

08-2544
 AUDIT
 TAX YEARS: 2002, 2003, 2004, 2005, 2006
 SIGNED 10-01-2009
 COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
 EXCUSED: M. JOHNSON
 GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER</p> <p style="text-align: center;">Petitioner,</p> <p>v.</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. 08-2540</p> <p>Account No. ##### Tax Type: Income Tax Tax Year: 2002-2006</p> <p>Judge: Marshall</p>
--	--

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *Pro Se*
 For Respondent: RESPONDENT REP 1, Assistant Attorney General
 RESPONDENT REP 2, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on August 12, 2009. Taxpayer is appealing a non-filing audit deficiency of Utah individual income tax and interest for the 2002, 2003, 2004, 2005, and 2006 tax years. Through November 26, 2008, Taxpayer was assessed the following amounts:

<u>Tax Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Tax is imposed on the state taxable income of every “resident individual.” *See* Utah Code Ann. §59-10-104(1) (2002-2006).

Utah Code Ann. §59-10-103 defines “resident individual” as follows:

(p) “Resident individual” means:

- (i) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of such period; or
- (ii) an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state. For purposes of this Subsection (1)(p)(ii), a fraction of a calendar day shall be counted as a whole day.

Utah Code Ann. §59-10-103 (1)(k) (2002), (1)(p) (2003), (1)(q) (2004), (1)(s) (2005), (1)(t) (2006).

Further guidance on the determination of resident individual status is provided in Rule R865-9I-2, set forth below, in relevant part:

- D. “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 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.

Utah Admin. Code R865-9I-2 (2002).

Administrative Rule R865-9I-2 was amended in 2003 as follows:

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 the 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.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

Utah Admin. Code R865-9I-2 (2003-2006).

The Utah Legislature has specifically provided that the taxpayer bears the burden of proof in proceedings before the Tax Commission, see Utah Code Ann. §59-10-543, below, in pertinent part:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner. . .

Utah Code Ann. §59-10-543 (2002-2006).

Appeal No. 08-2540

The Commission has been granted the discretion to waive penalties and interest. Section 59-1-401(10) of the Utah Code provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.” Utah Code Ann. §59-1-401(10) (2002-2003) and §59-1-401(11) (2004-2006).

DISCUSSION

On October 27, 2008, the Division issued Notices of Deficiency and Estimated Income Tax for the 2002 through 2006 tax years. It is the Division's position that Taxpayers are residents of the State of Utah for income tax purposes. Taxpayers maintain that they were residents of the State of STATE for all years at issue.

PETITIONER testified that they lived in CITY 1, STATE from 1997, when they moved there from COUNTRY, until April 2008 when they moved to CITY 2, Utah. They argue that partial days spent in Utah should not be considered full days for purposes of determining whether they are residents of Utah for tax purposes because they live in a border town, where it is common for residents to cross the border several times a day.

PETITIONER testified that they lived with his aunt in CITY 1. They did not pay a set amount of rent to his aunt, but rather helped with the living expenses and bought groceries. In 2001, the Taxpayers purchased a trailer located in CITY 2, Utah. He testified that it was destroyed at the time they purchased it, and they did repairs a little at a time to make the trailer livable. Taxpayer paid property tax on the trailer to COUNTY, Utah. Taxpayer itemized the deduction for the mortgage interest on the trailer, and had utilities connected to the trailer during the years at issue. Taxpayer testified that the utilities were needed so that he could work on the trailer.

Taxpayers both worked for either the COMPANY A or COMPANY B casinos during the years at issue. For the all years at issue, Taxpayers used a CITY 2, Utah P.O. Box address on their income tax returns, and on their W2s. In addition, the W2s for the 2003, 2004, 2005, and 2006 tax years also include the Moriah Avenue address, which is the location of Taxpayers' trailer in CITY 2, Utah.

