

06-0806

TAX TYPE: INDIVIDUAL INCOME

TAX YEAR: 1999, 2002, 2003 & 2004

DATE SIGNED: 6-28-2011

COMMISSIONERS: B. JOHNSON, M. JOHNSON, D. DIXON, M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1 &amp; TAXPAYER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No.    06-0806</p> <p>Account No.    #####</p> <p>Tax Type:       Individual Income</p> <p>Tax Years:      1999, 2002, 2003 &amp; 2004</p> <p>Judge:           Chapman</p>
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner:    REPRESENTATIVE-1 FOR TAXPAYER, Attorney

REPRESENTATIVE-2 FOR TAXPAYER, Attorney

For Respondent:   REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 6, 2011.

TAXPAYER-1 and TAXPAYER-2 (“Petitioners” or “taxpayers”) are appealing Auditing Division’s (the “Division”) assessments of additional individual income tax for the 1999, 2002, 2003, and 2004 tax years.

On May 15, 2006, the Division issued Statutory Notices of Estimated Income Tax (“Statutory Notices”) to the taxpayers, in which it imposed additional tax, penalties and interest (calculated as of September 15, 2006), as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

2004                      \$\$\$\$\$                      \$\$\$\$\$                      \$\$\$\$\$                      \$\$\$\$\$                      \$\$\$\$\$

Subsequent to the Statutory Notices being issued, the Internal Revenue Service (“IRS”) allowed the taxpayers net operating loss (“NOL”) carrybacks that eliminated the tax liability for 2002 and 2004 tax years and most of the liability for the 2003 tax year. The NOL carrybacks had no affect on the 1999 tax year. Although the NOL carrybacks eliminated almost all tax liability for 2002, 2003, and 2004, the Division asserts that interest would have accrued on the amounts due for these years until such time that the NOL carrybacks were allowed. For these reasons, the amounts the Division claimed to be due at the Initial Hearing (with interest calculated through May 31, 2011) (“revised assessments”), are, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

The taxpayers did not file Utah returns for the four years at issue. The Division claims that the taxpayers were domiciled in Utah for all four years at issue and that, as a result, all of their income for these years is subject to Utah taxation. Should the Commission, however, find that the taxpayers were not domiciled in Utah for the 1999 tax year, the Division contends that the income the taxpayers received from the 1998 sale of their Utah business is Utah source income that is subject to Utah taxation.

The taxpayers contend that they were domiciled in states other than Utah for the four years at issue. As a result, they ask the Commission to reverse the Division’s audits for each year at issue and find that they have no liability for any of the years at issue.

The taxpayers, however, indicated that they were not prepared to contest the Division’s assertion that interest was due for those tax years where the subsequent NOL carrybacks eventually eliminated all or most of

the tax liability. The Commission addressed the NOL carrybacks in a prior order in this appeal (Order Denying Petitioners' Motion for Stay Dec. 22, 2008), in which the Commission noted that:

Utah Code Ann. §59-10-538(2) provides that “[f]or purposes of this section, if any overpayment of tax imposed by this chapter results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year of the net operating loss which results in such carryback.” As a result, it appears that Utah law may consider a net carryback loss to be a payment of a prior year’s tax liability, in which case a taxpayer may still be liable for any interest, and possibly penalties, associated with a delinquency arising from the prior year.

As a result, the interest associated with the NOL carrybacks for 2001, 2002, and 2003 will only be reversed if the taxpayers meet their burden of proof to show that they were not domiciled in Utah.

APPLICABLE LAW

Under Utah Code Ann. §59-10-104(1)<sup>1</sup>, “a tax is imposed on the state taxable income . . . of every resident individual[.]”

For purposes of Utah income taxation, a “resident individual” is defined in UCA §59-10-103(1)(q)(i) to mean:

- (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
- (B) an individual who is not domiciled in this state but:
  - (I) maintains a permanent place of abode in this state; and
  - (II) spends in the aggregate 183 or more days of the taxable year in this state.

Utah Admin. Rule R865-9I-2 (“Rule 2”) further explains when a person is “domiciled” in Utah for income tax purposes. For the 1999 and almost all of the 2002 tax year (i.e., until the Commission amended the rule on December 9, 2002), Section D. of Rule 2 provided as follows:

"Domicile" means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place he has (whenever he is absent) the intention of returning. It is the place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making

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<sup>1</sup> All citations to the 2004 version of the Utah Code and the Utah Administrative Code, unless otherwise indicated.

a permanent home. After domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for before a person can be said to have changed his domicile, a new domicile must be shown.

