

03-1351
Audit
Signed 07/06/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 03-1351
)	Account No. #####
)	
AUDITING DIVISION OF)	Tax Type: Income Tax
THE UTAH STATE TAX)	Tax Year: 2000
COMMISSION,)	
)	
Respondent.)	Judge: Robinson

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, by telephone
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from the Auditing Division
 RESPONDENT REPRESENTATIVE 3, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 31, 2005. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.
2. The year in question is 2000.
3. Petitioner was domiciled in Utah and filed resident tax returns from 1992 through 1999.
4. In 2000, Petitioner accepted employment in the State of STATE. He began his employment there on or about January 15, 2000. He returned to Utah on or about April 10, 2000. He remained in Utah for the rest of 2000. He filed a resident return in 2001.

5. Petitioner stated it was his intent, when he went to STATE, to stay there.

6. On leaving for STATE, Petitioner did not list his residence for sale. He explained there were two other persons on the deed.

7. Petitioner did not obtain a STATE driver's license. He preferred to wait until his Utah driver's license was about to expire. He did not register his vehicles in STATE. He preferred to wait until the registration was about to expire. He delayed to avoid paying fees.

8. Petitioner did not open bank accounts in STATE. He retained his bank account in Utah. His professional advisors, such as attorneys, accountants, and physicians, were located in Utah.

9. Petitioner had seasonal employment with the (X). He returned to that employment on leaving STATE.

APPLICABLE LAW

Under Utah Code Ann. §59-10-104(1), "a tax is imposed on the state taxable income . . . of every **resident individual**" (emphasis added). For purposes of Section 104(1) and for the year in question, Utah Code Ann. §59-10-103(1)(q) defined "resident individual" to include:

- 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.

To administer these statutes, the Commission has enacted Utah Admin. Rule R965-9I-2 ("Rule 2") to further explain when a person is domiciled in Utah for income tax purposes. For the year in question, 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 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.

CONCLUSIONS OF LAW

Petitioner did not abandon his Utah domicile and establish one in STATE. With the exception of a period of approximately the first three months of 2000, during which Petitioner lived and worked in STATE, all indicia establish a Utah domicile.

DECISION AND ORDER

While Petitioner may have had a subjective intent to establish a new domicile when he went to STATE, he clearly did not abandon his Utah domicile. He retained ownership of a home, retained a Utah driver's license and vehicle registrations, and financial and professional relationships in Utah. He did not open a STATE bank account or establish parallel professional relationships in STATE. All of these are consistent with reserving a fall-back position if things did not work out in STATE as he may have hoped. Such is not abandonment of his Utah domicile.

Based upon the foregoing, the Tax Commission finds that Petitioner was domiciled in Utah for the year 2000. Petitioner's appeal is denied. It is so ordered.

DATED this ____ day of _____, 2005.

R. Spencer Robinson

Appeal No. 03-1351

Administrative Law Judge

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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