

04-0594
Audit
Signed 01/24/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-0594
)		
v.	)	Tax Type:	Individual Income Tax
	)	Account No:	#####
AUDITING DIVISION OF THE	)	Tax Year:	2000
UTAH STATE TAX COMMISSION,)		
	)	Judge:	Chapman
Respondent.)		

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, 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 October 5, 2004.

At issue is whether the Petitioner was a “resident individual” of Utah for purposes of individual income tax for the entire 2000 tax year. The Petitioner was born and raised in Utah. During 2000, he lived and worked in Utah until April, at which time he moved to CITY, STATE 1 to attend technical school to become a commercial diver. Although the Petitioner filed a 2000 Utah resident return, he only included as Utah taxable income the income he earned while living in Utah. He did not include the portion he earned while living in STATE 1. Auditing Division (“Division”) has assessed the Petitioner on the basis that he was domiciled in Utah for the entirety of 2000 and, as

Appeal No. 04-0594

such, is a full-year Utah resident individual for 2000. For this reason, the Division claims that the Petitioner should have paid Utah income tax on all taxable income earned in 2000 (including the income earned in STATE 1), but be allowed a credit against his Utah tax liability for any taxes paid to another state on that same income. In this case, the credit would be \$\$\$\$\$ because STATE 1 does not impose an income tax.

The Petitioner contends that he was not a resident of Utah upon leaving to go to school in STATE 1 in April 2000 because, upon leaving Utah, he had no intention of returning to Utah and, in fact, has not. Upon completing school in December 2000, the Petitioner accepted a commercial diving job in STATE 2, where he has lived ever since. For these reasons, the Petitioner believes he should only be considered a part-year Utah resident for purposes of filing and paying 2000 Utah individual income tax.

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.

DISCUSSION

Prior to April 2000, the Petitioner was domiciled in Utah. For the remainder of 2000, the Petitioner lived and worked in STATE 1, where he worked and went to school. Upon graduating in December 2000, the Petitioner established a new domicile in STATE 2. At issue in this appeal is whether the Petitioner was domiciled in Utah during the time he lived in STATE 1, and, as such, would be a "resident individual," as defined in Section 59-10-103(1)(q), for the entire 2000 tax year. If so, he would be required under Section 59-10-104(1) to file and pay 2000 Utah income tax as a full-year resident individual and report all income earned that year as Utah income, including that earned in another state.

Section 59-10-104(1) imposes Utah's individual income tax on the taxable income of every "resident individual." "Resident individual" is defined in Section 59-10-

103(1)(q) to include any person domiciled in Utah. As a result, someone who is domiciled in Utah for an entire tax year is a full-time Utah resident individual for state income tax purposes for that year, even if that person lived and worked in another state the entire year and was never once present in Utah during that year.

To determine if a person is domiciled in Utah for a particular period, one is required to apply the facts of a situation to the definition of “domicile,” which is found in Section D. of Rule 2 to mean:

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.

In this matter before the Commission, the Petitioner explains that upon leaving Utah in April 2000, he never intended to return to Utah because his new career would require him to live elsewhere. While he was in STATE 1, however, he kept his parents’ address in Utah as his mailing address because he did not expect to be in STATE 1 very long. The Petitioner explains that he planned to move from STATE 1 upon graduation and that he considered STATE 1 to be a “stepping block” before deciding where to move after graduation.

The Commission believes that, upon leaving Utah in April 2000, the Petitioner abandoned his Utah domicile. The Petitioner claims that he had no intention of returning to Utah and his actions support his statement. He closed his Utah bank accounts and opened an account in STATE 1 upon arriving there. He registered his vehicle in STATE 1 several days after

Appeal No. 04-0594

arriving there, although he retained his Utah driver's license and never applied for a STATE 1 driver's license. However, the Petitioner did obtain car insurance in STATE 1. In addition, the Petitioner transferred his church membership to STATE 1. While in STATE 1, the Petitioner lived with and paid rent to an uncle.

From the information provided at the hearing, the Commission finds that the Petitioner abandoned his Utah domicile when he left Utah in April 2000. However, from this information available at the Initial Hearing, it does not appear that the Petitioner established a new domicile in STATE 1 during 2000. To establish a new domicile, Rule 2 requires that a person establish "a true, fixed, permanent home and principal establishment . . . not for a mere special or temporary purpose, but with the present intention of making a permanent home." The Petitioner states that STATE 1 was not intended to be a permanent move, but a stepping block until he completed school and started his new career. His actions appear to support his assertions that he only intended to be in STATE 1 for a short period. For these reasons, the Commission finds that the Petitioner did not establish a domicile in STATE 1. Under Rule 2, until the Petitioner established a new domicile upon moving to STATE 2, his tax domicile remained in Utah. Accordingly, for 2000, the Petitioner was domiciled in Utah for the entire year and, as such, was a full-year resident individual for 2000 individual income tax purposes. For these reasons, the Division's assessment is sustained.

The Petitioner mentions that such a decision may cause financial hardship to him and his wife. If the Petitioner decides not to ask for a Formal Hearing, he may contact TAX

Appeal No. 04-0594

COMMISSION EMPLOYEE at ##### in the Offer in Compromise Section of the Taxpayer Services Division to discuss a payment plan or see if he qualifies for financial hardship consideration. If he chooses to pursue a Formal Hearing in this matter, he may contact TAX COMMISSION EMPLOYEE after a decision for that hearing is issued.

DECISION AND ORDER

Based upon the foregoing, the Commission determines that the Petitioner was domiciled in and, thus, a Utah resident individual for all of 2000. Accordingly, the Commission sustains the audit assessment at issue and denies the Petitioner's appeal. 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 _____, 2005.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 04-0594

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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