

12-2282
 INCOME
 TAX YEARS: 2009, 2010
 SIGNED: 6-4-2013
 COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
 EXCUSED: B. JOHNSON
 GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2

Petitioner,

v.

AUDITING DIVISION OF THE
 UTAH STATE TAX COMMISSION

Respondent.

INITIAL HEARING ORDER

Appeal No. 12-2282
 Account No. #####
 Tax Type: Income Tax
 Tax Year: 2009 and 2010
 Judge: Nielson-Larios

Presiding:

Aimee Nielson-Larios, Administrative Judge

Appearances:

For Petitioner: PETITIONER 1 AND PETITIONER 2, by telephone
 For Respondent: RESPONDENT 1, Auditing Division, in person
 RESPONDENT 2, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on March 7, 2013 for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. Petitioner (“Taxpayer”) challenges the audit assessments for the 2009 and 2010 tax years. Respondent (“Division”) issued the Notices of Deficiency and Audit Change (“Statutory Notice”) on August 27, 2012 for the 2009 and 2010 tax years, providing the following amounts:

<u>Tax Year</u>	<u>Audit Tax</u>	<u>Interest</u>	<u>Penalties</u>	<u>Audit Total Due</u>
2009	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The audit tax due amounts resulted from the Division’s disallowance of the Health Benefit Plan Credit (“Credit”). Interest was calculated through September 26, 2012 and continues to accrue on any unpaid balance.

APPLICABLE LAW

Utah Code § 59-1-1417 (2012) provides that the burden of proof is upon the petitioner (the taxpayer) in income tax matters before the Commission as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following . . . [The statute then provides three exceptions; none of which apply to this case.]

For the Credit, Utah Code § 59-10-1023(4) (2009-2010) states:

A claimant may not claim a tax credit under this section if the claimant is eligible to participate in insurance offered under a health benefit plan maintained and funded in whole or in part by:

- (a) the claimant's employer; or
- (b) another person's employer.

Utah Code § 59-10-103(1)(d) (2009-2010) defines “employer” for purposes of Title 59 Chapter 10 as the same as employer is defined in Utah Code § 59-10-401 (2009-2010). Section 59-10-401(2) (2009-2010) defines employer as follows:

"Employer" means a person or organization transacting business in or deriving any income from sources within the state of Utah for whom an individual performs or performed any services, of whatever nature, and who has control of the payment of wages for such services, or is the officer, agent, or employee of the person or organization having control of the payment of wages. It includes any officer or department of state or federal government, or any political subdivision or agency of the federal or state government, or any city organized under a charter, or any political body not a subdivision or agency of the state.

DISCUSSION

The Taxpayer is a retired federal employee. The federal government pays part of the premiums for his and his wife’s Altius health plan. The Taxpayer also has Medicare Part B insurance. The Taxpayer asserts that he should be entitled to a Credit calculated using the actual medical expenses that he has not claim on his federal returns. The Taxpayer commented that the state income tax instructions for the Credit are confusing. He provided a copy of the state instructions for the 2010 tax year. The Taxpayer asserted that the instructions do not say that the full Credit is disallowed if an employer pays part of the premiums. He questions the limitation on the Credit for situations in which a taxpayer or his spouse is insured under a health plan maintained and funded in whole or in part by a former employer. He believes this restriction is inequitable, illogical, discriminatory, and unreasonable. He explained that when he started his appeal, he believed this restriction was based on Tax Commission policy, but he now understands it is based on the Utah Code, created by the Utah Legislature. The Taxpayer asks the Commission to look into the Credit and, if the law needs to be changed, to recommend changes to the Utah Legislature.

Division argued that the Taxpayer does not qualify for the Credit based on the definition of employer that is found in § 59-10-103(1)(d) and § 59-10-401. It asserted that under this definition, an employer includes “a person or organization . . . for whom an individual **performs or performed** any services, of whatever nature, and who has control of the payment of wages for such services . . .” (emphasis added) and, thus, “employer” includes current and former employers. The Division asserted that the Taxpayer is not entitled to the Credit because parts of his and his wife’s insurance premiums were paid by the federal government, his former employer. Additionally the Division submitted copies of prior Commission decisions for Appeal 08-2114, available at <http://tax.utah.gov/commission/decision/08-2114.fofsanqc.pdf>, and Appeal 10-0090, available at <http://tax.utah.gov/commission/decision/10-0090.intsanqc.pdf>. The Division asserted that these two cases further show that retired federal employees do not qualify for the Credit. The Division further explained that these cases involved the Health Care Insurance Premiums Deduction (“Deduction”) that was later changed to the Credit and that the Deduction and the Credit both basically have the same limitation, namely a taxpayer cannot qualify for the Deduction or the Credit if the taxpayer is eligible to participate in insurance offered under a health benefit plan maintained and funded in whole or in part by the taxpayer’s employer.

