

ATTORNEY GENERAL OPINION NO. 95-02

TO: R. Michael Southcombe, Chairman
Idaho State Tax Commission
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

Dear Mr. Southcombe:

QUESTION PRESENTED

Does passage of Pub. L. No. 104-7, the Self-Employed Health Insurance Act, which was signed into law by President Clinton on April 11, 1995, apply retroactively to the benefit of Idaho taxpayers on their Idaho income taxes for 1994?

SHORT ANSWER

No. The provisions of the Self-Employed Health Insurance Act apply retroactively for 1994 federal tax returns, but not for 1994 Idaho tax returns. Unless the Idaho Legislature acts affirmatively to incorporate this recent change in federal tax law retroactively into Idaho law, self-employed Idaho taxpayers cannot avail themselves of this tax deduction on their Idaho tax returns for the 1994 tax year.

A. Background

The "Self-Employed Health Insurance Act" (Pub. L. No. 104-7) amends section 162 of the Internal Revenue Code to reinstate as a deductible business expense certain health care costs incurred by self-employed individuals (sole proprietors and members of partnerships). Prior to December 31, 1993, self-employed individuals could deduct twenty-five percent of the amount paid for health insurance for the individual and the individual's spouse and dependents. This deduction expired on December 31, 1993, and has not been a deduction available for computing federal taxable income for tax years beginning on and after January 1, 1994. Pub. L. No. 104-7 reinstates this deduction retroactively to January 1, 1994, and increases the amount of the deduction from twenty-five to thirty percent for tax years beginning on and after January 1, 1995. President Clinton signed the bill into law on April 11, 1995.

To take advantage of this deduction, federal taxpayers who have already filed 1994 returns will be required to file amendments to their 1994 federal income tax returns.

B. Application of Pub. L. No. 104-7 to the State of Idaho

The Idaho Income Tax Act (chapter 30, title 63, Idaho Code) defines “taxable income” by incorporating the definitions found in the Internal Revenue Code, subject to certain modifications. Idaho Code § 63-3022 provides in pertinent part:

The term “taxable income” means “taxable income” as defined in section 63 of the Internal Revenue Code, adjusted as provided in this chapter,

Idaho Code § 63-3004, as most recently amended by 1995 Idaho Session Laws, chapter 79, § 1 (H.B. 117) defines the term “Internal Revenue Code” as follows:

(a) The term “Internal Revenue Code” means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 1995.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions.

The Internal Revenue Code “as amended, and in effect on the first day of January, 1995” did not permit a deduction for health care costs incurred by self-employed individuals. Subsection (b) of Idaho Code § 63-3004 recognizes, for Idaho income tax purposes, retroactive effective dates of amendments to the Internal Revenue Code, but only if the amendment to the Internal Revenue Code is “prior to the effective date of the latest amendment to this section.” The latest amendment to Idaho Code § 63-3004 was by H.B. 117 of the 1995 Idaho Legislature. That bill, now 1995 Idaho Session Laws, chapter 79, § 1, was signed into law by Governor Batt on March 10, 1995. Its effective date was January 1, 1995. Both dates are before President Clinton’s signature of Pub. L. No. 104-7 on April 11, 1995. Thus, the deduction for health care costs incurred by self-employed individuals in 1994 is not a deduction available for the computation of Idaho taxes under present Idaho law.

C. Delegations of Authority

Your request letter also asks about possible constitutional implications of adoption of Pub. L. No. 104-7 through H.B. 117. Since H.B. 117 does not effect an adoption of Pub. L. No. 104-7, issues about possible improper delegations of legislative authority do not arise. It is appropriate to note, however, that part of the reason for annually updating

Idaho Code § 63-3004 is to avoid any possibility of an apparent adoption of federal law changes that significantly affect state tax policy without legislative approval.

The Idaho Supreme Court has in the past struck down statutes that provide for similar legislative delegations to Congress. See Idaho Savings and Loan Association v. Roden, 82 Idaho 128, 350 P.2d 255 (1960). In that case, the Idaho Supreme Court considered legislative provisions which required Idaho savings and loan associations to insure their accounts with the Federal Savings and Loan Insurance Corporation in the State of Idaho. However, to obtain such insurance, savings and loan associations were required by federal law to abide by and conform with the National Housing Act and any amendments thereto, and the rules and regulations of the Federal Home Loan Bank Board. Finding the legislation to be an unconstitutional delegation of legislative power, the court said:

The legal axiom that all legislative power is vested in the Legislature of the State of Idaho has been set forth in *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923). The legislature cannot delegate its authority to another government or agency in violation of our Constitution. *State v. Nelson*, *supra*; *State v. Heitz*, 72 Idaho 107, 238 P.2d 439 (1951).

. . . Thus, it is demonstrated that the unconstitutional provisions delegating to the Congress and the Home Loan Bank Board the legislative power and function to make future laws and regulations governing appellant's business and its right to remain in business, are not severable from the provisions requiring appellant to obtain insurance of accounts by the Federal Savings and Loan Insurance Corporation. The provisions requiring such insurance are therefore unconstitutional and void.

82 Idaho at 134-35.

The rule which has developed in Idaho regarding delegation to other public bodies is that delegation is permissible where the legislature establishes the standard or defines the limits by which rulemaking or fact finding may be judged. However, it is impermissible for the legislature to delegate to another public body the power to set the standard itself. The rule has also been analyzed as a distinction between the delegation of legislative functions and executive functions. See, e.g., Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978); State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977); Board of County Commissioners v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1975); Boise Redevelopment Agency v. Yick Kong Corp., 94 Idaho 876, 499 P.2d 575 (1951).

For this reason, the Idaho Legislature may adopt existing provisions of the Internal Revenue Code as a part of the Idaho Income Tax Act, but it cannot adopt, as Idaho law, unknown and unknowable future federal provisions.

Finally, it is important to note that in certain circumstances it is possible for the Idaho Legislature to validly make retroactive changes to tax statutes. A fuller analysis of retroactivity of tax legislation is found in Attorney General Opinion 91-2. *See* 1991 Idaho Att'y Gen. Ann. Rpt. 21.

AUTHORITIES CONSIDERED

1. Idaho Code and Session Laws:

Idaho Code § 63-3004.

1995 Idaho Session Laws, chapter 79, § 1.

2. Idaho Cases:

Board of County Commissioners v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1975).

Boise Redevelopment Agency v. Yick Kong Corp., 94 Idaho 876, 499 P.2d 575 (1951).

Idaho Savings & Loan Association v. Roden, 82 Idaho 128, 350 P.2d 255 (1960).

State v. Heitz, 72 Idaho 107, 238 P.2d 439 (1951).

State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977).

State v. Nelson, 36 Idaho 713, 213 P. 358 (1923).

3. Other Authorities:

Attorney General Opinion No. 91-2, 1991 Idaho Att'y Gen. Ann. Rpt. 21.

The Self-Employed Health Insurance Act (Pub. L. No. 104-7).

DATED this 20th day of April, 1995.

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Analysis by:

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