Beginning on December 9, 2002 and effective for the remainder of 2002, as well as the 2003 and 2004 tax years, Rule 2 provided as follows in pertinent part:

A. Domicile.

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.
2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.
  - a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.
  - b) Domicile applies equally to a permanent home within and without the United States.
3. A domicile, once established, is not lost until there is a concurrence of the following three elements:
  - a) a specific intent to abandon the former domicile;
  - b) the actual physical presence in a new domicile; and
  - c) the intent to remain in the new domicile permanently.
4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

Utah Admin. Rule R884-24P-52 ("Rule 52") sets forth a non-exhaustive list of factors or objective evidence that is determinative of domicile, as follows:

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;
2. the length of any continuous residency in the location claimed as domicile;
3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
4. the presence of family members in a given location;
5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;
8. the location of registration of vehicles, boats, and RVs;
9. membership in clubs, churches, and other social organizations;
10. the addresses used by the individual on such things as:
  - a) telephone listings;
  - b) mail;
  - c) state and federal tax returns;
  - d) listings in official government publications or other correspondence;
  - e) driver's license;
  - f) voter registration; and
  - g) tax rolls;
11. location of public schools attended by the individual; or the individual's dependents;
12. the nature and payment of taxes in other states;
13. declarations of the individual:
  - a) communicated to third parties;
  - b) contained in deeds;
  - c) contained in insurance policies;
  - d) contained in wills;
  - e) contained in letters;
  - f) contained in registers;
  - g) contained in mortgages; and
  - h) contained in leases.
14. the exercise of civil or political rights in a given location;
15. any failure to obtain permits and licenses normally required of a resident;
16. the purchase of a burial plot in a particular location;
17. the acquisition of a new residence in a different location.

UCA §59-1-1417 (2010) provides that the burden of proof is upon the petitioner in proceedings

before the Commission, with limited exceptions as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
  - (a) required to be reported; and
  - (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

The Division asserts that the taxpayers were Utah resident individuals for the years at issue pursuant to Section 59-10-103(1)(q)(i), which provides that the Petitioners are Utah resident individuals if they are either: 1) domiciled in Utah; or 2) present in Utah for 183 or more days in any one year. The Division did not assert that the taxpayers were present in Utah for 183 or more days of any year at issue. Accordingly, the first issue is whether the taxpayers were domiciled in Utah for the years at issue. If the taxpayers are found to be domiciled in Utah, all of their income is subject to Utah taxation, and the Division's assessments will be sustained. Only if the taxpayers are found not to be domiciled in Utah for the 1999 tax year will the Commission address the second issue concerning Utah source income, specifically whether the 1999 income arising from the 1998 sale of the taxpayers' Utah business is Utah source income.

The taxpayers admit that they were domiciled in Utah between 1989 and 1998. However, they claim that they changed their domicile to STATE-1 for the 1999 tax year, changed their domicile back to Utah during the 2000 tax year, and changed their domicile first to STATE-2 and later to STATE-3 for the 2002, 2003, and 2004 tax years. During the years at issue, the taxpayers always owned a Utah home (either under their own names or through an entity they controlled or owned). However, they also owned homes for periods in other states, including STATE-4, STATE-1, STATE-2, and STATE-3.

During the 1990s, the taxpayers operated a (X) business in Utah and lived in a home they owned in CITY-1, Utah ("CITY-1 home"). TAXPAYER-1 business activities were conducted in a number of states, including Utah and STATE-1. In 1998, the taxpayers sold the (X) business to NAME-1, a person in STATE-1, and TAXPAYER-1 moved to STATE-1 to work for NAME-1. TAXPAYER-1 worked for NAME-1 from late 1998 to late 1999, when his employment was terminated. TAXPAYER-1 continued to have business activities in both Utah and STATE-1 throughout the tax years at issue.

