

08-1534
AUDIT – INCOME TAX
TAX YEAR: 2005
SIGNED: 01-15-2009
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, M. JOHNSON, D.DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 08-1534 Account No. ##### Tax Type: Income Tax Year: 2005 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
For Respondent: RESPONDENT REP, 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 January 7, 2009.

PETITIONER 1 AND PETITIONER 2 (the “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of individual income tax for the 2005 tax year. On June 23, 2008, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

In its Statutory Notice, the Division informed the taxpayers that the assessment was due to its disallowance of a Health Care Insurance Premium Deduction in the amount of \$\$\$\$\$. The \$\$\$\$\$ of premiums consisted of: 1) \$\$\$\$\$ of premiums for an insurance policy funded in part by the federal government, PETITIONER 1's former employer; 2) \$\$\$\$\$ of Medicare premiums deducted from the taxpayers' social security benefits. At the hearing, the taxpayers conceded that the \$\$\$\$\$ of premiums for an insurance policy funded in part by PETITIONER 1's former employer did not qualify for the deduction. However, they assert that their Medicare premiums should, nevertheless, qualify for the deduction. As a result, they ask the Commission to reverse that portion of the audit concerning the disallowance of the Medicare premiums.

The Division explains that Medicare premiums qualify for the exemption if a taxpayer is not eligible to participate in a health plan funded in whole or in part by a current or former employer. Because PETITIONER 1 participates in an insurance policy funded in part by his former employer, the Division asserts that neither he nor his wife can qualify for any Health Care Insurance Premium Deductions, even if the payments are for Medicare or other plans not funded in whole or in part by an employer. For these reasons, the Division asks the Commission to sustain its assessment in its entirety.

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) (2005) and 59-10-114(3)(e) (2005), as follows:

(2) 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.

Page 7 of the Utah 2005 Individual Income Tax Instruction Booklet provided instruction concerning the Health Care Insurance Premium Deduction, as follows in pertinent part:

A taxpayer may deduct the premiums paid by the taxpayer for health care insurance during the taxable year for the taxpayer, spouse and dependents. Qualifying taxpayers are subject to the following requirements and limitations.

REQUIREMENTS

To qualify, the taxpayer or taxpayer's spouse must not be eligible to participate in a plan offered and funded (fully or partially) by an employer or former employer. A retiree, who may participate in a plan offered and funded (fully or partially) by a previous employer, cannot take this deduction. Employees who elect not to participate in a plan offered and funded by an employer or former employer cannot claim a deduction. Pre-tax deductions from wages through employer-sponsored programs, such as a cafeteria or flex plan, cannot be claimed as a deduction.

LIMITATIONS

Qualified taxpayers who meet the requirements above may have their deduction limited by:

1. Premiums fully or partially reimbursed or funded by the federal, state or any agency or instrumentality of the federal government or state, **excluding Medicare** (emphasis added).

....

DISCUSSION

The evidence submitted shows that PETITIONER 1's Medicare payments were deducted from his social security benefits, while PETITIONER 2's Medicare payments were deducted from her own social security benefits. Accordingly, the Commission will consider each taxpayer's Medicare payments separately to determine if each qualifies for the Health Care Insurance Premium Deduction.

PETITIONER 1's Medicare Payments. Section 59-10-114(3)(e)(ii) provides that a "subtraction for an amount paid for health care insurance . . . is not allowed . . . for a taxpayer 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." Because PETITIONER 1 participates in a health plan funded in part by his former employer (the federal government), this statute provides that he is no longer allowed to deduct health care insurance premiums, even for plans, such as Medicare, that are separate from the one provided by his former employer. Accordingly, the Medicare payments made by PETITIONER 1 do not qualify for the deduction.

This decision is consistent with the Commission's decisions in other cases. In *Appeal No. 01-1211* (Utah State Tax Comm'n Nov. 8, 2001), the Commission found that a federal retiree participating in a health plan funded by his former employer (the federal government), was not entitled to deduct Medicare payments. In *Appeal No. 06-0036* (Utah State Tax Comm'n Jan. 9, 2007), the Commission considered a case where a taxpayer paid premiums on three insurance policies, only one of which was funded by the taxpayer's employer. The Commission found that payments on all three policies were disqualified from the deduction because the taxpayer had one policy that was partially funded by his employer. Furthermore, in *Appeal No. 08-0502* (Utah State Tax Comm'n Jun 23, 2008), the Commission considered a federal retiree who made Medicare payments in addition to paying premiums on a health plan partially funded by her former employer

(the federal government). In this case, the Commission found that none of the payments qualified for the deduction, stating:

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.

Regardless of what the statutes provide, the taxpayers contend that the instructions found in the Utah 2005 Individual Income Tax Instruction Booklet (“2005 Instruction Booklet”) provide that Medicare payments qualify for the deduction. The taxpayers point out that the “Limitations” section of the instructions provides that Medicare payments are excluded from any limitation and, thus, are eligible for the deduction. The Division explains that the directions in the 2005 Instruction Booklet were confusing and that the instructions were rewritten for subsequent years’ instruction booklets. Nevertheless, the instructions, even if confusing, do not change the law. Because PETITIONER 1 is eligible to participate in a plan partially funded by his former employer, he may not take any Health Care Insurance Premium Deduction. For these reasons, the Commission finds that the Medicare payments made by PETITIONER 1 do not qualify for the deduction.

PETITIONER 2’s Medicare Payments. PETITIONER 2 is a retired teacher. Pursuant to Section 59-10-114(3)(e)(ii), PETITIONER 2 is also disqualified from taking a deduction for any health plan payments if she is “eligible to participate in a health plan maintained and funded in whole or in part by [her] employer or [her] spouse's employer.” The Division determined that PETITIONER 2’s Medicare payments do not qualify for the deduction. The Division’s determination is correct if PETITIONER 2 is either eligible to participate in a health plan funded by her former employer or eligible to participate in the health plan funded by PETITIONER 1’s former employer (the federal government). The taxpayers did not argue that she is

Appeal No. 08-1534

ineligible to participate in either of these types of plans. Without such evidence, the Commission finds that the Medicare payments made by PETITIONER 2 also do not qualify for the deduction.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment in its entirety. The taxpayers' 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:

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 _____, 2009.

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 _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Appeal No. 08-1534

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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