

04-0180
Audit
Signed 06/03/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	FINDINGS OF FACT,
Petitioner,)	CONCLUSIONS OF LAW,
)	AND FINAL DECISION
)	
v.)	Appeal No. 04-0180
)	
AUDITING DIVISION OF)	Tax Type: Income Tax
THE UTAH STATE TAX)	Tax Period: 1999, 2000 & 2001
COMMISSION,)	
)	Judge: Phan
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Manager, Income tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 29, 2005. Based upon the evidence and testimony presented at the hearing the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner filed an appeal of income tax and interest deficiencies issued against him for tax years 1999 through 2001. After the appeal had been filed the parties resolved the 1999 tax year with an Amended Statutory Notice of Estimated Income Tax issued for the 1999 on June 8, 2004, indicating a \$\$\$\$ balance. Respondent also amended the audits for the tax years 2000 and 2001. The amended Statutory Notices of Audit Change for these years were issued on June 3, 2004. It is the amended amounts for 2000 and 2001 that are now at issue.

2. The amount of the deficiencies determined by Respondent at issue are as follows:

Year	Tax	Interest as of Notice Date
2000	\$\$\$\$\$	\$\$\$\$\$
2001	\$\$\$\$\$	\$\$\$\$\$

3. Interest continues to accrue on the unpaid balance. No penalties were assessed with the audit.

4. Petitioner explained that he and his parents had lived in STATE 1 for 12 years prior to 1996. In 1995 he had started attending college in STATE 1. In 1996 his parents made a permanent change of residence, moving to Utah. Petitioner continued to attend college in STATE 1 and stay in rentals there. He would spend summers with his parents in Utah and started using his parents' address for his mailing address. In 1998 he obtained a Utah drivers license, using his parents address. He also filed a Utah resident return using his parent's address. The vehicle, which he used from 1998 through 2001, was registered in Utah. Petitioner points out that it was actually titled in his parents name and the registration was at their address.

5. Petitioner graduated from college in STATE 1 in May 2000. At that point he moved to his parents residence in Utah for the remainder of the year and started working in Utah. He did indicate that spent one month on vacation out of the country after he had moved to Utah.

6. In 2001 he lived and worked in Utah till May. Then he obtained a temporary employment position in STATE 2. He moved to STATE 2 from May to October where he worked at COMPANY. He indicates that he rented a place to stay in STATE 2 and was trying to get a permanent position, but that did not work out. While in STATE 2 he did not obtain a STATE 2 drivers license, nor did he register his vehicle in the state or register to vote. In October, after his job position had ended, he returned to Utah. He indicates that he rented a place in Utah in 2001 rather than stay with his parents and he continued to reside in Utah to the present time.

7. For the tax years 2000 and 2001 Petitioner had filed Utah resident returns. In 2000 he indicates that he had originally filed a STATE 1 resident return, but after the audit issues had been brought to

his attention he filed an amended STATE 1 return as a part year resident. For 2001 he had also filed an amended STATE 2 return as a part year resident.

8. When Petitioner originally filed his appeal of the audit he merely indicated that he wanted credit for taxes paid to STATE 1 and STATE 2. Respondent requested verification of taxes paid to those states and after receiving the returns Petitioner had filed there, Respondent gave Petitioner credit for taxes paid that resulted in the amended audits for the years at issue. The amended returns were calculated based on Petitioner being a full year resident of Utah, but then allowing credit for taxes paid to the other state. In addition, Respondent allowed one exemption for Petitioner to match what had been claimed on the federal return. When Petitioner had filed his Utah income tax returns for 2000 and 2001, he claimed on Line 4 Federal Adjusted Gross Income, only that income which he had earned in Utah and did not complete Line 23 where part year residency is considered and a ratio developed from the Utah source income as a percentage of the federal adjusted gross income.

9. For the years at issue as well as later years and 1998, all returns filed by Petitioner, whether Utah, STATE 2, STATE 1 or federal where filed listing Petitioner's parents address in Utah as Petitioner's mailing address.

10. It is the Commission's conclusion that Petitioner had become domiciled in Utah by 1998 and did not take steps to abandon Utah as his domicile or establish a new domicile during the years at issue.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104 as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

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

(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)(k)(ii), a fraction of a calendar day shall be counted as a whole day.

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)(2001)¹ 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 Sec. 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

Utah Code Sec. 59-10-104 imposes a tax on every "resident individual." "Resident individual" is defined at Utah Code Sec. 59-10-103(1)(k), which states, "'Resident individual' means: (i) an individual who is domiciled in this state for any period of time during the taxable year, . . . or (ii) an individual

¹ The rule defining "domicile" was revised in 2003. The Commission, however, applies the rule in effect during the audit period at issue.

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." The issue before the Commission in this matter is whether Petitioner was domiciled in Utah during the audit period.

The question of whether one establishes or maintains a domicile in Utah is a question of fact. The Commission has considered this issue in numerous appeals and whether someone is a "resident individual" for state tax purposes has been addressed by the appellate courts in Utah.² As discussed by the courts in considering this issue, the fact finder may accord the party's activities greater weight than his or her declaration of intent.³

In this case it appears that Petitioner became a resident of Utah at least by 1998 when he obtained a Utah drivers license, filed a Utah resident return and used his parents address as his permanent mailing address. The fact that he had no other address which he felt was permanent enough for important mailing, indicates that he did not have a domicile elsewhere. He retained Utah as his domicile despite being away to college during the school year in 2000. In 2001 he did not actually establish a domicile in STATE 2 during the five months that he was there. He did not obtain a STATE 2 drivers licenses, register his vehicle there or register to vote as a STATE 2 resident. In fact his employment in STATE 2 was a temporary position.

²The issue of domicile for Utah individual income tax purposes 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).

³ See Clements v. Utah State Tax Comm'n 893 P.2d 1078 (Ct. App. 1995); and Allen v. Greyhound Lines,

CONCLUSIONS OF LAW

The Commission has made a finding of fact that Petitioner was a Utah resident individual throughout the tax years 2000 and 2001. For this reason the Commission concludes that Petitioner is liable for Utah individual income tax on their state taxable income. Utah Code Sec. 59-10-104.

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the audit assessments of additional income tax and interest issued against Petitioners for the years 2000 and 2001. It is so ordered.

DATED this ____ day of _____, 2005.

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice: Failure to pay within thirty days the balance that results from this order may result in additional penalties and interest. 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

Inc., 583 P.2d 613, 614 (Utah 1978);

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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 Sec. 59-1-601 & 63-46b-13 et. seq.

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