

04-0902  
Audit  
Signed 06/14/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,	)		
	)	<b>ORDER</b>	
Petitioners,	)		
	)	Appeal No.	04-0902
v.	)	Account No.	#####
	)		
AUDITING DIVISION OF	)	Tax Type:	Income Tax
THE UTAH STATE TAX	)	Tax Year:	2001
COMMISSION,	)		
	)		
Respondent.	)	Judge:	Davis

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**Presiding:**

G. Blaine Davis, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 2  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, from the Auditing Division  
RESPONDENT REPRESENTATIVE 3, 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 June 2, 2005.

Petitioners, PETITIONER 1 and PETITIONER 2, moved to Utah in 1989, and resided here until June 2001 when Petitioner, PETITIONER 1 died. Petitioner, PETITIONER 2, continued to reside in Utah until 2002, when she moved out of state.

During the first portion of 2001, until he died in June, PETITIONER 1 was employed by the COMPANY in CITY 1, Utah, as a truck driver. He would normally leave the home of the parties, in CITY 2, Utah, on Sunday or Monday, and would return to the home in CITY 2, Utah on Friday. Therefore, he was normally home in Utah on weekends. During the week, he had an address in CITY 3 and a post office box in CITY 4, STATE.

Petitioner, PETITIONER 2, filed a joint federal and state income tax return for 2001, and she included thereon the income of her husband, but then deducted out the portion that was shown as STATE wages on his W-2 form for 2001, which constituted approximately 87% of his total income. However, because the address on the return was shown as Utah, Respondent made an adjustment to the return to include all of his income as Utah income, because he was domiciled in Utah.

At the hearing, PETITIONER 2 acknowledged that her husband was employed from a Utah base, and would return to the home in Utah nearly every weekend. There was no evidence presented that would establish that PETITIONER 1 was not domiciled in Utah for the portion of 2001 prior to his death.

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 R865-91-2.D.

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

#### DISCUSSION

In this matter, it appears that all of the income of Petitioner, PETITIONER 1, for 2001 was taxable in Utah. PETITIONER 1 was domiciled in Utah, was employed at a base in Utah, and had numerous other ties to the State of Utah. Although he did have an address location outside of the State of Utah during that time, there is no evidence to suggest that he either abandoned his domicile in Utah or that he established a new domicile in STATE. Accordingly, the Commission determines that the income of Petitioner was taxable in Utah.

Petitioner has suggested she will have difficulty paying the tax due. However, she may be able to enter into a payment plan, or request innocent spouse relief.

#### DECISION AND ORDER

Based upon the foregoing, the Tax Commission determines that the Statutory Notice of Audit Change imposed the correct income tax on Petitioners, and that Petitioner, PETITIONER 1, was not domiciled outside of the state. Therefore, his income was taxable in the State of Utah. The Petition for Redetermination is therefore denied. 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

Appeal No. 04-0902

Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

Appeal No. 04-0902

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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G. Blaine Davis  
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

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