

04-1525
Audit
Signed 11/04/2005

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER FROM INITIAL HEARING	
)		
Petitioner,)		
)	Appeal No.	04-1525
v.)		
)	Tax Type:	Income Tax
AUDITING DIVISION OF THE UTAH)		
STATE TAX COMMISSION.,)	Audit Period:	2000 & 2001
)		
Respondent.)	Presiding:	Rees

Presiding:

Irene Rees, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER 1 and PETITIONER 2, Petitioners, and PETITIONER REPRESENTATIVE, CPA

For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Manager, 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 Sec. 59-1-502.5, on October 20, 2005. At issue are statutory notices of estimated income tax for tax years 2000 and 2001.

The assessment for tax year 2000 was issued because the Division did not have a record of a 2000 return. Petitioners had their returns prepared by a CPA in STATE 1, who returned the return to them with instructions to mail the return and a check for the taxes to Utah. Petitioners thought they had mailed the return, but they had no record of the returned check. The assessment for 2000 includes a 10% failure to file penalty and a 10% failure to pay penalty. Also, with regard to the 2000 and 2001 tax returns, Petitioners claimed to be part-year residents on both returns.

The Division asserts that they were domiciled in Utah throughout both tax years. Other issues that resulted in adjustments include the disallowance of the exemption for Petitioners' granddaughter. Apparently the child's mother now has an amended divorce decree which retroactively denies the child's father the right to claim her as a dependent, but this matter is yet to be resolved with the IRS. The Division made an adjustment to include PETITIONER 1's retirement income as Utah taxable income because it was received in Utah during the period he lived in Utah. The Division also made adjustments to declared withholding credits on the return that was not filed because it did not have copies of the W-2's for that year.

Regarding the domicile issue, Petitioners assert that they moved from Utah in 2000 and established a new resident domicile in STATE 2. In 2001, circumstances brought them back to Utah. The Division asserts that the Petitioners were domiciled in Utah during the 2000 and 2001 tax years. The facts can be summarized as follows:

Petitioners worked as property managers in Utah prior to 2000. They lived on the property in a mobile home that they were purchasing. They were not required to pay rent on the space. PETITIONER 1 applied for a position with an (X) company in CITY 1. He was offered the job and moved there ahead of the rest of the family. He could not remember the exact date upon which he moved or began work, but estimated that it was about February 2002.

PETITIONER 1 rented a place to live until the family joined him.

PETITIONER 2 remained in Utah until their granddaughter finished the school year in May. PETITIONER 1 and PETITIONER 2 were their granddaughter's guardians. In May, PETITIONER 2 and her granddaughter moved to STATE 2 to join PETITIONER 1. PETITIONER 2 accepted employment in a similar position as a property manager in about May 2000. PETITIONER 2's employment provided them with housing and utilities, so the couple had

no reason to purchase a home in STATE 2. The couple's granddaughter was enrolled in school in STATE 2 during the time they lived there.

The couple sold their Utah mobile home on a lease with an option to buy contract. The purchasers, who lived in the home after PETITIONER 1 and PETITIONER 2 vacated it, were required by contract to continue making the mortgage payments on the home. They failed to do so and the mobile home was eventually repossessed. Petitioners signed an agreement with the mortgage holder on October 22, 2001 releasing any claim on the mobile home.

In July of 2000, PETITIONER 1 returned to Utah to visit his parents. At the time, he held a Utah commercial drivers license that was about to expire. PETITIONER 1 renewed the license while he was in Utah, using the address of the mobile home that had been sold under contract. He stated that he renewed it because he didn't know if he would have use for it in the future.

Petitioners state that they invited PETITIONER 1's parents to visit them in STATE 2 around the Christmas holidays with the goal of moving them to STATE 2 later. PETITIONER 1's father had a health problem that was aggravated by the climate, so his parents decided not to move to STATE 2. PETITIONER 1's father's health continued to deteriorate, and PETITIONER 1 and PETITIONER 2 quit their jobs in STATE 2 to move back to Utah to help take care of him. PETITIONER 2's former Utah employer eventually offered her a job, the same job that she held previously, so she went back to work there.

Regarding other indicia of domicile:

1. Because PETITIONER 1 is a retired military person, the family's medical needs are routinely handled by doctors at the military health clinic nearest their residence. When they lived in southern Utah, they saw doctors and dentists in CITY 2. When they lived in STATE 2, they saw military doctors in the CITY 1 area.