In mid-1999, the taxpayers purchased a home in STATE-4 and obtained STATE-4 driver's licenses (at which time they surrendered their Utah driver's licenses). The taxpayers also filed a 1999 non-resident STATE-1 income tax return, on which they indicated that they were full-year residents of STATE-4 during 1999. Nevertheless, for purposes of the Initial Hearing before the Commission, they now claim that they were domiciled in STATE-1, not STATE-4 during 1999. Accordingly, the Commission must determine if the taxpayers changed their Utah domicile to STATE-1 for the 1999 tax year.

1999 Tax Year. For the 1999 tax year, "domicile" was defined in Rule 2(D) to mean the place where a person has established his or her "true, fixed, permanent home and principal establishment . . . not for a mere special or temporary purpose, but with the present intention of making a permanent home. . . ." Furthermore, the rule provided that once domicile is established, that domicile is not changed until there is: 1) an abandonment of the old domicile; and 2) the intention and establishment of a new domicile.

The taxpayers claim that it was their intent to change their Utah domicile to STATE-1 and that they would still be domiciled in STATE-1 if TAXPAYER-1 employment with NAME-1 had not ended. Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes<sup>2</sup> and have determined that a person's actions may be accorded greater weight in determining his or her domicile than a declaration of intent.<sup>3</sup>

Prior to TAXPAYER-1 accepting the job with NAME-1, the taxpayers had contact with STATE-1. The 1998 purchase price of the taxpayers' business was allocated to various assets, including a condominium that the taxpayers' business owned in STATE-1. They also have had contact with STATE-1 since TAXPAYER-1 employment with NAME-1 ended, as the taxpayers' evidence shows that they were in STATE-

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2 The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals. *See Lassche v. State Tax Comm'n*, 866 P.2d 618 (Utah Ct. App. 1993); *Clements v. State Tax Comm'n*, 839 P.2d 1078 (Utah Ct. App. 1995), *O'Rourke v. State Tax Comm'n*, 830 P.2d 230 (Utah 1992), and *Orton v. State Tax Comm'n*, 864 P.2d 904 (Utah Ct. App. 1993).

3 *See Clements v. Utah State Tax Comm'n*, 893 P.2d 1078 (Ct. App. 1995); and *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 614 (Utah 1978).

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1 for 59 days in 2001, 114 days in 2002, 32 days in 2003, and 20 days in 2004, all years in which they claim to be domiciled somewhere other than STATE-1. The taxpayers purchased a home in STATE-1 at some point, though the date of sale is not specified. Evidence was proffered, however, to show that the taxpayers sold a home they owned in STATE-1 on September 25, 2000 for \$\$\$\$\$.

Although the taxpayers had some contacts with STATE-1, the taxpayers continued to own a home or homes in Utah in 1999. On May 25, 1999, the taxpayers signed a Quit Claim Deed to transfer their CITY-1 home to BUSINESS(“BUSINESS”), a STATE-4 entity that the taxpayers appear to either control or own.<sup>4</sup> A real estate purchase contract indicates that BUSINESS contracted to buy another home in CITY-2, Utah (“CITY-2 home”) on November 17, 1999. The January 21, 2000 closing statement shows the purchase price to be \$\$\$\$\$. The taxpayers or BUSINESS continue to own the CITY-2 home, and the taxpayers continue to reside in it. It is unclear when the taxpayers first made an offer to purchase the CITY-2 home, as the November 17, 1999 contract indicates that the “evaluations & inspections deadline” is December 15, 1997 and the “Settlement Deadline” is January 5, 1999. In several portions of the contract, the buyers are identified to be TAXPAYER-1 and TAXPAYER-2, even though BUSINESS is identified as the buyer on the first page on the contract.

On July 9, 1999, the taxpayers also purchased a home in CITY-3, STATE-4 for \$\$\$\$\$, which they sold on April 3, 2000. The Settlement Statement for the purchase of the STATE-4 home in July 1999 shows the taxpayers’ address to be at the CITY-1 home, even though the purchase occurred at a time when TAXPAYER-1 was working in STATE-1.

The taxpayers did not establish other contacts with STATE-1 to show that they intended to make STATE-1 their permanent home. They did not obtain STATE-1 driver’s licenses or register to vote in STATE-1. In fact, during August 1999, when TAXPAYER-1 was still working for NAME-1 in STATE-1, both

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<sup>4</sup> On one document, TAXPAYER-1 identified himself to be the manager of BUSINESS, and TAXPAYER-2 identified herself to be a member of BUSINESS.

