

04-1022
Audit
Signed 03/30/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioners,	)	Appeal No.	04-1022
)		
v.	)	Account Nos.	#####
)		#####
AUDITING DIVISION	)	Tax Type:	Income Tax
OF THE UTAH STATE TAX)		
COMMISSION,	)	Tax Year:	2002
)		
Respondent.	)	Judge:	Davis

Presiding:

G. Blaine Davis, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1
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 March 21, 2005.

The issue in this proceeding is whether the income of Petitioner was subject to income tax in the State of Utah for the calendar year 2002.

In 2001, Petitioner, PETITIONER 1, lost his job in Utah, and he finally found new employment in the State of STATE 1. He intended to move to STATE 1 for purposes of employment, and listed his house in COUNTY for sale with a real estate agent. However, because his house was not sold, his wife and daughter remained in Utah and lived in the house.

Petitioner continued to work in STATE 1 for a substantial period, but he did go to STATE 2 to work for a short period. During that time, he would normally return to Utah on the weekends to be with his wife and daughter.

In May 2003, Petitioner's wife was having difficulty with their daughter who was determined to be bipolar, so Petitioner left his job in STATE 1 and came back to Utah because of the needs of his wife and daughter.

Petitioner represented that he did contact the Utah State Tax Commission and represented that he was moving to STATE 1, and asked if he would still be required to pay income taxes to the State of Utah. He was informed that he would no longer be required to pay Utah taxes if he moved to STATE 1. However, he did not inform the individuals at the Tax Commission that his wife and daughter would be staying in Utah, or that he would continue to own a home in Utah.

During the time Petitioner was working in STATE 1 and STATE 2, his family remained in Utah and he continued to own a home in Utah which was receiving the primary residential exemption for property tax purposes.

Petitioner also had a child in school during that time.

Petitioner had a car registered in Utah, had a Utah driver's license, and continued making weekend trips back to the State of Utah. In addition, Petitioner's bank accounts and finances were all taken care of by his wife in the State of Utah, and he listed Utah as his home address on his federal income tax return.

While Petitioner was in STATE 1 for his job, he lived in housing that was provided by his employer, and had a company truck which he used when he was on the job. The vehicle he used to go to and

from Utah was presumably licensed in Utah, and he testified that he frequently rode his bicycle to the store and used a bicycle for local transportation while in STATE 1.

Petitioner did not pay any income taxes to the State of STATE 1, because they do not have an income tax system, and he did not remember whether he paid any taxes to the State of STATE 2.

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 R865-9I-2.D.

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

DECISION AND ORDER

Based upon the foregoing, the Commission determines that for the year 2002, Petitioner was domiciled in Utah, and was therefore required to pay income taxes to the State of Utah on income which was

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earned within or without the State of Utah. If Petitioner paid any income taxes to another state, he is entitled to receive credit for such taxes paid to another state in accordance with Utah law.

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.

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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