

06-1396  
Income  
Signed 06/07/2007

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>ORDER</b></p> <p>Appeal No. 06-1396</p> <p>Account No. ##### Tax Type: Income Tax Years: 2003 and 2004</p> <p>Judge: Jensen</p>
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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, 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 26, 2007. This case was set for a scheduling conference on that day, but the parties agreed to convert the scheduling conference to an Initial Hearing.

At issue is the Auditing Division's (the "Division") assessment of additional Utah individual income tax to the Petitioner for the 2003 and 2004 tax years. In 2003 and 2004, the petitioner paid premiums for a supplemental medical insurance plan available from his late wife's employer.

The Division disallowed the deduction for the health care insurance premiums at issue and assessed the Petitioner the additional tax resulting from the corresponding increase in

his Utah taxable income for the 2003 and 2004 tax years. The Division took this action on the basis of its understanding that the Petitioner's wife's employer paid part of the premiums for the health insurance at issue.

At hearing, the Petitioner presented evidence to support his understanding and testimony that he was paying one hundred percent of the premium without participation from his wife's employer. Perfect information was not available because his wife's employer, COMPANY A, was out of business. The Petitioner was able to speak with WITNESS 1, a now-retired co-worker and manager at the ( X ) location of COMPANY A. WITNESS 1 reported that her understanding was likewise that while COMPANY A offered a group rate that had a premium somewhat less than the premium of an individual policy, COMPANY A did not pay part of the premium for these plans. The Petitioner had also spoken with WITNESS 2. WITNESS 2 was a human resources person at the company that was winding up affairs for COMPANY B, the STATE company that had acquired COMPANY A. WITNESS 2 confirmed that COMPANY A did not participate in the payment of supplemental health care plans for retirees. The Division did not have information that would rebut the Petitioner's own testimony that he paid all of the premiums or the information that he had developed to determine that his wife's former employer did not contribute to health care premiums.

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.

Applying these statutes to this case, the Petitioner is not claiming a deduction for any amount paid by a governmental body. Thus, part (i) of Utah Code Ann. § 59-10-114(3)(e) will not prevent the Petitioner from taking a health care deduction. The Petitioner has presented credible evidence that he is not entitled to participate in a health plan funded in whole or in part by an employer. On that basis, part (ii) of Utah Code Ann. § 59-10-114(3)(e) will not prevent him from taking a health care deduction.

#### DECISION AND ORDER

Based upon the foregoing, the Commission finds that, for purposes of calculating the Petitioner's 2003 and 2004 Utah individual taxable income, the amounts paid by the Petitioner for health care insurance qualify as a Utah health care deduction. On that basis, the Commission reverses the portion of the Division's audits disallowing the health care deduction for the Petitioner for the 2003 and 2004 tax years. 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:

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.