

04-0908
Audit
Signed 05/27/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,	)	ORDER	
)		
Petitioner,	)	Appeal No.	04-0908
)		
v.	)	Tax Type:	Individual Income Tax
	)	Account No:	#####
AUDITING DIVISION OF THE)		
UTAH STATE TAX COMMISSION,	)	Tax Year:	2001
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER (by telephone)
 PETITIONER REPRESENTATIVE (by telephone)
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 May 18, 2005.

From 1986 until she moved to STATE 1 in July 2001, the Petitioner was raised and lived in Utah. Prior to this move, the Petitioner lived at her parent's home, attended college, and worked for COMPANY. Upon being accepted to study at the (X) in CITY, the Petitioner moved in July 2001 but retained her position with COMPANY, now working at a branch in CITY. The Petitioner lived and worked in STATE 1 until October 2001, when she moved back to her parents'

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home in Utah. The Petitioner explained that she was traumatized by the events of September 11, 2001 and no longer wanted to remain in STATE 1.

The Petitioner earned income for that period of time in which she lived in STATE 1. She reported that income to the State of STATE 1 for individual income tax purposes, but not to the State of Utah. At issue is whether the Petitioner was “domiciled” in Utah and, as such, a Utah “resident individual,” for that period in which she lived in STATE 1. If so, she would be required to report her STATE 1 income and pay tax to Utah, minus a credit for any tax already paid to STATE 1.

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) defines “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 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

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. Accordingly, if the Petitioner remained "domiciled" in Utah during that portion of 2001 in which she lived and worked in STATE 1, she would be considered a full-time Utah "resident individual," as defined in Section 59-10-103(1)(q), for the 2001 tax year. As such, she would be required to report and pay tax to Utah on the income earned in STATE 1.

In this case, the Petitioner was accepted to study art in STATE 1. As a result, she moved to the CITY area, rented a room in an apartment, and worked at a COMPANY branch there. Once she began working in STATE 1, her employee health insurance was transferred to a STATE 1 insurer. The Petitioner took her Utah-registered vehicle from Utah to STATE 1, but did not register the vehicle in STATE 1 or obtain a STATE 1 driver's license. Nor did the Petitioner change her Utah voter registration to STATE 1. However, the Petitioner did obtain car

insurance in STATE 1 upon relocation. The Petitioner explained that, upon moving to STATE 1, she planned to be there permanently until graduating from the (X), at which time she had hoped to get a job in STATE 2 or STATE 1. At the time of her move, the Petitioner explained that she did not intend to return to Utah.

There is no question that the Petitioner was domiciled in Utah prior to moving to STATE 1 in July 2001 and that she has been domiciled in Utah since her return in October 2001. For that period during which the Petitioner was absent from Utah, one must consider the individual facts and circumstances associated with the absence to determine if her “domicile” changed. As explained in Section D. of Rule 2, two events must occur for a person’s “domicile,” once it is established, to change: 1) an abandonment of the old domicile; and 2) the intention and establishment of a new domicile.

For a person with a spouse and family, a home, and many ties to a community, there are generally a large number of facts and circumstances for consideration in determining whether domicile has changed, such as the relocation of that person’s family, the sell of one home and the purchase of another, and the other facts associated with cutting a large number of ties in one community and establishing them in another. For a young, single person without a spouse and children and many community ties, determining that person’s intent though his or actions may be more difficult due to the sparsity of ties that must be cut in one community and established in a new one in order for domicile to change.

Although the Petitioner moved to STATE 1 and began working there, she did not change many of her ties that were common between the two locales. Although she changed her car insurance from a Utah carrier to a STATE 1 carrier, she did not change her Utah diver's license or Utah car registration to STATE 1. Nor did she change her Utah vote registration to STATE 1. Although her health insurance changed to STATE 1, it is unclear whether this change was her choice or was required by her employer. At the Initial Hearing, the Petitioner did not proffer any other testimony or evidence concerning ties that were severed in Utah and changed to STATE 1, such as church, club, or other affiliations. Nor is there a long period of uninterrupted absence from Utah in this case, due to the circumstances that arose soon after the Petitioner moved to STATE 1 that caused her to return to Utah. For these reasons, the Commission does not find sufficient evidence, based on the testimony proffered at the Initial Hearing, to conclude that the Petitioner changed her domicile from Utah to STATE 1 upon moving there in July 2001. Accordingly, the Commission denies the Petitioner's appeal and sustains the Division's audit assessment.

DECISION AND ORDER

Based upon the foregoing, the Commission determines that the Petitioner was domiciled in and a resident individual of Utah for the period during which she lived and worked in STATE 1 in 2001. Accordingly, the Commission denies the Petitioner's appeal and sustains the audit assessment at issue in this appeal. 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.

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 _____, 2005.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

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Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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