

04-0962  
Audit  
Signed 02/02/2005

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	04-0962
v.	)	Account No.	#####
	)		
AUDITING DIVISION OF	)	Tax Type:	Income
THE UTAH STATE TAX	)		
COMMISSION,	)	Judge:	Phan
	)		
Respondent.	)		

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**Presiding:**  
Jane Phan, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE, Assistant Attorney General

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 December 13, 2004.

Petitioner is appealing an audit deficiency of Utah individual income tax and interest for the tax year 2001. Respondent issued the deficiency on the basis that Petitioner was a resident of Utah during the entire year. Petitioner had filed a Utah Income Tax Return as a part year resident for that year as well as a part year resident STATE return. Petitioner maintains that for the period he resided and worked in STATE he was not a Utah resident for tax purposes.

The issue in this appeal is whether Petitioner was a "resident individual" in the State of Utah for the purposes of Utah Code Ann. §59-10-103(1)(k) during the January through March of 2001. A resident

individual is one who is “not domiciled in this state” but maintains a permanent place of abode in this state and spends more than 183 days per year in this state. Or, in the alternative, a resident individual is one who is "domiciled" in Utah. Petitioner did maintain a permanent place of abode and spent more than 183 days during 2001 in Utah. If the Commission finds that he was not domiciled in the state he would still be considered a resident for tax purposes under the 183 day alternative.

In order to show that he was no longer domiciled in Utah during the period in question Petitioner must show: 1) that he abandoned his Utah domicile; and 2) that he intended to and did in fact establish a new domicile in STATE. From the information provided, Petitioner was in the process of establishing a domicile in STATE, but had not abandoned his Utah domicile.

Petitioner explains that he and his family had been living in Utah for a period of several years when he became unemployed and started looking for a job. He was able find employment in STATE and started working in STATE beginning in January 2001. He provided his general employment history to show that it was typical for himself and family to move and establish residence wherever his job was located. He also pointed out that it typically would take additional time to get the family moved to the new location. In 2001 Petitioner moved to STATE into an apartment that he leased on a month to month basis. The plan was that they would list their Utah house for sale in the spring and that his wife and children would remain in Utah until the house sold. They had two reasons for waiting until spring. The first was that a real estate agent advised them it would be a better time to sell. Second, his daughter was a senior in high school and wanted to finish her senior year in Utah. Petitioner points out that he grew up in STATE and he and his family were planning to eventually abandon domicile in Utah and establish a new one in STATE.

He stated that he was renting in STATE because he could not buy a house there as residences were significantly more expensive. He was on a month to month lease so that when his family was able to

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move to STATE he could easily move to a residence with them. During the two months that he was in STATE, he did not obtain a STATE drivers license or register his vehicle in STATE. He did received mail in both STATE and Utah. He did join some professional organizations in STATE. On February 28, he received notice that he, and 300 other employees, were being laid off. On March 4, 2001 he returned to Utah.

The facts as presented by the parties indicate that Petitioner intended to establish a new domicile in STATE and had taken some steps toward that goal, but he had not abandoned his Utah domicile. Petitioner was given credit in the audit deficiency for the income taxes he paid to STATE. He had filed a part year resident return in STATE for tax year 2001. He points out that the Utah tax was 482% higher than STATE'S tax. He also indicates that he has been unemployed now for an extended period and there was an issue of financial hardship.

#### APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year.

(Utah Code Ann. 59-10-104).

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

(k) "Resident individual" means:

- (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) as follows:

ADomicile≡ 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 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 bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-10-543 provides the following:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner . . .

DECISION AND ORDER

Based upon the information presented at the hearing, and the records of the Tax Commission, the Commission finds that Petitioner remained domiciled in Utah throughout 2001. Therefore, the Commission sustains the audit of additional tax and the interest thereon. Petitioner may contact the Taxpayer Services Division at 297-6300 about payment arrangements or making an Offer in Compromise based on financial hardship. 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

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

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

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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:** If a Formal Hearing is not requested in this matter as discussed above, failure to pay the balance due within thirty days from the date of this order may result in a late payment penalty being assessed.

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