

13-2231  
TAX TYPE: INCOME TAX  
TAX YEAR: 2010  
DATE SIGNED: 10-27-2014  
COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN  
EXCUSED: R. PERO

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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 style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 13-2231</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2010</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER, *Pro Se*  
For Respondent: RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 22, 2014 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Petitioner (“Taxpayer”) timely appealed an audit of his individual income tax return for the 2010 tax year by the Respondent (“Division”). The Taxpayer was assessed additional tax in the amount of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$ through November 21, 2013. There were no penalties assessed.

APPLICABLE LAW

Utah Code Ann. §59-10-1023<sup>1</sup> provides for a nonrefundable tax credit for amounts paid for a health benefit plan, as follows, in pertinent part:

- (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

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<sup>1</sup> The Commission cites to the Utah Code in effect in 2010, the tax year at issue.

- (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 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.

Under Utah Code Ann. §59-10-1002.2, tax credits are apportioned as follows, in relevant part:

- (1) A nonresident individual or a party-year resident individual that claims a tax credit in accordance with Section ...59-10-1023...may only claim an apportioned amount of the tax credit equal to:
  - (a) For a nonresident individual, the product of:
    - (i) the state income tax percentage for the resident individual; and
    - (ii) the amount of the tax credit that the nonresident individual would have been allowed to claim but for the apportionment requirements of this section...

The burden of proof is on the Petitioner, in accordance with Utah Code Ann. §59-1-1417, below, in pertinent part:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner...
- (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
  - (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
  - (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

#### DISCUSSION

The Taxpayer filed a non-resident 2010 Utah individual income tax return. The Division issued a Notice of Deficiency and Audit Change on October 22, 2013 that disallowed a portion of the Health Benefit Plan Credit. This resulted in audit tax in the amount of \$\$\$\$\$, and interest in the amount of \$\$\$\$\$ through November 21, 2013. The Division agrees that the Taxpayer was a non-resident, and did not make any changes to the allocation of income.

The Taxpayer stated that he appealed the audit assessment because in 2010 he was working in Utah for a short period of time. During this period, he paid rent in Utah, and incurred frequent travel expenses, returning to STATE about every ten days. He stated that when he prepared his return, he did everything in good faith, and used Turbo Tax. He stated that he answered all of the questions in Turbo Tax, and in no way did he purposefully try to avoid paying

taxes. He stated that he does not believe he owes additional money to the State of Utah, and does not understand why the audit and appeal are proceeding.

The Division's representative stated that the Taxpayer claimed a health-benefit plan credit of \$\$\$\$ on his return. The Division asked the Taxpayer to provide documentation to verify that he qualified for the credit; and that he did submit a letter from his employer showing that the Taxpayer was not eligible to qualify for a group insurance plan, as well as a letter from INSURANCE COMPANY showing the Taxpayer paid \$\$\$\$ in premiums. She explained that in order to be eligible for the credit, a taxpayer has to pay 100% of the premiums, and they believe the Taxpayer is eligible.

In order to be eligible, you have to pay 100% of your premiums. The Taxpayer is eligible. She noted that the credit is limited to 5% of the premiums paid, with a maximum limit of \$\$\$\$ based on the Taxpayer's filing status of a joint return with dependents. She stated that 5% of the Taxpayer's insurance premiums paid of \$\$\$\$ is \$\$\$\$\$, which is the credit amount they have allowed. The Division's representative explained that when the Taxpayer filed his return, he received a \$\$\$\$ refund. She stated that he would not have received that large of a refund had the credit been calculated correctly. She noted that the Taxpayer is not being assessed additional tax, but is having to repay a refund to which he was not entitled. She noted that there were no penalties assessed, and that interest was assessed pursuant to statute. The Division's representative stated that interest is generally waived if there was a Tax Commission error, or if a Tax Commission employee gave him erroneous advice; and argued that the Taxpayer's reliance on tax preparation software is not reasonable cause to waive interest.

In rebuttal, the Taxpayer stated that when he prepared his tax return, there were deductions that he could have taken, but did not do so. He feels that he should not be audited for something that he did not do intentionally. He believes the audit is unfair because it appears there was some kind of issue with Turbo Tax. He stated that the State of Utah is asking him to pay quite a bit of money, which he believes is harsh. He asked the Commission to make a determination as to whether he has to pay the full amount and to treat him fairly. The Taxpayer stated that he does not believe the State of Utah would go into bankruptcy if they did not receive the audit tax assessed.

The burden of proof is placed on the Taxpayer in this matter to show that he is entitled to a larger health benefit plan credit than was allowed by the Division. Because this matter involves a tax credit, the statute is to be strictly construed against the Taxpayer. Under Subsection (2) of Utah Code Ann. §59-10-1023, a credit is allowed that is equal to the product of the amount paid for insurance and 5%. The Taxpayer provided information to the Division showing that he

paid \$\$\$\$ for insurance premiums; 5% of this is \$\$\$\$\$, the credit amount allowed by the Division. The Taxpayer did not submit any additional documentation at the hearing showing that he paid a greater amount for insurance premiums and excluded expenses, and thus has not sustained his burden of proof to show he is entitled to a larger credit. The audit assessment should be sustained.

Jan Marshall  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment of tax and interest on the audit of the Taxpayer's 2010 individual income tax return. 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 \_\_\_\_\_, 2014.

John L. Valentine  
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.**