

06-0036
Audit
Signed 01/09/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	06-0036
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF	)	Tax Years:	2003
THE UTAH STATE TAX COMMISSION,)		
	)	Judge:	Jensen
Respondent.)		

Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, from Auditing Division
RESPONDENT REPRESENTATIVE 2, from Auditing 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 April 11, 2006.

At issue is the Auditing Division's (the "Division") assessment of additional Utah individual income tax to the Petitioner for the 2003 tax year. The parties agree on the facts and differ only on the interpretation of Utah law. In 2003, PETITIONER paid three premiums for three medical insurance plans:

- \$\$\$\$\$ for (X) (health care for PETITIONER and his wife);
- \$\$\$\$\$ for (X) (dental coverage for PETITIONER and his wife);
- \$\$\$\$\$ for (X) through his current employer, COMPANY.

Appeal No. 06-0036

PETITIONER'S employer, COMPANY pays for a portion of the (X). The \$\$\$\$ amount listed represents only the portion that PETITIONER pays. There is no employer or government payment toward the other two policies and PETITIONER pays 100% of these premiums. The three policies are separate freestanding plans of insurance and are purchased from three different entities.

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's position is that payment by PETITIONER'S employer toward one of the three plans requires that it disallow a health care deduction in its entirety. PETITIONER agrees that he may not be allowed to deduct his contribution toward a plan that is partially funded by his employer, but claims a deduction for the other two plans for which he receives no contribution from any source.

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

The above-cited statutes require that the Division disallow the health care cost deduction from income under two circumstances. Utah law is slightly different depending on which of the two circumstances describes a given taxpayer. The first is covered under part (i) of Utah Code Ann. § 59-10-114(3)(e), which provides that if state or federal government sources pay for all or part of health insurance, the taxpayer cannot reduce his or her income by an amount paid for health

insurance. Under part (i), the emphasis is on amount. The second circumstance is covered under part (ii) of Utah Code Ann. §59-10-114(3)(e), which provides that if a taxpayer is eligible to participate in a health care plan funded in whole or in part by his or her employer, the taxpayer is not entitled to the deduction. Under part (ii), the emphasis is on the taxpayer. Thus, under part (i) covering government-funded plans, a taxpayer may be able to claim one amount as a deduction from income even though another amount may not qualify for the deduction. But under part (ii), a taxpayer either does or does not qualify for the deduction.

PETITIONER'S circumstances are best described by part (ii) Utah Code Ann. §59-10-114(3)(e). He is eligible to participate in a health plan maintained and funded in whole or in part by his employer. Thus, he as a taxpayer described under part (ii) is not entitled to reduce his income with health care insurance costs. 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

Appeal No. 06-0036

Formal Hearing. Such a request shall be mailed 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

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

DATED this _____ day of _____, 2007.

Clinton Jensen
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 _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
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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