

04-0081  
Audit  
Signed 11/30/2004

BEFORE THE UTAH STATE TAX COMMISSION

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|                      |   |                            |
|----------------------|---|----------------------------|
| PETITIONER,          | ) | <b>FINDINGS OF FACT,</b>   |
|                      | ) | <b>CONCLUSIONS OF LAW,</b> |
| Petitioner,          | ) | <b>AND FINAL DECISION</b>  |
|                      | ) |                            |
| v.                   | ) | Appeal No.    04-0081      |
|                      | ) | Account No.   #####        |
| AUDITING DIVISION OF | ) |                            |
| THE UTAH STATE TAX   | ) | Tax Type:     Income Tax   |
| COMMISSION,          | ) |                            |
|                      | ) | Judge:        Phan         |
| Respondent.          | ) |                            |

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**Presiding:**

Palmer DePaulis, Commissioner  
Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner:    PETITIONER  
For Respondent:    RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
                    RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 10, 2004. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1.    Petitioner is appealing an audit deficiency of additional Utah individual income tax and interest for tax year 2000. The amount of the tax assessed was \$\$\$\$\$. The interest as of the notice of deficiency was \$\$\$\$\$. Interest continues to accrue on the unpaid balance. No penalties were assessed.

2.    For tax year 2000, Petitioner had filed a Utah Individual Income Tax Return. He did not check the box on the return to indicate that it was a part year resident return. On the return he included only the income that he had earned in Utah. Petitioner had earned additional income working in STATE. For

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his 2000 federal income tax return Petitioner had similarly only listed the income earned in Utah. Petitioner testified that he had given the W-2s to his tax preparer and then did not review the return after it was prepared. The 2000 federal return was audited by the IRS because of the discrepancy and then later the State Tax Commission audited the discrepancy.

3. The address listed on Petitioner's 2000 state and federal returns was a Utah address.

4. Petitioner had been a resident of Utah for many years up to the period in question in the audit.

5. It is Petitioner's position that he was not a resident of, nor domiciled in, Utah for the last part of 2000. He indicates that he left Utah on July 1, 2000 to live and work in CITY 1, STATE and that he did not return to Utah until January of 2001.

6. During the early part of 2000, Petitioner had been residing in Utah, in a trailer home that he had owned through a purchase contract for a couple of years. He indicates that he had become unable to work at his job as a car salesperson because of health reasons and that he could not find another job in Utah where he would earn enough to keep up the payments on the trailer home and his other expenses. He also indicated that his wife had left him and moved to CITY 2, he had become depressed and he decided a change and a new start would be in order.

7. Petitioner attempted to sell his trailer home and listed it June or July for a period of time, but he was unable to sell it. He indicates that he was behind on the payments and he was going to lose the trailer home. He found a job in CITY 1, STATE, at a ( X ) and he moved into housing that he rented from the employer. He indicated that he paid \$\$\$\$ per month for the accommodations, which consisted basically of one small room. He did not plan on trying to keep his trailer. He stated that he moved his belongings from the trailer into storage at some point, but it was unclear exactly when. He indicated that he was planning on working up to a position that would pay him enough so that he could rent a house in CITY 1. However, he ended up working there only for about six-months during which he continued to reside in the room leased from his employer. He indicated that he did not intend on returning to Utah, but toward the end

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of his stay in CITY 1 had started thinking about moving further into STATE. He states that he applied for a couple of other jobs in STATE, but had no offers.

8. Also sometime around July 2000 he started negotiations with the seller/lender on his trailer home and eventually worked out an arrangement where the seller/lender would take it back without any additional payment from Petitioner. Petitioner indicated that he had made \$\$\$\$ in improvements to the trailer over the year or two prior to this time and, although at first the seller/lender wanted Petitioner to pay some additional amount, she did finally agree to take back the trailer as payment in full for the amount that Petitioner owned relating to the trailer. They did sign a written agreement regarding the trailer on October 13, 2000.

9. There was no evidence submitted that Petitioner continued to use the trailer as his residence on his days off from his employment in CITY 1. Petitioner stated that he might have returned a couple of times after July 1, 2000 to move his belongings.

