

09-2694
INCOME
TAX YEAR: 2006
SIGNED: 12-16-2010
COMMISSIONERS: R. JOHNSON, M. JOHNSON, M. CRAGUN
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION
Petitioners,	Appeal No. 09-2694
v.	Account No. #####
AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Income
Respondent.	Tax Year: 2006
	Judge: Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1, Taxpayer
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
RESPONDENT REP. 2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 3, 2011. Based upon the evidence and testimony presented by the parties, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is Utah individual income tax.
2. PETITIONER 1 and PETITIONER 2 (the "Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessment of individual income tax for the 2006 tax year.

Appeal No. 09-2694

On August 19, 2009, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest (calculated through September 18, 2009), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

3. On November 3, 2010, the Commission issued an Initial Hearing Order in this matter, which the taxpayers timely appealed.

4. In the 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 \$\$\$\$\$ that they had claimed on their 2006 Utah income tax return.¹ Exhibit R-1.

5. The \$\$\$\$\$ amount of premiums at issue consists of premiums the taxpayers paid for dental insurance and vision insurance in 2006.

6. None of the dental insurance and vision insurance premiums at issue were reimbursed by or funded in whole or in part by the taxpayer’s employers or former employers.

7. PETITIONER 2, who was retired in 2006, was eligible to participate in a health care plan that her former employer, the LDS church, provided and funded in part. The health care plan provided by PETITIONER 2’s former employer did not include dental or vision coverage. She participated in her former employer’s health care plan for the first three months of 2006, but not for the last nine months of 2006. Exhibit R-5.

¹ The taxpayers initially claimed a Health Care Insurance Premium Deduction of \$\$\$\$\$, in which they had erroneously included \$\$\$\$\$ of long-term care insurance premiums. The Division corrected the return to allow a Long-Term Care Insurance Premium Deduction in the amount of \$\$\$\$\$, as allowed under Utah Code Ann. §59-10-114(2)(j) (2006). However, the Division disallowed the remaining \$\$\$\$\$ of the Health Care Insurance Premium Deduction.

8. PETITIONER 1, who was also retired in 2006, was eligible to participate in a health care plan that his former employer, the federal government, provided and funded in whole or in part. The health care plan provided by PETITIONER 1's former employer did not include dental or vision coverage. He participated in his former employer's health care plan for all of 2006.

9. Because the taxpayers are responsible to pay 100% of their dental and vision insurance premiums, they assert that Utah law should allow them to deduct the premiums for these policies, whether or not they are eligible to participate in other health care insurance policies funded in whole or in part by their former employers. As a result, the taxpayers ask the Commission to find that they qualify for the \$\$\$\$ Health Care Insurance Premium Deduction that the Division disallowed, in addition to the \$\$\$\$ Long-Term Health Care Insurance Deduction that the Division allowed.

10. The Division does not contest the taxpayers' claim that they are responsible for 100% of their dental and vision insurance premiums. However, the Division asks the Commission to deny the taxpayers' appeal and to sustain its assessment on either one of two bases. First, the Division argues that the taxpayers do not qualify for a deduction of any health care insurance premiums, including those paid in full by the taxpayers, because they are eligible to participate in plans provided by and funded in whole or in part by their former employers. Second, the Division argues that dental insurance and vision insurance does not qualify as "health care insurance" subject to the deduction.

APPLICABLE LAW

1. Utah Code Ann §59-10-114 (2006) 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 or deduction for amounts paid for health care insurance is allowed in accordance with Subsections 59-10-114(2)(g) and 59-10-114(3)(e), as follows:

(2) There shall be subtracted from federal taxable income of a resident or nonresident individual:

....

(g) 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; . . .

....

(3)(e) For purposes of Subsection (2)(g), 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.

2. UCA §59-1-1417 (2010) provides that the burden of proof is upon the petitioner

in proceedings before the Commission, with limited exceptions as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
 - (a) required to be reported; and
 - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Section 59-10-114(2)(g) allows a taxpayer to deduct from Utah taxable income those amounts paid during the taxable year for health care insurance. This exemption, however, is limited by

Appeal No. 09-2694

the conditions set forth in Section 59-10-114(3)(e). 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.” In 2006, the taxpayers were both eligible to participate in health plans funded in whole or in part by their former employers. Accordingly, Subsection 114(3)(e)(ii) precludes the taxpayers from qualifying for any deduction for health care insurance, even though the health plans funded in whole or in part by their employers do not cover dental and vision care and the taxpayers pay 100% of the premiums for separate dental insurance and vision insurance policies.

This decision is consistent with prior Commission decisions. For example, in *Utah State Tax Commission Appeal No. 06-0036* (Initial Hearing Order 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 premiums paid on all three policies did not qualify for the deduction because the taxpayer had one policy that was partially funded by his employer.

Based on the Division’s first argument, the taxpayers do not qualify for a Health Care Insurance Premium Deduction because they are eligible to participate in a plan funded in whole or in part by their former employers. Accordingly, the Commission need not address the Division’s second argument concerning whether dental and vision plans qualify as health care insurance for purposes of the exemption.

CONCLUSIONS OF LAW

1. The taxpayers are not entitled to the Health Care Insurance Premium Deduction because they are eligible to participate in health plans provided by and funded in whole or in part by former employers. Accordingly, they do not qualify for a Health Care Insurance Premium Deduction of \$\$\$\$\$, the amount they paid for separate dental and vision insurance plans in 2006.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Division's assessment is sustained in its entirety. It is so ordered.

DATED this _____ day of _____, 2011.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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. §63G-4-302. 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 Ann. §§59-1-601 and 63G-4-401 et seq. Failure to pay any remaining 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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