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taxpayers obtained STATE-4 driver's licenses. As mentioned earlier, the taxpayers did not pay 1999 income tax to STATE-1 as though they were STATE-1 residents. They filed a 1999 STATE-1 non-resident return where they only paid STATE-1 income tax on their STATE-1 source income.

Furthermore, the taxpayers responded on a questionnaire that they had 14 credit cards or credit accounts open during the tax years at issue and that the address on 13 of the 14 accounts was either their CITY-1 home or their CITY-2 home. Furthermore, there is evidence of only one doctor visit in STATE-1 in 1999, whereas there is evidence of numerous visits to Utah dentists and doctors throughout 1999.

In addition, there is no indication that the taxpayers made any donations to STATE-1 entities in 1999, whereas they made donations to at least four Utah entities in 1999. In addition, for all tax years at issue, the taxpayers' accountant was located in Utah. There is no evidence of the taxpayers establishing relationships with professionals in STATE-1. Lastly, the taxpayers have had burial plots in Utah since the mid-1990s.

When the taxpayers' actions are looked at as a whole, it does not show an intent to change their domicile to STATE-1. The actions do not even show a clear intent to abandon their Utah domicile. Except for the taxpayers obtaining STATE-4 driver's licenses and TAXPAYER-1 accepting a job in STATE-1, a state where he had and continues to have a business presence, it appears that a majority of the taxpayers' contacts remained in Utah. Furthermore, as explained below, it appears that the taxpayers continued to retain the Utah contacts for periods when they owned homes in other states, as well. For these reasons, it should be found that the taxpayers were domiciled in Utah, not STATE-1, for the 1999 tax year. Accordingly, the Division's revised assessment for 1999 should be sustained.

2002, 2003, and 2004 Tax Years. The taxpayers claim that they reestablished their Utah domicile after they sold their STATE-4 home in 2000. They also claim that they changed their Utah domicile once again in 2001 when they purchased a condominium in STATE-2 on the CITY-3“(Y)” (“CITY-3 condominium”). The CITY-3 condominium was purchased in July 2001 for \$\$\$\$\$, and the taxpayers sold it in February 2004 for

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\$\$\$\$\$. At issue is whether the taxpayers took sufficient steps to change their Utah domicile to STATE-2 prior to or during the 2002 tax year.

For all but the last month of the 2002 tax year, “domicile” was defined in Rule 2(D) the same way it was defined in 1999. Although Rule 2 was amended on December 9, 2002, the changes do not impact the decision concerning the taxpayer’s domicile during the four tax years at issue. Effective December 9, 2002, the rule was amended to provide that “[d]omicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.” Once domicile is established, Rule 2(A)(3) provides that domicile “is not lost until there is a concurrence of the following three elements: a) a specific intent to abandon the former domicile; b) the actual physical presence in a new domicile; and c) the intent to remain in the new domicile permanently.”

Two of the criteria that must be present for a person to change domicile involve a person’s intent. For domicile to change, Rule 2(3)(a),(c) requires “a specific intent to abandon the former domicile” and “the intent to remain in the new domicile permanently.” As explained earlier, Utah courts have held that a person’s actions are accorded greater weight in determining domicile than a person’s declared intent.

Besides purchasing the CITY-3 condominium, the taxpayers had the utilities for the condominium sent to the CITY-3 address while they owned the property. In April 2002, the taxpayers also filed their 2001 federal return and nonresident Utah returns (showing some Utah source income) showing the CITY-3 address. The taxpayers also filed a 2002 federal return in April 2003 showing the CITY-3 address. Furthermore, the taxpayers proffered evidence to show that they registered a YEAR MAKE and MODEL OF CAR in STATE-2 during the period they owned the CITY-3 condominium.

However, the majority of the evidence does not show an intent of the taxpayers to abandon their Utah domicile and establish a new domicile in STATE-2. As mentioned earlier, the taxpayer maintained a Utah

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home during the entire period they owned the CITY-3 condominium. The taxpayers received the primary residential exemption on their Utah home for 2002, 2003, and 2004. The taxpayers indicated that most of their credit cards and credit accounts showed a Utah address. It is not clear if or when TAXPAYER-1 obtained a STATE-2 driver's license. However, it is clear that TAXPAYER-2 obtained a Utah driver's license in 2000 and did not obtain a STATE-2 license.

