

01-1729  
INCOME - DOMICILE  
TAX YEAR: 1998 & 1999  
SIGNED: 05-09-2002

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER,	)	
	)	<b>ORDER</b>
Petitioner,	)	
	)	Appeal No. 01-1729
v.	)	Account No. #####
	)	
AUDITING DIVISION OF	)	Tax Type: Income
THE UTAH STATE TAX	)	
COMMISSION,	)	Judge: Phan
	)	
Respondent.	)	

---

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER

For Respondent: RESPONDENT REP. 1, Assistant Attorney General  
RESPONDENT REP. 2, Manager, Income Tax Auditing

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 April 23, 2002.

Petitioner is appealing the assessment of Utah individual income tax and interest for the tax years 1998 and 1999. Respondent issued the assessment based on the assertion that Petitioner was a resident of Utah for tax purposes during this period. Petitioner had filed Utah individual income tax returns and claimed on those returns only the income he had earned in Utah during each

of the tax years at issue. Petitioner did not claim on his Utah return the income he had earned out of state.

The issue in this appeal is whether Petitioner was a "resident individual" in the State of Utah for the purposes of Utah Code Ann. §59-10-103(1)(k) for the years 1998 and 1999. Utah Code Ann. §59-10-103(1)(k) provides two tests for "resident individual." A "resident individual" is one who is either domiciled in this state or one 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.

Respondent is not contenting the Petitioner was domiciled in this state, and in fact the information presented by Petitioner tends to indicate that he was domiciled in STATE 1. Instead Respondent is looking at the second test and argues that Petitioner did spend in the aggregate more than 183 days in this state and maintained a permanent place of abode.

During 1998 and 1999 Petitioner was a college student who attended UNIVERSITY (UNIVERSITY) in CITY 1, Utah. He had been a long term resident of STATE 1 and his parents resided in STATE 1. In January 1997 he started attending UNIVERSITY full time. Throughout the audit period he maintained his STATE 1 drivers license, his vehicles were registered in STATE 1 and he was registered to vote in STATE 1. On his student records at UNIVERSITY he was listed as a STATE 1 resident. During 1998 he resided in an off-campus, student approved apartment which he shared with roommates from January until May. In May he had no further rental obligations on the apartment and relinquished it. In May he returned to STATE 1 for vacation and to work and then spent the rest of the summer working in STATE 2. He returned to CITY 1 for fall 1998. He moved into a different student approved apartment from August through December, again with roommates and attended college full time and worked part time in Utah. In December he went home to STATE

1 for a couple weeks and also worked some over the Christmas holidays in STATE 1. In January 1999 he returned to Utah to attend school. He was paid the rest of the commissions he had earned while working the prior summer in STATE 2 during 1999. Petitioner returned to STATE 1 in the summer where he worked some and again returned to UNIVERSITY for the fall quarter, moving into another apartment. He did get married later in 1999 at which point he again moved into a different student approved apartment.

Petitioner now understands that he filled out his Utah individual income tax returns incorrectly as he should have filed as a part year resident or nonresident .

As Respondent points out, Petitioner clearly spent more than 183 days per year in Utah. The statutory test also requires that he maintain a “permanent place of abode.” The issue before the Commission is whether the various off-campus student approved housing units, rented by Petitioner and a number of roommates, constitutes a permanent place of abode for purposes of the statute. Respondent argues that a possible test could be if a student stays in on-campus dormitories it would not be a permanent place of abode but if they rented off-campus housing that should be considered a permanent place of abode. Respondent points out that the permanent place of abode test should not mean the same as the domicile test. Respondent merely asks for guidance in this matter as this is the first time the issue of a student’s permanent place of abode for income tax purposes has come before the Commission.

The resolution of this issue has broad application that would affect numerous students who are nonresident students for the purposes of college tuition or not a domiciliary of the state

under the domicile test and who would likely have no idea that they would be could be considered Utah residents for tax purposes. Clearly in this case the Petitioner has a strong argument that his student apartments were not permanent places of abode. However, rather than define what is meant by permanent place of abode as it is applied to students on a case by case basis and then apply retroactively, the Commission concludes that it would be appropriate to define by rule what would be a permanent place of abode for students for purposes of the statute, publish the rule and apply prospectively.

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. (Utah Code Ann. §59-10-104).

Resident individual is defined in Utah Code Ann. §59-10-103(1)(k) as follows:

"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 determining whether an individual is domiciled in this state the

Commission has defined "domicile" in Utah Administrative Rule R865-9I-2(D) as follows:

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 or herself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home.

Appeal No.01-1729

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 or her domicile, a new domicile must be shown.

DECISION AND ORDER

Based upon forgoing, the Commission orders Respondent to recalculate the tax deficiency on the basis that Petitioner was not a Utah Resident for purposes of Utah Code Ann. Sec. 59-10-103(1)(k). 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 \_\_\_\_\_, 2002.

---

Jane Phan  
Administrative Law Judge

Appeal No.01-1729

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Palmer DePaulis  
Commissioner

Marc B. Johnson  
Commissioner

JKP/01-1729.int