

11-296  
INCOME TAX  
TAX YEAR: 2007  
SIGNED: 10-14-2011  
COMMISSIONERS: M. JOHNSON, D. DIXON, M. CRAGUN  
EXCUSED: R. JOHNSON  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioners,

v.

AUDITING DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 11-296

Account No. #####-1

Tax Type: Income

Tax Year: 2007

Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioners: PETITIONER 1  
PETITIONER 2

For Respondent: RESPONDENT REP., 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 § 59-1-502.5, on August 15, 2011. Petitioners (the “Taxpayers”) are appealing the audit deficiency issued by Respondent (the “Division”) of individual income tax and the interest accrued thereon for the 2007 tax year. The audit denied the health care insurance premium deduction the Taxpayers had claimed on their Utah Individual Income Tax Return. The Division issued the Notice of Deficiency and Audit Change (“Statutory Notice”) on December 15, 2010, 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>
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$ <sup>1</sup>	\$\$\$\$\$

APPLICABLE LAW

Utah Code Ann. § 59-10-114 (2007) 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

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<sup>1</sup> Interest was calculated through the date of the Statutory Notice and continues to accrue on any unpaid balance.

amounts paid for health care insurance is allowed in accordance with Utah Code §§ 59-10-114(2)(g) and 59-10-114(3)(e) (2007), 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; 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.

Utah Code § 59-10-537(1)(a) (2010) (prior version at § 59-10-537(1) (2007)) provides for the imposition of interest for failure to pay tax when due, as follows:

Subject to the other provisions of this section, if any amount of income tax is not paid on or before the last date prescribed in this chapter for payment, interest on such amount at the rate and in the manner prescribed in Section 59-1-402 shall be paid.

Utah Code Ann. § 59-1-1417 (2010) provides that the burden of proof is upon the petitioner (taxpayer) in income tax matters before the Commission as follows:

In a proceeding before the commission, the burden of proof is on the petitioner . . .

#### DISCUSSION

The Taxpayer, PETITIONER 1 is a federal government retiree. He and PETITIONER 2 were eligible to participate in a health insurance plan through the Office of Personnel Management Retirement Services Program. The Taxpayers had originally claimed a deduction in the amount \$\$\$\$ on their Utah Individual Income Tax return for the health care insurance premium deduction. This amount had included the portion of the premiums which they had paid for their health insurance and dental insurance in addition to premiums that

they had paid for a short term care policy. After the audit, review of the statutory provisions and further discussion with the Division, the Taxpayers no longer claimed that they were entitled to deduct their health insurance premiums or dental premiums. At issue is the amount that they had paid for their short term care policies.

The Taxpayers explained that independent from any employer or former employer sponsored plan, they had purchased a short term care policy from COMPANY 1. This plan was completely separate from any plan sponsored by their former employers. Each of the Taxpayers had their own policy. The amount of the premiums they had paid for the plan in 2007 had been \$\$\$\$ each, or a total of \$\$\$\$\$. At the hearing the only amount for the health care premium deduction that the Taxpayers had requested they be allowed was this \$\$\$\$\$. The Taxpayers provided documentation from COMPANY 1 to support the amount of the premiums that they had paid in 2007 for the short term care policy.

The Division did not refute any of the facts. They did not challenge that the COMPANY 1 policy was completely separate from any employer sponsored policy. They did not claim that the policy was funded in part by a former employer or the government. It was the Division's contention that the Taxpayers themselves were not eligible to claim a healthcare premium deduction on any policy because of the provisions of Utah Code §59-10-114(3)(e)(ii). Subsection (ii) limits the taxpayers who qualify to claim the deduction. Under subsection (ii), no deduction is allowed "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." Under § 59-10-401(2), a taxpayer's employer includes any former employer. It was the Division's position that the Taxpayers were disqualified from being able to claim any health insurance premium deductions because they are eligible to participate in a health plan maintained and funded in whole or in part by their former employer. Thus, as ineligible taxpayers, they may not claim any amount for the deduction, including amounts for separate plans that they obtained independently from their employer. The Division points out that the State Tax Commission has issued prior decisions on this issue and its position is consistent with these decisions.<sup>2</sup>

Upon review of the statutory restrictions on the healthcare premium deduction, and the facts in this matter, the Division has correctly disallowed the deduction. Despite that the Taxpayers arranged for the short term care policy from COMPANY 1 completely independently from their former employer, they are disqualified from eligibility to claim the deduction pursuant to of Utah Code §59-10-114(3)(e)(ii). This is an issue that has previously come before the State Tax Commission. The Tax Commission has considered the restriction to the deduction provided at Utah Code §59-10-114(3)(e)(ii) and concluded that the statute prohibits

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<sup>2</sup> The Division representative points to Tax Commission decisions in Appeal No. 03-1675, 06-0036, 06-0788, 08-1534.

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taxpayers who qualify to participate under an employer or former employer's health insurance plan from qualifying for the deduction, even on plans totally separate from the employer and for which the taxpayer pays 100% of the premium.<sup>3</sup> In this matter the Taxpayers are ineligible for the deduction under the statute.

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Jane Phan  
Administrative Law Judge

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 \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
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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<sup>3</sup> The facts in this case are similar to the facts in Utah Tax Commission Appeal No 06-0036.