

08-2114  
AUDIT  
SIGNED 10-28-09

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>PETITIONER 1 &amp; PETITIONER 2,  Petitioner,  vs.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.</p>	<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b></p> <p>Appeal No. 08-2114</p> <p>Tax Type: Income Tax Tax Years: 2005 and 2006</p> <p>Judge: Marshall</p>
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**Presiding:**

Pam Hendrickson, Commission Chair  
Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, *Pro Se*  
PETITIONER 2, *Pro Se*  
For Respondent: RESPONDENT REP 1, Assistant Attorney General  
RESPONDENT REP 2, Manager, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 19, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue before the Utah State Tax Commission in this matter is Taxpayer's appeal of income tax and interest deficiencies issued for the 2005 and 2006 tax years.
2. The Division issued a Notice of Deficiency and Audit Change for the 2005 tax year on October 1, 2008. The notice reflected additional tax due of \$\$\$\$ and interest in the amount of \$\$\$\$\$. No penalties were assessed. (Exhibit R-1).
3. The Division issued a Notice of Deficiency and Audit Change for the 2006 tax year on October 1, 2008. The notice reflected additional tax due of \$\$\$\$ and interest in the amount of \$\$\$\$\$. No penalties were assessed. (Exhibit R-2).

4. Taxpayer filed a 2005 Utah Individual Income Tax Return. On Line 13 the Taxpayer entered a deduction in the amount of \$\$\$\$\$. On Taxpayer's Income Tax Supplemental Schedule (TC-40S), the Taxpayer entered code 74 for the Line 13 deduction, which indicates the deduction was taken for healthcare insurance premiums. (Exhibit R-3).
5. Taxpayer filed a 2006 Utah Individual Income Tax Return. On Line 13 the Taxpayer entered a deduction in the amount of \$\$\$\$\$. On Taxpayer's Income Tax Supplemental Schedule (TC-40S), the Taxpayer entered code 74 for the Line 13 deduction, which indicates the deduction was taken for healthcare insurance premiums. (Exhibit R-4)
6. On July 28, 2008, the Division submitted a request to the Taxpayer for verification of the health insurance premiums paid for 2005 and 2006. (Exhibits P-5 and R-6).
7. Taxpayer submitted a letter dated July 30, 2008 in response to the request for verification, instructing the Division to contact their tax preparer, PERSON A. (Exhibit P-1). Taxpayer did not submit any verification that he was entitled to the health insurance premium deductions.
8. The Office of Personnel Management issued a letter dated September 11, 2008 to PERSON A indicating that the federal government pays approximately 70%-75% of the health benefit premiums for retirees. (Exhibit P-6).
9. Information from the Office of Personnel Management website indicates that retirees pay the same premiums and receive the same benefits as employees. For most employees and retirees, the Government contributes between 72% and 75% of the total cost of the health insurance premiums, and retirees are responsible for the remainder. (Exhibit R-7).
10. Taxpayers are federal retirees, and receive an annuity from the Office of Personnel Management.
11. Taxpayers argued that according to a report from the National Active and Retired Federal Employees, nine other states do not tax or require returns from retired federal employees. (Exhibit P-6).
12. Taxpayers provided a letter dated January 14, 2009 from the Office of Personnel Management that indicates that if the annuity started after July 2, 1986, a portion of each annuity payment is taxable. (Exhibit P-7). Taxpayer pointed out that the letter also indicates that the Office of Personnel Management does not have authority to make any changes in starting, stopping, adding or subtracting these deductions from payments. Taxpayer argued that he retired in 1982, and therefore the letter did not apply to him.
13. Taxpayers argued that their civil rights had been violated. They stated that self-employed individuals are able to deduct up to 100% of health insurance premiums. Taxpayers

- provided a letter to Representative ( X ) questioning why federal employees and retirees are treated differently in Utah than other states, and why government employees and retirees are being treated differently than those in the private sector. (Exhibit P-10). In addition, Taxpayers argued that they have been self-employed for 10 years, operating COMPANY A, and should be allowed to deduct their health insurance premiums on that basis. (Exhibit P-13).
14. Taxpayers argued that the State of Utah does not provide adequate oversight of tax preparers, and that the CITY issues business licenses without requiring special certification to prepare tax returns. (Exhibits P-1, P-2, and P-4).
15. Taxpayers submitted as Exhibit P-11 a number of letters addressed to GOVERNOR. Taxpayers stated that they wrote the letters in efforts to obtain government oversight of professionals such as tax preparers and attorneys.

APPLICABLE LAW

Utah Code Ann. §59-10-543, places the burden of proof on the Petitioner, as set forth below:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under Title 59, Chapter 1, Part 5 is filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported, and of which change or correction the commission had no notice at the time it mailed the notice of deficiency.

Utah Code Ann. §59-10-543 (2008).

Utah Code Ann. §59-10-114 provides for certain additions and subtractions of taxable income of an individual when calculating that person's Utah state taxable income. A subtraction for amounts paid for healthcare insurance premiums is allowed in accordance with Utah Code Ann. §59-10-114(2)(h) and §59-10-114(3)(e), 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.

Utah Code Ann. §59-10-114 (2005).<sup>1</sup>

#### CONCLUSIONS OF LAW

Utah Code Ann. §59-10-114(2)(h) allows for a deduction of health insurance premiums. The deduction is limited by Utah Code Ann. §59-10-114(3)(e), which provides that the deduction is not allowed if the premium is funded in whole or in part by the federal or state government, or if the taxpayer is eligible to participate in a health plan maintained and funded in whole or in part by the taxpayer's employer. Taxpayers are retired federal employees and participate in a health insurance plan that the Office of Personnel Management pays between 70% and 75% of the premiums. Thus, the Taxpayers are not entitled to a deduction of their health insurance premiums under the plain language of the statute.

Taxpayers argued that their civil rights had been violated, and stated that as a federal retiree the State of Utah is treating them differently than other states. In addition, Taxpayers argued that government employees are being treated differently than private sector employees. There has been no evidence presented to show that the tax code, as written, is not being applied to all taxpayers equally. Further, it is outside the scope of the Commission's authority to determine such issues. *See ( X ) v. Utah State Tax Comm'n.*, 34 P.3d 180 (Utah 2001), quoting *State Tax Commission v.( X )*, 596 P.2d 634 (Utah 1979).

Taxpayers also raised the issues of government oversight for tax preparers and the issuance of business licenses by cities to tax preparers. It is Taxpayers' position that the State

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<sup>1</sup> The equivalent sections for 2006 are §§ 59-10-114(2)(g)(2006) and 59-10-114(3)(e)(2006).

should provided training to, and oversee the activities of, these tax preparers. The Tax Commission has not been charged with this duty. Further, the regulation of tax preparers and issuance of business licenses by cities is not relevant to whether the Office of Personnel Management paid a portion of Taxpayers' health insurance premiums, or whether Taxpayers were entitled to a deduction of those premiums for the 2005 and 2006 tax years.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment of income tax and interest. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Jan Marshall  
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Sec. 59-1-601 et seq. and 63-46b-13 et seq.

*JM/08-2114.fof*