Taxpayers held STATE driver licenses, and have not been issued driver licenses by the State of Utah. Taxpayers registered their vehicles in STATE, and purchased auto insurance in STATE. Taxpayers maintained their bank accounts at BANK and Trust during the years at issue. In addition, Taxpayers' health insurance was through COMPANY C in CITY 3, STATE. During the years at issue, Taxpayers had one school-aged child, who attended SCHOOL in CITY 2, Utah.

The Division's representative acknowledged that this is a very unique case because CITY 2 straddles the border of Utah and STATE. While the Taxpayer worked in STATE, registered their vehicles, and held STATE driver licenses, it is the Division's position that Taxpayers were physically present in Utah; based on their ownership of the trailer, payment of property tax, and child attending school in Utah.

A “resident individual” is one who is in the State of Utah for more than 183 days per year, or one who is “domiciled” in the state for any period of time. Taxpayers testified that residents cross the border into Utah several times a day. In addition, they testified that their daughter attended school in Utah, they had a P.O Box in Utah, and a trailer in Utah that they were fixing up. It is more than likely that Taxpayers spent more than 183 days in Utah, as a partial day is treated as a full day under the statute. Because of the unique situation of CITY 2 being a border town, the Commission also looks at the issue of domicile.

The question of whether one establishes or maintains a domicile in Utah is a question of fact. See *Clements v. Utah State Tax Comm’n*, 893 P.2d 1078, 1081 (Ct. App. Utah 1995), *Lassche v. Utah State Tax Comm’n*, 866 P.2d 618, 621 (Ct. App. Utah 1993), *Orton v. Utah State Tax Comm’n*, 864 P.2d 904, 907 (Ct. App. Utah 1993). Domicile is defined as “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.” Utah Admin. Code R865-9I-2(A)(1) (2003-2006). Utah law requires that a person have a “permanent home” to claim a domicile. The Utah Supreme Court has held that “[d]omicile is based on residence and intent to remain for an indefinite time. The intention need not be to remain for all time, it being sufficient if the intention is to remain for an indefinite period.” *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 615 (Utah 1978). Further, in *Clements v. Utah State Tax Comm’n*, 893 P.2d 1078 (Ct. App. Utah 1995), the Court determined that a person’s actions may be accorded greater weight in determining his or her domicile than a declaration of intent. Taxpayer has the burden of proof in this matter; and while they testified that they were living with family and repairing the trailer so that they could move in, they provided no documentation to that effect. Taxpayers did not provide photographs of the condition of the trailer, receipts for repairs, or utility bills showing that there were only minimal charges during the years at issue. The Commission finds that the Taxpayers were domiciled in Utah during the years at issue. It is clear Taxpayers have many ties to STATE; employment, driver licenses, vehicle registration, and insurance. However, they testified they were staying with a family member in CITY 1, STATE while they CITY 3vated a trailer. Taxpayers had purchased the trailer in Utah in 2001 with the intention of making it their permanent home. Taxpayers paid property tax on the trailer to COUNTY, and do not dispute that they had utilities connected to the trailer. Taxpayers provided the address of the trailer and their Utah P.O. Box to their employers, as evidenced by their W-2s. In addition, their daughter attended school in CITY 2, Utah; rather than CITY 1, STATE.

Considering the penalties assessed in this matter, the domicile issue is complicated and specifically in this case as the facts are such that Taxpayers may not have been aware they were subject to Utah income tax. The Commission finds there is reasonable cause for waiver of the penalties assessed with the audit.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the tax deficiencies and interest, but waives the penalties related to Taxpayers' income tax filings for the 2002, 2003, 2004, 2005, and 2006 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 _____, 2009.

Jan Marshall
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

DATED this ____ day of _____, 2009.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

NOTICE: If a Formal Hearing is not requested, failure to pay the balance due as determined by this order within thirty days of the date hereon, may result in a late payment penalty. Petitioner may contact Taxpayer Services at (801) 297-7703 to make payment arrangements.

JM/08-2540.int