

12-2621
TAX TYPE: INCOME TAX
TAX YEAR: 2009
DATE SIGNED: 6-6-2013
COMMISSIONERS: D. DIXON, M. CRAGUN, R. PERO
EXCUSED: B. JOHNSON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2621</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2009</p> <p>Judge: Nielson-Larios</p>
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Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearing:
For Petitioner: TAXPAYER-1, by telephone
For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 22, 2013 for an Initial Hearing in accordance with Utah Code Ann. § 59-1-502.5. Petitioner (“Taxpayer”) requests a waiver of the interest assessed on the income tax filing for the 2009 tax year. Respondent (“Division”) issued the Notice of Deficiency and Audit Change (“Statutory Notice”) on October 22, 2012 for the 2009 tax year, providing the following amounts:

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

The Audit Tax Due resulted from the Division’s disallowance of the Health Benefit Plan Credit (“Credit”). Interest was calculated through November 21, 2012 and continues to accrue on the 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) 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) defines “employer” for purposes of Title 59 Chapter 10 as the same as employer is defined in Utah Code § 59-10-401 (2009). Section 59-10-401(2) (2009) 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.

The Commission has been granted the discretion to waive penalties and interest. Utah Code § 59-1-401(13) (2012) states:

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 (2012) 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.

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DISCUSSION

At the initial hearing, the Taxpayer explained that he is retired and he did not have a current employer paying any part of his health insurance premiums, but his former employer did pay part for the 2009 tax year. He said he claimed the Health Benefit Plan Credit (“Credit”) for the 2009 tax year after he read the 2009 TC-40 Instructions. He provided a copy of the instructions, which state: “You may claim a

[Credit] only if you [or] your spouse . . . is not insured under a health benefit plan maintained and funded in whole or in part by your [or] your spouse's . . . **employer**. . . ." (emphasis added). These instructions did not say "current or former employer." The Taxpayer noted that the 2010 TC-40 Instructions for the Credit used "current or former employer" instead of just "employer." The Taxpayer provided a copy of the 2010 instructions as well. "Employer" was not further defined within the 2009 or 2010 TC-40 Instructions.¹ The Taxpayer commented that it would have been nice if "employer" had been defined in the 2009 TC-40 Instructions. The Taxpayer said he followed the 2009 TC-40 Instructions and claimed the Credit in 2009 because he had no current employer funding part of his health insurance premiums.

The Division explained that the Taxpayer did not qualify for the Credit based on the definition of employer that is found in § 59-10-103(1)(d) and § 59-10-401. 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). The Division agrees that the 2010 TC-40 Instructions were clearer, but believes there was no Tax Commission error in the 2009 TC-40 Instructions.

The Division correctly disallowed the Credit in this case. 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. Although these orders addressed the Health Care Insurance Premiums Deduction ("Deduction") found in § 59-10-114(2)(g) (2006-2007) and § 59-10-114(2)(h) (1999-2005) instead of the Credit currently at issue, 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. The decisions for Appeal No. 01-1359 and Appeal No. 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.

However, after reviewing the printed 2009 TC-40 Instructions for the Credit along with previous instructions for the Deduction and later instructions for the Credit, **the Commission has determined that interest should be waived in this case and other similar 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.** Unlike previous and subsequent instructions, the printed 2009 TC-40 Instructions, relied on by the Taxpayer and by others during the 2009 filing season, did not adequately inform them that "employer" includes former employers. The 2001-2007 TC-40 Instructions use "employer or former employer," "previous employer," and/or "employer from which he/she retired" for clarification. Similarly, the revised 2009 TC-40 Instructions

¹The current versions of the 2009 and 2010 TC-40 Instructions are available on line at <http://tax.utah.gov/forms/2009/tc-40inst.pdf> and <http://tax.utah.gov/forms/2010/tc-40inst.pdf>, respectively.

and the 2010-2012 TC-40 Instructions use “current or former employer” for clarification. However, the printed 2009 TC-40 Instructions had no such clarifying language.²

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission grants the Taxpayer’s request for a waiver of interest for the 2009 tax year. 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.

² For the 2008 tax year, there was no Deduction or Credit.