There is evidence of dozens of visits to Utah dentists and doctors in 2002 and 2003, and no evidence of any visits to STATE-2 medical personnel. While the taxpayers maintained one vehicle in STATE-2, evidence shows that the taxpayer's maintained as many as six vehicles in Utah. Although some W-2's and other tax forms were sent to the CITY-3 address in 2002 and 2003, numerous 1099's and other tax forms were sent to the taxpayers in 2002 and 2003 at their CITY-2 address.

Although there is no evidence that the taxpayers made donations to or were members of STATE-2 entities, there is evidence to show that they made numerous donations to and were members of Utah entities during these years. Records also show that the taxpayers made contributions to the CITY-2 1<sup>st</sup> Ward in these years, but not to wards in other states.

Furthermore, for 2002, 2003, and 2004, the taxpayers' accountant was located in Utah. There is no evidence of the taxpayers establishing relationships with professionals in STATE-2. In addition, various (X) related documents and articles from 2002, 2003, 2004 and 2005 show TAXPAYER-1 address to be the CITY-2 home. In 2003, the UNION identified TAXPAYER-1, of CITY-2, Utah, as the secretary of the Utah club. Based on the totality of the evidence, it should be found that the taxpayers did not abandon their Utah domicile and establish a new domicile in STATE-2.

The taxpayers began to establish some contacts with STATE-3 in 2003. The taxpayers provided a New Home Contract showing that they purchased a home in CITY-4, STATE-3 ("CITY-4 home") for \$\$\$\$ in October 2003. The General Warranty Deed for the CITY-4 home, once recorded, was returned to the

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taxpayers at a CITY-5, Utah business address. The taxpayers filed 2003 and 2004 federal returns in early 2004 and 2005, respectively, showing the CITY-4 address. No state returns were filed for 2002, 2003 and 2004. There is also evidence of a car insurance bill being sent to the CITY-4 address in 2004. However, it is unknown how many vehicles were registered in STATE-3 to compare to the numerous vehicles registered in Utah. It appears that both taxpayers obtained STATE-3 driver's licenses around December 2004 (records show that TAXPAYER-2 surrendered her Utah driver's license at this time and that both taxpayers had STATE-3 driver's licenses when a 2007 report was run). Records also show that both taxpayers registered to vote in STATE-3 on October 31, 2004 and voted in the general election held on November 2, 2004.

However, the taxpayers also maintained their Utah contacts during 2003 and 2004, contacts that were not established in STATE-3 during these years. It appears that most mail was still received in Utah. The taxpayers continued to receive the primary residential exemption on their CITY-2 home during 2003 and 2004 tax years, and the 2004 property tax notice for the CITY-4 home was sent to the taxpayers at a CITY-5, Utah business address. It appears that the taxpayers were still members of the CITY-2 1<sup>st</sup> Ward during 2003 and 2004. A December 2004 CITY-2 1<sup>st</sup> Ward Tithing Settlement Statement was proffered as evidence.

In addition, there is evidence that the taxpayers established new ties and maintained old ties with Utah in 2005, even after they registered to vote in STATE-3 on October 31, 2004. In January 2005, TAXPAYER-1 was elected to a two-year term to serve on the Board of Directors of the FOUNDATION, a Utah charitable organization. There is no evidence that the taxpayers made donations to or were members of STATE-3 organizations during the years at issue, including the last two months of 2004. Furthermore, there is no evidence of professional relationships being severed in Utah or being established in STATE-3. Although some 2004 W-2 forms were sent to the CITY-4 address in early 2005, numerous 1099's were sent to the CITY-2 home in early 2005. Again, various (X) documents from 2004, as well as 2005, show TAXPAYER-1 address to be in Utah.

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By October or November 2004, the taxpayers had registered to vote in STATE-3 and appear to have obtained STATE-3 driver's licenses, which are actions that typically denote an intent of domicile. However, based on the totality of the evidence and the totality of the contacts in Utah and in STATE-3, it should be found that the taxpayers did not abandon their Utah domicile and establish a new domicile in STATE-3 during 2003 or 2004. Accordingly, the Division's revised assessments should be sustained for all four tax years at issue.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the taxpayers were domiciled in Utah during the four tax years at issue. Accordingly, for each tax year, the Division's revised assessment is sustained in its entirety. 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 \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.