

08-0502
Audit
Signed 06/23/2008

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,

Petitioner,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 08-0502

Account No. #####

Tax Type: Income Tax

Tax Year: 2005

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 2

For Respondent: RESPONDENT REPRESENTATIVE, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5 on June 4, 2008. Petitioner (the "Taxpayer") filed an appeal of an income tax audit of additional tax and interest for the year 2005. The matter had originally been scheduled for a Telephone Status Conference, but was converted to an Initial Hearing with the consent of the parties. The amount of the additional income tax had been \$\$\$\$ and as of the date of the issuance of the Statutory Notice, March 5, 2008, the interest had been \$\$\$\$\$. The additional tax resulted from Respondent's (the "Auditing Division's") denial of a health insurance premium deduction and a correction regarding the deduction for one-half the federal income tax. The Taxpayer conceded that she had made an error regarding the federal income tax deduction, but questioned the denial of the health insurance premium deduction.

APPLICABLE LAW

For purposes of Subsection (2)(h), a subtraction for the amount paid for health care insurance as defined in title 31A, is not allowed: (i) for an amount that is reimbursed or funded in whole or in part by the federal government or the state; and (ii) for a taxpayer who is eligible to participate in a health plan that is maintained and funded in whole or in part by the taxpayer's employer or the taxpayer's spouse's employer. Utah Code Sec. 59-10-114 (3)(e).

Interest on any underpayment, deficiency, or delinquency of any tax or fee administered by the commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received. Utah Code Sec. 59-1-402 (5).

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. Utah Code Sec. 59-1-401(13).

DISCUSSION

The Taxpayer explained that during 2005 she had paid both Medicare health insurance premiums and premiums for a supplemental insurance which was offered through her former employer. She was a retired federal worker during that year. The Taxpayer explained that when she was preparing her return she had called the Tax Commission for help at the 1 800 # provided and spoke to someone named (X). She indicates that she was told over the telephone that she could deduct the health insurance premiums. When she prepared her tax return she actually wrote on the form next to the deduction "per (X) at 1-800 # can use entire amount paid for Medicare."

The Taxpayer then explained that later, after being audited she called and spoke with TAX COMMISSION EMPLOYEE, the auditor. She thought from that conversation that the healthcare premium

deduction might be allowed. However, when she appealed the audit it was the Auditing Division's position that the deduction was properly disallowed and she would have to pay the additional tax. At the hearing the Auditing Division did not object to waiver of the portion of interest related to the denial of the health care premium deduction. This appears to be a Tax Commission employee error, confirmed by the fact that she had written the information on her return and it was not correct.

Upon review of the applicable law and facts in this matter, incorrect verbal advice from a Tax Commission employee may provide grounds to waive penalties or interest, but not the underlying tax. No penalties were assessed with the audit. The law clearly disallows the Taxpayer to claim the premiums paid for Medicare, as it is funded in part by the government. It also disallows the premiums paid for her supplemental insurance as it is a plan maintained and funded in part by her former employer, and also, because her former employer was the federal government, may have been funded in whole or in part by the government.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the audit as to the additional tax for the tax year 2005. The Commission waives the portion of the interest that has accrued from the disallowance of the health insurance premium deduction. 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.

Appeal No. 08-0502

DATED this _____ day of _____, 2008.

Jane Phan
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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: Failure to pay the balance due as a result of this order within thirty days from the date hereon may result in an additional penalty. Petitioners may contact the Taxpayer Services Division about setting up a payment plan, at (801) 297-7703.

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