10. Petitioner worked in CITY 1 and resided there from July 1, through the end of December 2000. After which his son-in-law offered him a job in Utah. He stated the job offer had been unsolicited, as prior to that he had been thinking of moving further into STATE. When he returned to Utah he had no place to live in the state. He stayed with his mother and aunt for a while, until he could rent an apartment.

11. During the period he was in CITY 1, he did not obtain a STATE driver's license, register to vote, or register his vehicle in STATE. He indicated that he intended to wait to register his vehicle when the Utah registration expired. Petitioner did obtain a CITY 1 post office box and a bank account in STATE. Petitioner did also keep an account open at a ( X ), although he indicated he was repaying a loan there.

#### APPLICABLE LAW

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

Resident individual is defined in Utah Code Sec. 59-10-103(1)(j) as follows:

A "resident individual" is either:

- (i) an individual who is domiciled in this state for any period of time during the taxable year; 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 R865-91-2(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. 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.

The Utah Legislature has specifically provided that the taxpayer bear the burden of proof in proceedings before the Tax Commission. Utah Code Ann. '59-10-543 provides the following:

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

#### ANALYSIS

The issue in this appeal is whether Petitioner was in fact a "resident individual" in the State of Utah for the purposes of Utah Code Sec. 59-10-103(1)(j) from July 1, December 31, 2000. The statute provides two separate basis under which a person is deemed a "resident individual" for state tax purposes. Utah Code Sec. 59-10-103(1)(j) indicates a "resident individual" is either: (i) an individual who is domiciled in this state; 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. Respondent argues

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that Petitioner was a “resident individual” under both of the tests. It was Respondent’s position that Petitioner remained domiciled in Utah because he never actually abandoned Utah as his domicile. Respondent also argues that Petitioner spent more than 183 days in the states and maintained a permanent place of abode.

Upon review of the evidence presented<sup>1</sup> and applicable law, the Commission disagrees with Respondent’s position. First considering domicile, the Administrative Rule indicates this is 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. Petitioner did not retain a home or principal establishment in Utah during the six months at issue. Respondent’s position is once a domicile in Utah has been established in Utah, in order to change the domicile for tax purposes the Utah domicile must be abandoned. However, the Commission finds that the facts do not support domicile in Utah after Petitioner left his trailer and that the action of trying to sell the trailer and turning it back to the lender shows abandonment of domicile. The facts that Petitioner retained his Utah driver’s license and vehicle registration, do not outweigh that he did abandon his residence in Utah. The facts at hand are different from other appeals where abandonment is an issue because the taxpayer has retained a Utah residence, but also established a new residence in another state.

The one factor that does tend to support the Respondent’s position is the tax return filed by Petitioner for 2000. He had filed a Utah Individual Income and did not check the box or fill in the line that would indicate it was being filed as a part year resident return. However, in light of all the evidence submitted the Commission concludes that Petitioner was not a “resident individual” of Utah during the period in question and notes that he did not claim on the Utah return the income he earned in STATE during this period at issue.

The Commission also finds that Petitioner is not a resident based on the 183-day requirement.

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<sup>1</sup>The issue of domicile for Utah individual income tax purposes has been found to be a question of fact and has been considered by the Utah Supreme Court and the Court of Appeals in the following cases: 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).

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Certainly Petitioner spent more than 183 days in the state of Utah during the calendar year. However, he did not maintain a permanent place of abode throughout the calendar year. Respondent apparently is interpreting this to mean a permanent place of abode needs to be maintained only during the 183 days that the taxpayer is in the state, and if so maintained this will subject the taxpayer to Utah tax for the period after he or she has left the state and no longer has a residence. The Commission disagrees with this position as it reads the provision to mean that in order to tax Petitioner for the income earned out of state during the last half of the year, Petitioner would have needed to maintain a permanent place of abode in Utah during the last half of the year, but not necessarily be present in the state more than the 183 days.

CONCLUSIONS OF LAW

For the period at issue, since the Commission has found that Petitioner was not a resident of Utah, he is not liable for Utah individual income tax on his STATE income pursuant to Utah Code Sec. 59-10-104.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that Petitioner was not a resident individual for purposes of Utah individual income tax for the period of July 1 through December 31, 2000. Respondent is ordered to adjust its audit accordingly. It is so ordered.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Jane Phan  
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 \_\_\_\_\_, 2004.

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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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