

04-0695
Audit
Signed 05/31/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND FINAL DECISION
Petitioners,)	
)	Appeal No. 04-0695
v.)	
)	Account No. #####
AUDITING DIVISION OF THE)	Tax Type: Individual Income Tax
UTAH STATE TAX COMMISSION,)	Tax Year: 2001
)	
Respondent.)	Judge: Chapman

Presiding:

Pam Hendrickson, Commission Chair
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Attorney-at-Law
 PETITIONER 1
 PETITIONER 2
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on May 10, 2006. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is individual income tax.
2. The tax year at issue is 2001.
3. The Auditing Division of the Utah State Tax Commission (the "Division") issued a Statutory Notice of Audit Change ("Statutory Notice") dated April 16, 2004 to the Petitioners, in which it imposed additional income tax for the 2001 tax year.
4. The amounts imposed in the Statutory Notice (Exhibit R-2) are \$\$\$\$ in additional tax, as well as the interest accrued thereon. The Division did not impose any penalties.

5. For the 2001 tax year, the Petitioners filed an STATE resident income tax return and a joint Utah non-resident income tax return. The Division issued its assessment after determining that the Petitioners were domiciled in and, thus, resident individuals of Utah for the 2001 tax year. The Division's assessment reflects a Utah tax liability based on the entirety of the Petitioners' federal adjusted gross income of \$\$\$\$\$, not just the \$\$\$\$\$ portion that they reported as Utah taxable income.

6. The Petitioners contend that they were domiciled in and, thus, resident individuals of STATE, not Utah, for the 2001 tax year.

7. Prior to 2001, the Petitioners lived and worked in CITY 1, Utah. In late January 2001, the Petitioners moved from CITY 1 to CITY 2, STATE, which is located on the (X). In documents that the Petitioners submitted to the Division and are included in Exhibit R-1, the Petitioners claimed to have moved from Utah to STATE in February 2000, which PETITIONER 1 initially confirmed in his testimony at the hearing. However, upon further questioning, PETITIONER 1 stated that he was mistaken and that he and his wife moved to STATE in January 2001. PETITIONER 2 confirmed this latter date, testifying that they moved from Utah to STATE in late January 2001.

8. The Petitioners lived in STATE and worked on the (X) from late January 2001 until June 2004. During this period, PETITIONER 2 was employed by the (X), and PETITIONER 1 worked first as a consultant to the (X) and later for the (X) ("X").

9. The Petitioners owned a home in CITY 1, Utah prior to moving to STATE in 2001 and retained ownership of this home during the years they lived and worked STATE. During the period the Petitioners lived in STATE, they allowed one of their grown children to reside in the CITY 1 home.

Appeal No. 04-0695

10. In STATE, the Petitioners lived in staff housing on the (X) that PETITIONER 2's employer, the (X), provided. The Petitioners did not purchase property in STATE.

11. The Petitioners moved back to Utah in June 2004, at which time they purchased a home in CITY 3, Utah, a city adjacent to CITY 1, Utah. Also at this time, the Petitioners sold their CITY 1 home to one of their children.

12. During the period the Petitioners lived in STATE, they retained their Utah driver's licenses and did not obtain STATE driver's licenses.

13. During the period the Petitioners lived in STATE, they were registered to vote in Utah, not STATE.

14. During the period the Petitioners lived in STATE, they registered their motor vehicles in Utah, not STATE.

15. During the period the Petitioners lived in STATE, they retained their Utah bank accounts and did not open any new accounts in STATE, although they had the opportunity to open an account at a BANK office located on the (X).

16. PETITIONER 2 is an enrolled member of the (X), not the (X). PETITIONER 1 is not an enrolled member of any (X).

17. During the period the Petitioners lived in STATE, they retained their family doctor in CITY 1, Utah and visited this doctor on occasion to receive physical exams. The Petitioners did not retain a doctor in STATE. As a teacher in the (X) and an enrolled member of a (X), PETITIONER 2 could have received medical services on the (X).

18. The Petitioners claim that the income PETITIONER 2 earned on the (X) was exempt from STATE state income taxes because she was an enrolled member of the (X). For the 2001 tax

Appeal No. 04-0695

year, PETITIONER 2 earned \$\$\$\$ on the (X) through her employment with the (X).

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1), “a tax is imposed on the state taxable income . . . of every **resident individual**” (emphasis added).

2. For purposes of Section 104(1), a “resident individual” is defined in UCA §59-10-103(1)(k) for the year at issue to mean:

- (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. . . .

3. Utah Admin. Rule R865-9I-2 (“Rule 2”) further explains when a person is “domiciled” in Utah for income tax purposes. For the year at issue, 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.

4. The Utah Legislature has specifically provided that the taxpayer bears the burden of proof, with limited exceptions, in proceedings involving individual income tax before the Tax Commission. UCA §59-10-543 provides, as follows:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under Title 59, Chapter 1, Part 5 is filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported, and of which change or correction the commission had no notice at the time it mailed the notice of deficiency.

5. UCA §59-10-539(8) provides that “[i]n addition to the penalties added by this section, there shall be added to the tax due interest payable at the rate and in the manner prescribed in Section 59-1-402 for underpayments.”

6. UCA §59-1-402(5) provides that “[i]nterest on any underpayment, deficiency, or delinquency of any tax or fee administered by the tax commission shall be computed from the time the original return is due, excluding any filing or payment extensions, to the date the payment is received.”

DISCUSSION

At issue is whether the Petitioners were Utah “resident individuals,” as defined in Section 59-10-103(1)(k), for the 2001 tax year. If there were, they would be liable for Utah individual income tax on all income they earned in 2001, including income earned while living and working outside of Utah. The Petitioners filed a 2001 Utah return indicating that they were not Utah resident individuals for the 2001 tax year. The Division, however, contends that they were and have assessed them additional tax on this basis.

