

14-1200

TAX TYPE: INCOME TAX

TAX YEAR: 2010

DATE SIGNED: 12-11-2014

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 AND TAXPAYER-2,</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. 14-1200</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2010</p> <p>Judge: Nielson-Larios</p>
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Presiding:

Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, in person

For Respondent: RESPONDENT, Auditing Division, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 2, 2014 for an Initial Hearing in accordance with Utah Code § 59-1-502.5. On April 7, 2014, Respondent (“Division”) issued a Notice of Deficiency for the 2010 tax years showing the following amounts:

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

Interest was calculated through May 7, 2014, and continues to accrue on any unpaid balance. The Taxpayer claimed a “health benefit plan credit” (“Credit”) of \$\$\$\$\$, which the Division disallowed in full.

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) states, in 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
 - (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.)

DISCUSSION

Petitioner (“Taxpayer”) explained that her family in 2010 consisted of her, her husband, and her son. The Taxpayer explained that the husband’s employer did not offer health insurance to its employees. She explained that her employer offered health insurance and paid a portion of her insurance. She explained that the employer would have paid the same amount toward a group plan as a single plan. She explained that she could have added her spouse and son to her plan, but her employer did not pay to cover them; instead, she would have had to pay approximately \$\$\$\$ more per month to add them. The Taxpayer’s employer wrote in a letter dated September 9, 2013, the following:

The health insurance benefit provide by [Taxpayer’s employer] is to pay 69% of health insurance for only the person who is the [Taxpayer’s employer’s] employee. This amounts to paying \$\$\$\$ a month for health insurance with the employee paying the remaining \$\$\$\$ for a single person. A family insurance policy is available but once again the only portion that [Taxpayer’s employer] pays is the \$\$\$\$ with the employee paying for the remaining portion of the premium which is \$\$\$\$ a month. . . .

The Taxpayer explained that her family sought other insurance to cover the husband and son for \$\$\$\$ per month, which increased over time to \$\$\$\$ per month. The Judge notes that \$\$\$\$ * 12 = \$\$\$\$, which is close to the \$\$\$\$ the Taxpayer claimed for the Credit.

The Taxpayer explained that she used TurboTax when she claimed the Credit and she sincerely believes she qualifies for the Credit because her employer did not cover, in whole or in part, the cost of

insurance for the husband and son. She explained that she did not claim the Credit for the amounts she paid for her insurance. She explained the difficulty of working for a nonprofit that did not cover part of the cost of her family members' insurance. She explained that finding a private plan was her family's only practical option.

In response to the Taxpayer's arguments, the Division explained that the Division disallowed the Credit because the Division believes the Taxpayer has not met § 59-10-1023(4). The Division asserts that the Taxpayer was eligible to participate in a family insurance plan funded in part by her employer. The Division explained that because her employer would have paid a portion of the premiums for that plan, she is not eligible for the Credit. The Division read from online information about the Health Benefit Plan Premiums, which included an Example 5. The Division explained that this information was available online for the 2010 tax year. This information is currently located at <http://incometax.utah.gov/2010/credits/health-benefit-plans-credit>, and states in part:

Health Benefit Plan Premiums Non-refundable Credit Worksheet – Do You Qualify?

Answer the following questions to determine if you qualify for the Health Benefit Plan non-refundable credit.

1. Are you or your spouse eligible to participate in a health benefit plan in which a current or former employer pays any portion of the health plan premiums, even if you elect not to participate in the plan?
 - a. If the answer is Yes, STOP you do not qualify for the credit.
 - b. If the answer is Yes and the employer's plan only covers employees and does not allow the employee to purchase coverage through the company plan for his/her family members, go to question 2.
 - c. If the answer is No, go to question 2.

....

Example 5: Company Plan Covers Spouse and Children, but Employee Elects not to Participate

NAME is eligible to participate in an employer-funded health benefit plan. The plan provides coverage for her family, but only if she pays an additional premium. NAME chooses not to cover her family under the plan. Instead she buys a separate, less expensive plan for her spouse and children.

Since her spouse and children were eligible and could have been included in the employer plan, a credit for any premiums paid is not allowed.

The Division explained that the Taxpayer's situation is similar to that for Example 5.

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: (a) the [taxpayer’s] employer; or (b) another person’s employer.” Based on this language, the Taxpayer cannot qualify for the Credit. The Taxpayer was eligible to participate in a family insurance policy offered by her employer that would have covered her, her husband, and son, and her employer would have paid part of the premiums for that policy. The Judge is sympathetic to the Taxpayer’s arguments that the employer would not have paid more toward the family insurance policy than the employer paid toward the Taxpayer’s single policy. Regardless, the employer would still have paid in part the premiums for the family insurance policy had the Taxpayer chosen it. Thus, based on the language of § 59-10-1023(4), the Taxpayer does not qualify for the Credit. The Taxpayer’s argument that the private insurance option chosen by the family was significantly less expensive than the coverage offered by her employer also does not change the Taxpayer’s eligibility for the Credit. Section 59-10-1023 was not written to provide the Credit for taxpayers in such situations.

Based on the above analysis, the Division correctly denied the Credit for the 2010 tax year and the Division’s audit assessment should be sustained.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit assessment for the 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. 14-1200

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.