

06-0788
Individual Income
Signed 03/06/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,	)	ORDER	
)		
Petitioners,	)	Appeal No.	06-0788
)		
v.	)	Account No.	#####
	)	Tax Type:	Individual Income
AUDITING DIVISION OF	)	Tax Years:	2003, 2004
THE UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
 PETITIONER 2

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 February 14, 2007.

At issue is Auditing Division's ("Division") assessment of additional Utah individual income tax to the Petitioners. On May 30, 2006, the Division issued Statutory Notices of Audit Change ("Statutory Notices") to the Petitioners for the 2003 and 2004 tax years. For the 2003 tax year, the Division assessed \$\$\$\$ in additional Utah taxable income, resulting in \$\$\$\$ of additional tax, plus interest. For the 2004 tax year, the Division assessed \$\$\$\$ in additional Utah taxable income, resulting in \$\$\$\$ of additional tax, plus interest. No penalties were imposed.

The Petitioners agree with the majority of the Division's assessments for each of the years at issue. However, the Petitioners contest the Division's disallowance of a portion of the "health care insurance premium" that they subtracted from their Utah taxable income in each year. The amount of Utah taxable

income in dispute (i.e., the amount of the disallowed premiums) is \$\$\$\$ for the 2003 tax year and \$\$\$\$ for the 2004 tax year.

The Division proffers that the disallowed premiums relate to an insurance plan that covers PETITIONER 2 and which the federal government partially funds as a retirement benefit. As a result, the Division contends that Utah Code Ann. §59-10-114(3)(e)(ii) provides that the premiums are excluded from the health care premium subtraction that would otherwise be provided in Section 59-10-114(2)(h). Furthermore, the Division contends that the Commission sustained a similar assessment concerning the Petitioners' 2002 income tax liability in *USTC Appeal No. 03-1675*.

The Petitioners explain that PETITIONER 2 was previously married to another spouse and upon her former spouse's death, received a survivor's annuity, which included the right to participate in the insurance plan at issue. Although the Petitioners admit that the federal government pays or funds a portion of the premiums associated with the plan, they contend that the amounts paid by PETITIONER 2 should nevertheless qualify for the subtraction. The Petitioners also assert that they correctly subtracted the premiums at issue pursuant to instructions found in the 2003 and 2004 Utah Individual Income Tax booklets.

Instruction 13.(74) on page 7 of the 2004 tax booklet provides that in order to qualify for the subtraction, "the taxpayer or taxpayer's spouse must not be eligible to participate in a plan that is offered and funded (fully or partially) by an employer or former employer. . . ." A similar instruction is found in the 2003 instruction booklet. Although PETITIONER 2's former spouse was an employee of the federal government that partially funds the insurance plan at issue, neither of the Petitioners has been employed by the federal government. Because the federal government is neither an employer nor former employer of PETITIONER 2 or her current spouse, PETITIONER 1, the Petitioners argue that they properly followed the instructions and subtracted the premiums at issue.

The Petitioners also argue that because the retirement plan at issue is a “supplemental” insurance plan, the premiums paid for it are eligible for subtraction, pursuant to instructions in the 2003 booklet. An example in Instruction 13.(74) on page 8 of the 2003 booklet provides as follows: “A taxpayer and spouse, who are both 65, are covered by Medicare. They pay premiums for a Medicare B supplemental insurance policy and Medicare B premiums are deducted from their social security. They can deduct the full amount of premiums paid for Medicare B and any supplemental policy.” The Petitioners assert that the insurance plan at issue is a “supplemental” policy and that, as a result, the instructions in the example provide that the premiums paid for the policy are eligible for the subtraction. For these reasons, the Petitioners ask the Commission to reverse that portion of the Division’s assessments that relate to the premiums PETITIONER 2 paid to participate in the insurance plan provided by her former husband’s employer.

The Petitioners also ask the Commission to waive all interest associated with the Division’s assessments, arguing that the Division’s Statutory Notices were issued more than two years after the 2003 return was due and, thus, were untimely.

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 59-10-114(3)(e) (2002), 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.

Utah Code Ann. 59-1-401(11) authorizes the Commission to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

DISCUSSION

At issue is whether the Petitioners may subtract from their Utah taxable income the premiums that PETITIONER 2 paid to participate in an insurance plan provided by her former spouse's employer. The Division asserts that the Commission has previously ruled on this issue in *USTC Appeal No. 03-1675*. However, the Commission's decision in this matter is dependent on its interpretation of the term "spouse" for purposes of Section 59-10-114(3)(e)(ii) and whether or not the term includes a former spouse. The decision in *USTC Appeal No. 03-1675* is silent to this issue. Accordingly, the Commission will consider the arguments that the Petitioners proffered at the Initial Hearing and rule below.

Although Section 59-10-114(2)(h) allows a subtraction for amounts paid for health care insurance under certain circumstances, Subsection 114(3)(e)(ii) provides that the amounts may not be subtracted by "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**" (emphasis added). PETITIONER 2, a taxpayer, paid the premiums at issue to participate in a health plan funded in whole or in part by her *former* spouse's employer. For purposes of the statute and the exclusion from the subtraction, the Commission interprets "spouse" to include not only a *current* spouse, but also a *former* spouse, under these circumstances.

Although the explanation and the examples provided in the instruction booklets do not specifically address the Petitioners' specific fact scenario, the Commission does not find the instructions in the booklets to be incorrect.

Furthermore, when the example on page 8 of the 2003 instruction booklet that the Petitioners specifically cited is read in its entirety, the Commission finds it only pertains to Medicare B supplemental insurance policies and not to other types of supplemental policies. For these reasons, the Commission finds that Section 59-10-114(3)(e)(ii) provides that the premiums that PETITIONER 2 paid and are in dispute may not be subtracted from the Petitioners' taxable income for the years at issue. Accordingly, the Division properly disallowed the Petitioners' subtraction of these amounts from their taxable income.

Concerning the waiver of interest, the Commission's policy is not to waive interest unless the interest arose or accrued pursuant to Tax Commission error. The Commission does not find such error to exist in this matter. The Commission also notes that the Division imposed its assessments in May 2006, approximately one year after the 2004 tax return was due and two years after the 2003 return was due. The Commission does not find that it was erroneous or unreasonable for the Division to impose its assessments within this period of time. Accordingly, the Petitioners' request for a waiver of interest is denied.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's imposition of additional tax and interest for the 2003 and 2004 tax years. The Petitioners' 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. 06-0788

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.

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 _____, 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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