

05-0961
Audit
Signed 10/17/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	05-0961
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income
TAXPAYER SERVICES DIVISION OF	)	Tax Years:	2003
THE UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from Taxpayer Services
Division
RESPONDENT REPRESENTATIVE 3, from taxpayer Services Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on October 6, 2005.

At issue is the Taxpayer Services Division's (the "Division") assessment of additional Utah individual income tax to the Petitioner for the 2003 tax year. In 2003, PETITIONER, a federal government retiree, paid approximately 25% of his health care insurance premiums while his former employer, the federal government, paid the remaining 75%. Because he himself paid a portion of the amounts paid for his health care insurance premiums in 2003, he believes that the plain language of Utah Code Ann. §59-10-114(3)(e)(i) allows him to deduct the amounts he paid from his Utah taxable

income. For these reasons, he deducted his payments of more than \$\$\$\$ from his 2003 taxable income.

The Division disallowed the deduction for the health care insurance premiums at issue and assessed PETITIONER the additional tax resulting from the corresponding increase in his 2003 Utah taxable income. The Division asserts that Section 59-10-114(3)(e)(i) should be interpreted to mean that a taxpayer is not allowed to deduct from Utah taxable income the amounts that he or she pays for health care insurance premiums if the federal government pays any portion of the premium associated with the health care coverage.

APPLICABLE LAW

Utah Code Ann §59-10-114 provides for certain additions to and subtractions from the federal taxable income of an individual when calculating that person's Utah state taxable income. A subtraction for amounts paid for health care insurance is allowed in accordance with Subsections 59-10-114(2)(h) and -114(3)(e), as follows:

(2)(h) There shall be subtracted from federal taxable income of a resident or nonresident individual: h) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

(i) for:

- (A) the taxpayer;
- (B) the taxpayer's spouse; and
- (C) the taxpayer's dependents; and

....

(3)(e) For purposes of Subsection (2)(h), a subtraction for an amount paid for health care insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

- (i) for an amount that is reimbursed or funded in whole or in part by the federal government, the state, or an agency or instrumentality of the federal government or the state; and
- (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

For purposes of Section 59-10-114, UCA §59-10-103(1)(g) provides that the word “employer” is defined as provided in Section 59-10-401. UCA §59-10-401(2) defines “employer” as follows:

(2) "Employer" means a person or organization transacting business in or deriving any income from sources within the State of Utah for whom an individual performs or performed any services of whatever nature, and who has control of the payment of wages for such services, or is the officer, agent, or employee of the person or organization having control of the payment of wages. It includes any officer or department of state or federal government, or any political subdivision or agency of the federal or state government, or any city organized under a Charter, or any political body not a subdivision or agency of the state.

DISCUSSION

At issue is whether PETITIONER may subtract from his 2003 Utah state taxable income the amounts he paid for health care insurance in 2003. Although PETITIONER’S former employer, the federal government, paid the majority of his health care insurance premiums in 2003, he himself paid approximately 25% of the premiums, which totaled more than \$\$\$\$\$. PETITIONER believes that, under these circumstances, Utah law allows him to subtract these payments from his 2003 Utah taxable income, while the Division does not.

Although Section 59-10-114(2)(h) allows a subtraction for amounts paid for health care insurance under certain circumstances, Subsection 114(3)(e) provides two situations where those amounts are disallowed as a subtraction: (1) “for an amount that is reimbursed or funded in whole or in part by the federal government . . . ;” and (2) “for a taxpayer who is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer . . . “

The Commission agrees with the Petitioner that **the amounts he paid** and subtracted were not reimbursed by a government agency, including his former employer, the federal government. Nor were **the amounts he paid** and subtracted “funded in whole or in part” by the federal government. Although the federal government funded a part of his health care coverage, it did not fund in whole or in part that portion of the premiums that the Petitioner paid and subtracted from his Utah taxable income. Accordingly, the Commission finds that the portion of health care insurance premiums paid by the Petitioner is not disallowed for subtraction from Utah taxable income because of Subsection 59-10-114(3)(e)(i).

However, the Commission has previously determined that where the federal government funds a portion of the health care coverage for a retired federal employee, the amounts paid by the retiree were disallowed for subtraction from Utah taxable income in accordance with Subsection 59-10-114(3)(e)(ii). In *Petitioner v. Auditing Division of the Utah State Tax Commission*, USTC Appeal No. 01-1359 (2002), the Commission determined that a retiree’s former employer is considered an “employer” for purposes of Subsection 59-10-114(3)(e)(ii). The definition of “employer,” as found in Section 59-10-401(2) includes “. . . a person or organization . .

. for whom an individual performs or performed any services. . .” (emphasis added). Because the Petitioner is a federal government retiree who performed services for the federal government, the federal government is considered PETITIONER’S employer for purposes of Subsection 114(3)(e)(ii). That subsection specifically disallows a subtraction from taxable income for an amount paid for health care insurance “for a taxpayer who is eligible to participate in a health care plan maintained and funded in whole or in part by the taxpayer’s employer” As PETITIONER is a taxpayer who participated in a health care plan maintained and funded in part by his employer in 2003, the amounts he paid for health care coverage in 2003 do not qualify for subtraction from his 2003 Utah taxable income. Accordingly, the Division’s actions to disallow the subtraction and assess additional tax are sustained.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that, for purposes of calculating the Petitioner’s 2003 Utah individual taxable income, the amounts paid by the Petitioner for health care insurance do not qualify for subtraction from taxable income. Accordingly, the Division’s actions are sustained, and the Petitioner’s appeal is denied. 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 to the address listed below and must include the Petitioner's name, address, and appeal number:

Appeal No. 05-0961

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

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

DATED this _____ day of _____, 2005.

Kerry R. Chapman
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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