

14-368

TAX TYPE: INCOME TAX

TAX YEAR: 2010 AND 2011

DATE SIGNED: 10-17-14

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 14-368</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2010 and 2011</p> <p>Judge: Nielson-Larios</p>
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Presiding:

Aimee Nielson-Larios, Administrative Law 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 September 2, 2014 for an Initial Hearing in accordance with Utah Code § 59-1-502.5. On January 6, 2014, Respondent (“Division”) issued Notices of Deficiency for the 2010 and 2011 tax years showing the following amounts:

<u>Year</u>	<u>Audit Tax</u>	<u>Interest</u>	<u>Penalties</u>	<u>Total Due</u>
2010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2011	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest was calculated through February 5, 2014. In general, interest continues to accrue on any unpaid balance. The Taxpayer claimed a “health benefit plan credit” (“Credit(s)”) of \$\$\$\$\$ for the 2010 tax year and a Credit of \$\$\$\$\$ for the 2011 tax year. Through its audits, the Division disallowed those Credits and also revised the Taxpayer’s “Utah AGI on a part-year or nonresident return.” On April 16, 2014, the Division amended the audit for the 2010 tax year to decrease the “Utah AGI on a part-year or nonresident return,” but the Division still disallowed the Credits. At the initial hearing, the Taxpayer only disputed the disallowance of the Credits; he did not dispute the “Utah AGI on a part-year or nonresident return.”

APPLICABLE LAW

Utah Code § 59-1-1417(1) 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 (2010-2011) states:

(1) As used in this section:

....

(d) (i) **"Health benefit plan" is as defined in Section 31A-1-301.**

....

....

(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) (2010) (2011 version at § 31A-1-301(74)) 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

The Taxpayer explained that he claimed the Credit because he did not use the health care option offered by his employer. He said he instead used a privately sourced healthcare provider. He emphasized that he paid after tax dollars to pay for his insurance. The Taxpayer also emphasized that he did not turn down a healthcare plan *funded in part by his employer*. He stated that his employer did not supplement the employees’ premiums. The Taxpayer submitted a copy of the employer’s “2010 Benefit Enrollment Guide” (“Benefits Guide”). The Taxpayer explained that the same benefits package was offered for the 2011 tax year. The Taxpayer explained that the company was self-insuring and he referred to the Benefits Guide, page 2, paragraph 2, which states the following:

Every year, the employee benefit’s cost and design are reviewed and compared so we can maintain a competitive benefits package for our employees and their families. It is important for employees to understand that **our medical plan is “self-insured”**, which means the company pays the claims. INSURANCE COMPANY-1 now a part of INSURANCE COMPANY (INSURANCE COMPANY) is the Plan Administrator. They are responsible for processing the claims accordingly; however they are not financially responsible for the medical claims.

(Emphasis added.)

The Taxpayer explained that the employer paid the healthcare claims and the employees pay 100% of the premiums. The Benefits Guide, page 7, provides a table of premiums for three medical plans, two dental plans, and a vision plan. The table contains no plain language about whether the employer pays part of the employees’ premiums. The following is an excerpt from the table for the medical plans:

	2010 Benefit Plan Weekly Rates		
	Medical Plans		
	INSURANCE COMPANY Healthcare		
	Basic Plan	Low Plan OPN	High Plan OPN
Employee Only	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Employee + One	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
Family	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

For the medical plans, the Judge notes the increase in the premiums between “employee only” and “employee + one” more than doubles.

The Taxpayer claims he paid \$\$\$\$ in INSURANCE COMPANY-2 premiums eligible for the Credit for the 2010 tax year and \$\$\$\$ in INSURANCE COMPANY-2 premiums eligible for the Credit for the 2011 tax year. The Taxpayer believes he correctly claimed the Credits on his original returns.

In response to the Taxpayer's arguments, the Division asserts that the Taxpayer was "eligible to participate in insurance offered under a health benefit plan maintained and funded in whole or in part by . . . [his] employer . . .," and thus, the Taxpayer does not qualify for the Credits based on § 59-10-1023(4). The Division contends that the Taxpayer has not shown the employer did not fund in part the employer's health benefit plan. The Division explained that "self-insured" in this case means the company paid the claims, but the term does not mean the employer's medical plan was funded fully by the employees.

The Division also asserted that if the Commission rules that the Taxpayer qualifies for the Credits, the Taxpayer's Credits are still limited to 5% of the premiums, not 100%. Furthermore, the Division said that if the premiums are composed of separate medical premiums and dental premiums, only the medical premiums qualify for the Credit. The Judge notes that insurance premiums paid for a policy covering dental only are not amounts paid for "insurance offered under a health benefit plan" for purposes of the Credit, based on § 59-10-1023(1)(d)(i) and § 31A-1-301(b)(i).

Under § 59-10-1023(4), a taxpayer may not claim 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. In the case at hand, the Taxpayer was eligible to participate in a health benefit plan maintained by his employer. The question is whether that employer funded in part the health benefit plan. The Taxpayer claimed that the fact his employer's medical plan is "self-insured" means the employer did not fund the plan in part. The employer's Benefits Guide says "self-insured" "means the company pays the claims." However, the Benefits Guide did not say the employer did not fund in part the employer's medical plan. Thus, the Taxpayer has not shown the employer did not fund in part the medical plan, and he has also not shown he qualifies for the Credit. This conclusion does not change even if the table of premiums does not show the employer as paying part of individual employees' insurance premiums. Based on the limited facts presented, the employer could have contributed money into the health benefit plan, reducing the employees' insurance premium payments.

Because the Taxpayer does not qualify for the Credit, this order does not address the adequacy of the Taxpayer's evidence of the total amount he paid during 2010 and 2011 for insurance offered under a health benefit plan.

Based on the above analysis, the Division correctly denied the Credits for the 2010 and 2011 tax year and the Division's audit assessments should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessments for the 2010 and 2011 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 _____, 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.