Section 59-10-103(1)(k) provides that a person is a Utah “resident individual” if he or she is either: 1) domiciled in Utah for that tax year; or 2) if not domiciled in Utah, maintains a permanent place of abode in and spends at least 183 days in Utah during that tax year. The Division does not contend that the Petitioners were Utah resident individuals for the 2001 tax year due to the latter criterion. The Division

Appeal No. 04-0695

contends, instead, that the Petitioners were domiciled in Utah for the entirety of the tax year at issue, even though they lived and worked in STATE for all but a few weeks of that year.

For purposes of determining whether a person is a Utah resident individual, “domicile” is defined 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. . . .

The rule also provides that once a person is domiciled in one state, two things are necessary for that person to create a new domicile in another state: 1) an abandonment of the old domicile; and 2) the intention and establishment of a new domicile. Both of these conditions must exist before a person domiciled in Utah has changed his domicile.

Neither party disputes that the Petitioners were domiciled in Utah prior to moving to STATE in early 2001. However, the Petitioners claim that they changed their domicile to STATE upon moving there. In several documents that the Petitioners completed and sent to the Division (included in Exhibit R-1), they indicated otherwise. PETITIONER 1 stated in a letter dated May 11, 2004, that “they were temporary residents of the State of STATE living on the (X) on assignment.” Furthermore, in a questionnaire from the Division dated January 15, 2003 and signed by the Petitioners on February 23, 2004, the Petitioners stated that they considered CITY 2, STATE to be their temporary place of abode and CITY 1, Utah to be their permanent place of abode for the 2001 tax year (Question 19).

At the Formal Hearing, however, PETITIONER 1 testified that his responses were only meant to explain that he could never be considered a “permanent resident” of the (X) because he was not an enrolled member of the (X), not that he had any intention, upon moving to STATE, of living elsewhere. He

further testified that he considered himself permanently domiciled in STATE during the tax year at issue and until 2004, when he accepted a new job that required him to live nearer an airport, prompting the move back to Utah in June 2004. PETITIONER 2 also testified that she considered herself to be an STATE resident for the tax year at issue.

Although the Petitioners' declaration of intent is a factor to consider when determining whether they abandoned their Utah domicile and established a new one in STATE, the Commission must also consider the Petitioners' actions. Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes¹ and have determined that a person's actions may be accorded greater weight in determining his or her domicile than a declaration of intent.²

The Petitioners have stated that they intended STATE to be their permanent residence and state of domicile upon moving there in January 2001. However, the Commission does not find that the Petitioners' actions support such intentions. Not only did the Petitioners maintain many ties to Utah throughout the years they lived and worked in STATE, they established few, if any, permanent ties with STATE. Upon moving to STATE, the Petitioners maintained their Utah driver's licenses, Utah registration of their motor vehicles, and Utah voter registration, as well as retaining ownership of their home in Utah. In addition, they retained Utah bank accounts and their doctor who was located in Utah and whom they visited whenever they had physical exams. Furthermore, they did not establish any of these incidences of domicile in STATE. Although the Petitioners lived and worked in STATE during the years from 2001 to 2004, their

1 The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals. See *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).

2 See *Clements v. Utah State Tax Comm'n*, 893 P.2d 1078 (Ct. App. 1995); and *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 614 (Utah 1978).

actions as a whole do not suggest an intention to change their domicile.

Based on the evidence and testimony proffered at the Formal Hearing, the Commission finds that not only did the Petitioners not abandon their Utah domicile in 2001, but that they also did not establish a new domicile in STATE upon moving there. Accordingly, pursuant to Section 59-10-103(1)(k) and Rule 2, the Commission finds that the Petitioners was domiciled in Utah and, as a result, were Utah resident individuals for income tax purposes for the 2001 tax year.

Lastly, the Commission finds the amount of the Division's assessment to be correct. PETITIONER 2 testified that for STATE income tax purposes, she was afforded the status of an enrolled (X) and that STATE did not tax the \$\$\$\$ of income that she earned on the (X) in 2001. The Petitioners assert that because PETITIONER 2's income was exempt from taxation in STATE, Utah should comply with STATE'S determination and not tax it, as well. However, the Petitioners presented no evidence to show that the income is exempt from Utah taxation. Because the Petitioner has the burden of proof under these circumstances to show the Division's assessment to be incorrect and has not done so, the Commission sustains the assessment in its entirety.

CONCLUSIONS OF LAW

1. The Commission finds that the Petitioners did not abandon their Utah domicile upon moving to STATE in early 2001. The Commission also finds that the Petitioners did not establish a new domicile in STATE. Accordingly, the Commission finds that the Petitioners were domiciled in Utah for the entire 2001tax year.

2. Having found the Petitioners to be domiciled in Utah for the entire 2001 tax year, the Commission also finds them to be Utah "resident individuals" for the 2001 tax year for Utah income tax purposes.

Appeal No. 04-0695

3. The Commission finds that the Petitioners have neither shown that the income on which the Division assessed tax is exempt from Utah taxation nor shown that they are entitled to a credit for taxes paid to another state, specifically STATE. Accordingly, the Commission finds the amount of the Division's assessment to be correct.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that the Petitioners were domiciled in and, thus, resident individuals of Utah during the entirety of the 2001 tax year for income tax purposes. Accordingly, the Commission sustains the Division's assessment and denies the Petitioner's appeal. It is so ordered.

DATED this _____ day of _____, 2006.

Kerry R. Chapman
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 _____, 2006.

Pam Hendrickson

R. Bruce Johnson

Appeal No. 04-0695

Commission Chair

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. Failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

KRC/04-0695.fof