts from BUSINESS-7 or any other recipient for any of the donations. The Taxpayer has not shown he was entitled to the \$\$\$\$ in gifts to charity deductions.

### **III. Recalculated Schedule A Itemized Deductions**

In this matter, the Taxpayer had the burden of proof to establish that under the facts and under the law he was entitled to the deductions that the IRS had disallowed following an IRS audit. The Taxpayer did not provide key information for tax years 2014 or 2016 and there was no basis offered to support the disallowed deductions for either of those tax years. The Taxpayer did provide his 2015 federal return and the schedules to that return so that a full analysis of the itemized deductions claimed by the Taxpayer could be reviewed. After a careful review of the documentation the Taxpayer provided at the Initial Hearing, the Taxpayer did not show he was entitled to any additional deductions from the amount allowed by the IRS following its audit. The Division had based its Utah individual income tax audit on the IRS's determination of allowed deductions for each tax year and the Division's audits should be sustained.

Jane Phan  
Administrative Law Judge

### **DECISION AND ORDER**

Based on the foregoing, the Commission sustains the Division's audit deficiencies in their entirety for tax years 2014, 2015 and 2016. 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 \_\_\_\_\_, 2022.

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.**