

13-1195
TAX TYPE: INCOME TAX
TAX YEAR: 2009 and 2010
DATE SIGNED: 1-15-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 13-1195</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2009 and 2010</p> <p>Judge: Nielson-Larios</p>
--	---

Presiding:

Aimee Nielson-Larios, Administrative Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 24, 2013 for an Initial Hearing in accordance with Utah Code § 59-1-502.5. The parties disagree on whether Petitioner (“Taxpayer”) may claim the health benefit plan credit (“Credit”), found in Utah Code § 59-10-1023, for insurance premiums the Taxpayer paid for his INSURANCE policies for vision, accident, dental, and hospital.

On March 21, 2013, the Division issued Notices of Deficiency and Audit Change for the 2009 and 2010 tax years showing the following audit amounts:

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

Interest was calculated through April 20, 2013 and continues to accrue on any unpaid balance. The Division disallowed Credit amounts of \$\$\$\$\$ for 2009 and \$\$\$\$\$ for 2010. The 2009 assessment also included an \$\$\$\$\$ increase to the Taxpayer’s federal adjusted gross income; the Taxpayer did not dispute that change.

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(1) (2009-2010) states:

(1) As used in this section:

....
(c) "Excluded expenses" means an amount a claimant pays for insurance offered under a health benefit plan for a taxable year if:

-
(ii) the claimant deducts that amount under Section 162 or 213, Internal Revenue Code:
(A) on the claimant's federal individual income tax return for the taxable year; and
(B) with respect to an eligible insured individual; or

....
(d) (i) **"Health benefit plan" is as defined in Section 31A-1-301.**
(ii) "Health benefit plan" does not include equivalent self-insurance as defined by the Insurance Department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

....
(2) Subject to Subsection (3), and except as provided in Subsection (4), for taxable years beginning on or after January 1, 2009, a claimant may claim a nonrefundable tax credit equal to the product of:

- (a) the difference between:
(i) the total amount the claimant pays during the taxable year for:
(A) insurance offered under a **health benefit plan**; and
(B) an eligible insured individual; and
(ii) excluded expenses; and
(b) 5%.

(3) The maximum amount of a tax credit described in Subsection (2) a claimant may claim on a return for a taxable year is:

- (a) for a single claimant with no dependents, \$300;
(b) for a joint claimant with no dependents, \$600; or
(c) for a claimant with dependents, \$900.

(4) 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.

(Emphasis added.)

Utah Code § 31A-1-301(73) (2009-2010) (current version at § 31A-1-301(75)) defines health benefit plan as follows:

- (a) Except as provided in Subsection (73)(b), "health benefit plan" means a policy or certificate that:
 - (i) provides health care insurance;
 - (ii) provides major medical expense insurance; or
 - (iii) is offered as a substitute for hospital or medical expense insurance, such as:
 - (A) a hospital confinement indemnity; or
 - (B) a limited benefit plan.
- (b) **"Health benefit plan" does not include a policy or certificate that:**
 - (i) **provides benefits solely for:**
 - (A) **accident;**
 - (B) **dental;**
 - (C) income replacement;
 - (D) long-term care;
 - (E) a Medicare supplement;
 - (F) a specified disease;
 - (G) **vision; or**
 - (H) a short-term limited duration; or
 - (ii) **is offered and marketed as supplemental health insurance.**

(Emphasis added.)

DISCUSSION

On his 2009 and 2010 Utah income tax returns, the Taxpayer claimed the following amounts for the Credit: \$\$\$\$\$ for 2009 and \$\$\$\$\$ for 2010. The Taxpayer stated that these amounts reflect the INSURANCE premiums he paid. The Auditing Division disallowed these Credit amounts in full.

The Taxpayer explained that he used his INSURANCE coverage as his primary health insurance. He provided letters from INSURANCE showing he had \$\$\$\$\$ per month in INSURANCE premiums for vision, accident, dental, and hospital policies, each of which had a separate policy number. He explained that he paid these premiums out of pocket. In response to a question, he explained that his employer paid \$\$\$\$\$ per month of the INSURANCE premiums only for August 2010 to July 2011, when the employer considered him to be a full-time employee. The Taxpayer disagreed with the Division's argument that he cannot qualify for the Credit because the INSURANCE policies are marketed as supplemental insurance plans instead of primary insurance plans. Although the INSURANCE website (Division's Exhibit 5) and a letter from his employer (Division's Exhibit 2) described the INSURANCE as supplemental, the Taxpayer emphasizes that he used the INSURANCE policies as his primary insurance.

The Division argues that the Taxpayer cannot qualify to claim the Credit for the INSURANCE policies because those policies are not health benefit plans under the Utah Code. Under § 59-10-1023(2)(a)(i)(A), the Credit is for "insurance offered under a health benefit plan." Under § 59-10-1023(1)(d)(i), "'Health benefit plan' is as defined in [Utah Code] § 31A-1-301." Section 31A-1-301(73)(b)(ii) defines health benefit plans to exclude a policy that "is offered and marketed as supplemental health insurance." The Division argued that the premiums paid for the INSURANCE

policies cannot be used for the Credit because the INSURANCE policies are offered and marketed as supplemental health insurance; thus, the INSURANCE policies are not health benefit plans for purposes of the Credit. For 2010, the Division additionally argues that the Taxpayer cannot claim the INSURANCE premiums because the Taxpayer already claimed those same premiums on his federal tax return for the self-employed health insurance deduction found on Form 1040, page 1, line 29. (Division's Exhibit 4.) Under § 59-10-1023(2)(a)(ii), taxpayers may not claim the Credit for excluded expenses. Section 59-10-1023(1)(c) defines excluded expenses to include amounts paid for insurance if the taxpayer deducts those same amounts on his federal return.

For the situation presented by this appeal, the Taxpayer cannot claim the Credit for the amounts he paid for his INSURANCE policies. Under § 31A-1-301(73)(b)(ii), the INSURANCE policies are excluded from the statutory definition of health benefit plan because the INSURANCE policies are "offered and marketed as supplemental health insurance." Additionally, § 31A-1-301(73)(b)(i)(A), (B) and (G) provides a second reason to exclude three of the four of the Taxpayer's INSURANCE policies. Under these subsections, a "[h]ealth benefit plan' does not include a policy . . . that . . . provides benefits solely for . . . accident[,], . . . dental[, or] vision . . ." The fact that the Taxpayer used the INSURANCE policies as his primary insurance does not change these conclusions.

For the above reasons, the Division's assessment should be sustained in full.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains in full the Division's audit assessments dated March 21, 2013 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

Appeal No. 13-1195

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.