The Division is correct that the Taxpayer is not entitled to the Credit. Generally, tax statutes providing exemptions or credits are strictly construed against the taxpayer. This is according to a well recognized principle of law requiring narrow interpretation in such cases.¹ Likewise in this case, the statutory language of the Credit should be interpreted narrowly.

For purposes of the Credit, “employer” includes former employers. Utah Code § 59-10-103(1) (1987–present) defines employer for purposes of Title 59 Chapter 10 to be the same as employer is defined in § 59-10-401 (1987-present). Over many years, these definitions have remained unchanged and the Commission has consistently interpreted them to include former employers. The Commission’s prior decisions for Appeal Nos. 01-1359 and 11-296 show how the Commission interpreted employer for the 1999 and 2007 tax years to include former employers.² Although these orders addressed the Deduction found in § 59-10-114(2)(g) (2006-2007) and § 59-10-114(2)(h) (1999-2005), these decisions still relied on the meaning of employer as defined in § 59-10-103(1) and § 59-10-401 to determine the taxpayers’ eligibility for the Deduction. In these decisions, the Commission interpreted employer to include former

¹ See *Parson Asphalt Prods., Inc. v. State Tax Comm’n*, 617 P.2d 397, 398 (Utah 1980) (“[s]tatutes which provide for exemptions should be strictly construed, and one who so claims has the burden of showing his entitlement to the exemption”). Tax credit statutes, like tax exemptions, “are to be strictly construed against the taxpayer.” *MacFarlane v. State Tax Comm’n*, 2006 UT 18, ¶11. However, the court did explain in that case, “While we recognize the general rule that statutes granting credits must be strictly construed against the taxpayer, the construction must not defeat the purposes of the statute. The best evidence of that intent is the plain language of the statute.” (Citations omitted.) See *id.* at ¶19.

² The decisions for Appeal Nos. 01-1359 and 11-296 are available at <http://tax.utah.gov/commission/decision/01-1359sanqc.htm> and <http://tax.utah.gov/commission/decision/11-296.intsanqc.pdf>, respectively.

employers and denied the Deduction to taxpayers who were retired federal employees eligible to participate in health insurance plans funded in part by their former employer, the federal government. The decisions for Appeal Nos. 08-2114 and 10-0090, presented by the Division, have rulings consistent with the rulings for Appeal Nos. 01-1359 and 11-296. Likewise, in this case, the Taxpayer is ineligible for the Credit because he is a retired federal employee eligible to participate in a health care insurance plan funded in part by his former employer, the federal government.

Furthermore, the Taxpayer may not claim any amount for the Credit. Under § 59-10-1023(4), because the Taxpayer and his wife are eligible to participate in insurance offered under a health benefit plan maintained and funded in part by his former employer, the Taxpayer is “[a] claimant [who] may not claim a tax credit under this section.” The language of § 59-10-1023(4) precludes the Taxpayer from claiming the Credit, regardless of the amount; the statute does not merely prevent the Taxpayer from including certain premiums in his calculation of the Credit. In addition to the statute, the 2010 Instructions correctly inform taxpayers: “You may claim a [Credit] . . . **only** if you [or] your spouse on a joint return . . . is **not** insured under a health benefit plan maintained and funded in whole or in part by your . . . current or former employer . . .” Consistent with § 59-10-1023(4), this language also provides that the Credit, regardless of the amount, is disallowed if a taxpayer’s former employer pays part of the premiums. Thus, the Taxpayer is not entitled to a Credit calculated using only his Medicare Part B insurance premiums or any other amounts.

As requested by the Taxpayer, the judge has conveyed to the Commission the Taxpayer’s request for the Commission to look into the Credit and, if the law needs to be changed, to recommend changes to the Utah Legislature. The Taxpayer is also free to contact his legislators regarding this or any other issue.

Lastly, although not specifically requested by the Taxpayer, the Commission has determined that a waiver of interest for the 2009 tax year is appropriate in this case. Under Utah Code § 59-1-401(13) (2012), the Commission has authority to waive interest based on reasonable cause shown. Recently, the Commission reviewed the printed 2009 TC-40 Instructions and found that those instructions for the Credit did not adequately inform taxpayers that “employer” includes taxpayers’ current and former employers. The Commission decided that interest for the 2009 tax year should be waived for all appeals cases in which the Credit was incorrectly claimed for the 2009 tax year by retired taxpayers who were insured under health benefit plans maintained and funded by their former employers. The Taxpayer’s situation falls within this category of cases. For the 2010 tax year, though, the Taxpayer is not entitled to a similar waiver. For that year, the TC-40 Instructions correctly informed taxpayers they were ineligible for the Credit if they were insured under a health benefit plan maintained and funded in whole or in part by a “current or former employer.”

In summary, the interest assessed for the 2009 tax year should be waived, but the remaining audit tax and interest assessed should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission waives the interest assessed for the 2009 tax year only and sustains the remaining tax and interest assessed for the 2009 and 2010 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:

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 _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
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.