

04-0113
Audit
Signed 03/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)	Appeal No.	04-0113
)		
v.)	Account No.	#####
)		
AUDITING DIVISION)	Tax Type:	Income Tax
OF THE UTAH STATE TAX)		
COMMISSION,)	Tax Year:	
)		
Respondent.)	Judge:	Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, from the Auditing Division
RESPONDENT REPRESENTATIVE 2, from the Auditing Division

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 February 10, 2005.

The issue in this proceeding is whether Petitioner was required to file a resident income tax return for the year 2000. Respondent originally made audit assessments for the calendar years 1998, 1999, 2000, and 2001. However, all years except the year 2000 have been resolved between the parties.

Petitioner is a single individual and during the years at issue did not have a wife or children within the State of Utah or any other state. Petitioner did not register to vote in Utah or in any other state, and accordingly did not vote.

Petitioner previously had a driver's license in STATE 1, but in 1999 he obtained a Utah driver's license which was renewed in Utah on April 30, 2004. That is the only driver's license Petitioner had during the period at issue, although he testified he had a STATE 1 driver's license up until 1999.

Petitioner had a motor vehicle registered in the State of Utah during the year at issue, and he did not have a vehicle registered in any other state. His motor vehicle was registered in Utah for numerous years, both before and after the year 2000.

Petitioner testified that he had bank accounts in several states during some of those years, but for the years 1996 through 2001, there is no interest income shown for any banks outside the State of Utah, but there is interest income shown for COMPANY A within the State of Utah. Petitioner stated he did not really have any money in those banks to earn interest, and he was not regularly writing checks on such banks outside the State of Utah.

During the years that were audited by Respondent, Petitioner did not own a home in Utah or in any other state, and he seldom had a place of his own that he rented. When he was in Utah, part of the time he stayed with a girlfriend, and when he was in STATE 2, he stayed with a brother. He also stayed some time in STATE 3, but did not represent whether he rented a place or stayed with someone else.

For 1996, Petitioner filed a Utah Non-Resident Return stating that his home state was STATE 2. However, his W-2 form from COMPANY B, in CITY 1 was issued to him at an address in CITY 2, Utah. The address shown on his income tax return was also in CITY 2, Utah.

For 1997, Petitioner filed a Non-Resident Income Tax Return in Utah, but stated that his home state was STATE 2. The address on the return was Utah, and his W-2 form was again issued from COMPANY B in CITY 1 to Petitioner at an address in CITY 2, Utah. Petitioner also drew unemployment from the State of Utah and received a 1099G from the Utah Department of Workforce Services for the year 1997.

For 1998, Petitioner again filed a Non-Resident Utah Return showing that his home state was STATE 2, but his address on the return was shown as CITY 3, Utah. His W-2 forms were issued to him in CITY 2, Utah by the same company for which he had worked in all of the other prior years, and it had Utah Withholdings on the wages paid to him. In addition, Petitioner had interest from COMPANY A, and he had a second W-2 form issued to him by a STATE 3 company, but mailed to him at an address in CITY 2, Utah.

For 1999, Petitioner received a W-2 form from COMPANY B in CITY 1 and mailed to him at an address in Utah. He also had unemployment compensation paid to him by the Utah Department of Workforce Services and mailed to him at an address in Utah. Petitioner further received interest from COMPANY A, and received a 1099 from them on that interest.

For 2000, the year at issue, Petitioner received a W-2 form from a STATE 3 computer company, on which STATE 3 income tax was withheld, but the form was mailed to him at an

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address in CITY 3, Utah. On his STATE 3 income tax return for 2000, and on his federal income tax return, Petitioner showed a CITY 3, Utah address. The STATE 3 income tax return filed by Petitioner was a Non-Resident or Part-year return.

For 2001, Petitioner filed a Utah Individual Income Tax Return as a resident, and showed his address as CITY 3, Utah. The return was prepared by COMPANY C in CITY 4, Utah. One W-2 form was issued to him at his address in CITY 3, Utah, and had Utah Withholding taxes shown thereon. Petitioner also filed a STATE 3 Non-Resident or Part Year Resident income tax return, which was prepared by COMPANY C in CITY 4, Utah. That STATE 3 income tax return also showed Utah as his address.

Petitioner acknowledges that in the year 2000 he was in the State of Utah at least 183 days.

APPLICABLE LAW

1. A resident individual means an individual who is either domiciled in this state for any period of time during the taxable year, or 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. (Utah Code Ann. §59-10-103(1)(j).)

2. "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 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 Administrative Code R865-9I-2.D.

3. A person's intentions are determined by his or her actions, and not by verbal declarations.

DISCUSSION

Although Petitioner maintains that he did not really intend for Utah to become his permanent home, and argues that he has personal property stored in STATE 2, it is clear that during the years 1996 through 2001, Utah was the State with which he had the most contacts. This is the State in which he had his driver's license, in which he had registered a motor vehicle, and the state at which he was telling his employers to send his income tax information and the state to which any tax refunds were sent to him. It also appears that while he has been employed some in other states, that employment has been primarily for a temporary purpose and he continues to return to Utah every time he changes employment. During those years, he also registered during at least two years for unemployment compensation in the State of Utah, and he did not register for unemployment compensation in any other state.

Utah Administrative Code Rule R865-9I-2 provides that:

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

From a totality of the facts and circumstances in this matter, the Commission finds that Petitioner established a domicile in Utah by at least 1996. Thereafter, there is no evidence showing a specific intent to abandon his domicile in Utah. There is also no evidence to show actual physical presence in a new domicile, or an intent to remain in such domicile permanently.

In addition, Utah Code Ann. §59-10-103 defines a resident individual as someone 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. Petitioner acknowledged that he spent at least 183 or more days within this state for the year at issue, and during that time he did not have a permanent place of abode at any other location. Accordingly, his abode within Utah is deemed to be his permanent abode.

Therefore, the Commission finds that Petitioner was domiciled within this state. However, even if he was not domiciled in Utah, he meets the statutory requirements of being in this state for 183 days or more, so he is required to file a Resident Individual Income Tax Return in this state for the year 2000.

DECISION AND ORDER

Based upon the foregoing, the Commission determines that Petitioner was required to file a Resident Income Tax Return in the State of Utah for the year 2000. The audit assessment is therefore affirmed, and the Petition for Redetermination is hereby denied. It is so ordered.

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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 _____, 2005.

G. Blaine Davis
Administrative Law Judge

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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

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