

04-1476
Audit
Signed 10/18/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioners,)		
)	Appeal No.	04-1476
v.)		
)		
AUDITING DIVISION OF)	Tax Type:	Income
THE UTAH STATE TAX)	Tax Years:	1997, 2000
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing

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 September 28, 2005.

Petitioner is appealing the assessment of Utah individual income tax and interest for the years 1997 and 2000. Petitioner had not filed Utah returns for either of these years. The Statutory Notices of Estimated Income Tax were issued on December 8, 2004, for both years. Failure to file and failure to pay penalties were assessed with the tax for both years. The amount of the additional tax, penalties and interest as of the assessment date for each year are as follows:

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	Tax	Penalties	Interest ¹
1997	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2000	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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) (2001) 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) (2000) 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.

¹ Interest continues to accrue on the unpaid balance.

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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 . . .

The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon showing of reasonable cause. (Utah Code Ann. §59-1-401(10).)

DISCUSSION

Respondent based its audit on the assertion that Petitioner had remained domiciled in Utah and was therefore a “resident individual” for state tax purposes during the years at issue. Petitioner had not filed resident Utah Individual Income Tax Returns and maintains that he was not a resident of Utah except for the first three months of 1997. 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). From the information presented Petitioner did not spend in the aggregate more than 183 days per year in Utah during the period in question. A resident individual, in the alternative, is one who is "domiciled" in the State of Utah.

The question of whether one establishes or maintains a domicile in Utah is a question of fact. The Commission has considered this issue in numerous appeals and whether someone is a "resident individual" for state tax purposes has been addressed by the appellate courts in Utah.² As

²The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals in the following cases: 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).

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discussed by the courts in considering this issue, the factfinder may accord the party's activities greater weight than his or her declaration of intent.³

It is clear that Petitioner did become a Utah resident for a short period from July 1996 through March of 1997. Petitioner had graduated from college in STATE 1 at the end of 1995, after which he resided for a few months in STATE 2 until he found a job. The job was in Utah and he moved to Utah from approximately July 1996 through March 1997. He did file a Utah resident tax return for the portion of 1996 that he was in Utah. He had obtained a Utah Drivers License, registered a car in Utah and rented an apartment. Petitioner had never been a Utah resident prior to this time. While working in Utah he had heard about a job opening in his field on ISLAND, which was an island in the (X). He applied for the position while working in Utah and when he had been offered the position he quit his job in Utah and moved his car and belongings back to his mother's house in STATE 2. He gave up the leased apartment and did not maintain a residence in Utah after this time through the end of 2000. He registered his car in STATE 2 and obtained an STATE 2 drivers license because he could not take his car with him to the island and he wanted to have the car to drive when he returned to STATE 2 on leave. His mail at first went to STATE 2, but he later had it transferred directly to his place of residence on ISLAND. While working on the island Petitioner stayed in employer provided housing. The employment arrangement was that he worked on the island for eight weeks then the employer would pay an amount calculated to fly him back to his point of origin, in his case STATE 2, for a two week vacation. He did not necessarily have to return to the

³ 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);

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point of origin and could vacation anywhere he chose. In 1997 he had three vacations, two of which he spent in STATE 2 and one with a sister in STATE 1.

He continued to work on the island through the end of 2000. Sometime in 1998 his mother moved to STATE 3. He moved his car with his mother, obtained a STATE 3 Drivers License and registered his car in that state. However, most of his time was spent on the island. In 1998 or 1999 he did purchase a recreational property in CITY 1, Utah, which he put in a rental pool and was rented on a nightly basis. In 2000 he did visit Utah and STATE 4 for a ski vacation during one of his two-week vacation periods.

Petitioner indicates that he became tired of working on the island and in 2000 applied for and obtained a job in CITY 2, Utah at the firm he had worked for right after college. His field of employment dealt with (X) and there apparently were not many employers. He indicates that the CITY 2 employer and the employer on ISLAND were competitors. He moved to Utah in 2001.

As provided in the rule to change domicile one must both abandon the domicile in Utah and intend to, and in fact, establish a domicile elsewhere. Utah Administrative Rule R865-91-2(D) (2000). It is clear in this matter that when Petitioner moved from Utah in March 1997 he abandoned his Utah domicile. Respondent argued that he failed to meet the second requirement, that he failed to establish a new domicile elsewhere. Respondent points out that Petitioner was only in STATE 2 for a few weeks before moving to ISLAND, so despite obtaining an STATE 2 drivers license and car registration he had not intended to establish domicile there. Apparently Respondent also presumes that Petitioner did not establish a domicile on ISLAND. The island is a U.S. territory, not under the jurisdiction of a state. It does not appear that he could have obtained a drives license there, there was

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no state or local tax on the island and he could not take his car. The housing there was employer provided. Respondent pointed to credit card statements that indicated credit card charges all over the U.S. and abroad, and very few charges in the states of STATE 2 or STATE 3.

The Commission would note that Petitioner was clearly employed and living on ISLAND on a more permanent basis than when he was in Utah for the eight months in 1996 and 1997. Yet Respondent argues that in those eight months he established a Utah domicile regardless of Petitioner's intent or lack thereof to making Utah a permanent home. Petitioner had started looking for a different job within a few months of beginning employment in Utah, although he had filed a Utah resident return for 1996.

Petitioner was single during the periods at issue, so he was not maintaining a residence in Utah or anywhere else for a wife and children while he worked on the island. His car was likely one of his most important possessions in 1997 and where he licensed and registered it was as good an indication as any as to where he felt he was permanently domiciled. Petitioner acknowledged that he did not file a state income tax return in STATE 2. He indicates the reason for this was that he was under the misunderstanding he was not subject to state tax on the money he earned on the island. He additionally indicates that STATE 3 does not have a state income tax.

DECISION AND ORDER

Based upon the information presented at the hearing the Tax Commission finds that Petitioner was not domiciled in Utah after he had moved from Utah in approximately March 1997 through the end of 2000. However, Petitioner was a resident of Utah for the three months or so that he was working in Utah in 1997 and is liable for Utah income tax on the income earned in Utah, as

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well as interest and penalties calculated only on that amount. There is no basis for waiver of the penalties calculated on the Utah portion of the income because Petitioner should have filed and paid Utah taxes either as a part year resident or as a nonresident with Utah source income. The audit assessment of tax, penalties and interest that is based on income earned outside the state of Utah in 1997 is abated. The audit in its entirety for 2000 is abated. Respondent is to recalculate the assessment on that basis. 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

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

DATED this _____ day of _____, 2005.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

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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, failure to pay the balance due as determined by this order within thirty days of the date hereon, may result in a late payment penalty.

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