

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER 1 & PETITIONER 2,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 10-0090</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2006-2007</p> <p>Judge: Marshall</p>
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Presiding:

Jan Marshall, Administrative Law Judge

Appearing:

For Petitioner: PETITIONER 1, *Pro Se*
For Respondent: RESPONDENT REP., Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on August 31, 2010. Taxpayer is appealing the audits of his income tax returns for the 2006 and 2007 tax year, specifically the deduction taken for health care insurance premiums. Taxpayer was assessed additional tax of \$\$\$\$ for the 2006 tax year and \$\$\$\$ for the 2007 tax year. Interest was assessed and continues to accrue.

APPLICABLE LAW

Utah Code Ann. §59-10-114¹ 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, as follows in pertinent part:

- (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:

¹ The Commission cites to the Utah Code in effect in 2006, the tax year at issue.

- (A) the taxpayer;
 - (B) the taxpayer's spouse; and
 - (C) the taxpayer's dependents; and
 - (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or 213, Internal Revenue Code, in determining federal taxable income for the taxable year.
- (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.

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(13) of the Utah Code provides, "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."

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

DISCUSSION

Taxpayer is a retired federal employee and has health care insurance coverage through the COMPANY 1 ("COMPANY 1"). He acknowledges that COMPANY 1 covers a portion of the premiums for the insurance coverage, but believes the law is unjust and singles out federal employees/retirees and does not apply to the general public.

The taxpayer also argued that claiming the deduction was not an intentional error on his part, that he prepares his returns using COMPANY 2. He believes that COMPANY 2 should have caught the error. Taxpayer also noted that he has been unemployed for the past three months, and needs time to pay the tax liability.

The Division's representative stated that it appears the Taxpayer agrees that he was not entitled to claim the health insurance premium deduction. She noted that the Division is not singling out federal employees/retirees, that the law is equally applied. The Division's representative stated that typically the Commission will only waive an assessment of interest if a Tax Commission employee provided erroneous information to the taxpayer or if there was a Tax

Commission error. She noted that the Taxpayer's reliance on COMPANY 2 or other misinformation is not a Tax Commission error and that interest should not be waived.

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 care insurance plan maintained and funded in whole or in part by the taxpayer's employer. Taxpayer participates in a healthcare insurance plan that is maintained and funded, in part, by the COMPANY 1. Thus, the Taxpayer is not entitled to a deduction of his health insurance premiums

The Commission has promulgated Rule R861-1A-42 to set forth the circumstances under which a waiver of penalties or interest will be granted. Rule R861-1A-42 specifically provides, "[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." The Commission finds there has not been a Tax Commission error that warrants a waiver of the interest assessed. However, the Commission has established the offer in compromise program, which allows for a reduction of tax liability, penalties, or interest in the event a taxpayer is experiencing a financial hardship. The Commission does not know whether Taxpayer would qualify for the offer in compromise program; however, the Taxpayer may contact the Taxpayer Services Division directly at (801) 297-7703.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment for the 2006 and 2007 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:

Appeal No. 10-0090

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 _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
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.

JM/10-0090.int