2. After moving to STATE 2, PETITIONER 2 registered her car in STATE 2. PETITIONER 1 had registered his car in Utah about the same time that he moved, so he did not register his car in STATE 2 because his Utah plates did not expire during the time he was there.
3. The couple could not remember whether they registered to vote in either Utah or STATE 2, but stated that they may have been registered via their Utah drivers license applications. In any event, they do not regularly vote.
4. Petitioners maintained their BANK 1 account in Utah, which received the direct deposit of PETITIONER 1's retirement check. They also opened a BANK 2 account in STATE 2.
5. Before, during and after the tax periods at issue here, PETITIONER 1 held fishing licenses in Utah, STATE 1 and STATE 2. Petitioners could not remember whether they purchased resident licenses in any state, but stated that PETITIONER 1 may have purchased a Utah resident license before leaving the state.
6. Petitioners' 2000 tax return was prepared by a CPA in STATE 1. The part-year return indicated that Petitioners resided in Utah from January 1, 2000 to May 31, 2000, representing the date when PETITIONER 2 and her granddaughter moved out of Utah. Petitioners' representative, who is a CPA in Utah, stated that the Utah return does not have space to enter separate dates if the spouses moved out of Utah on different dates. Therefore, the tax preparer typically uses the latest date upon which one of the spouses moved.
7. Workforce Services records indicate that PETITIONER 1 earned income in Utah during the first and second quarters of 2000; and in the second, third and fourth quarters of 2001; and through 2002, 2003 and beyond. The records for PETITIONER 2 indicate that she

earned income in Utah during the first and second quarter of 2000, then from the first quarter of 2001 on.

8. Petitioners stated that they moved to STATE 2 with the idea in mind that they would eventually settle permanently in STATE 2 or STATE 1.

APPLICABLE LAW

Utah Code §59-10-102 imposes Utah income tax on each Utah resident's taxable income.

A Utah resident is defined in Utah Code §59-103 as any person who is "domiciled" in Utah during the tax year. Under Utah Admin. Rule R865-9I-3, "domicile" is defined as "the place where an individual has a permanent home and to which he intends to return after being absent. Also, domicile is not determined by the individual's statement, but on the totality of facts. Finally, a domicile, once established, changes only upon the concurrence of the following:

1. a specific intent to abandon the former domicile;
2. the actual physical presence in a new domicile; and
3. the intent to remain in the new domicile permanently.

A who has not severed all ties with Utah may still satisfy the requirement of abandoning his Utah domicile if the facts and circumstances show that the individual longer intended Utah to be his permanent home.

DECISION AND ORDER

The facts of this case indicate that Petitioners left Utah received income in Utah in the first and second quarters of 2000. The Petitioners left the state for a short period, then returned and began receiving income in Utah again in the first quarter of 2001. The major question at issue

here is whether Petitioners correctly identified themselves as part-year residents in 2000 and 2001. There is no question that Petitioners sought and accepted employment in STATE 2. Nor is there any question that they moved to STATE 2 for a short time. The question is whether they relinquished their Utah domicile and established a new domicile in STATE 2 during the time they were there.

In this case, the facts indicate that Petitioners maintained Utah ties throughout the short period of their absence. Most notably, they retained their Utah drivers licenses; PETITIONER 1 retained his Utah vehicle registration; PETITIONER 1 renewed his Utah CDL license; and the couple maintained their Utah bank account for purposes of the direct deposit of PETITIONER 1's retirement. Regarding the Utah CDL license in particular, PETITIONER 1 testified that he renewed the license because he was not sure whether he would need it in the future, indicating that he wanted to leave that option open in the event he moved back to Utah.

Had circumstances been different, perhaps Petitioner would have eventually severed ties with Utah. However, during their short absence from Utah, the facts of this case indicate that they retained enough important ties to Utah to support a finding that they did not change domicile for the period at issue. Therefore, the Commission finds that Petitioners were domiciled in Utah in 2000 and 2001. The assessments are affirmed. However, if Petitioners produce W-2's to support a credit for withholding that is unaccounted for in the assessments, the Division shall recalculate the amounts assessed accordingly. Also, if the IRS resolves the matter concerning the exemption for Petitioners' granddaughter for the 2001 tax year, Petitioners may present that information to the Division for an adjustment to the assessment.

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

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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.

Irene Rees
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

Marc B. Johnson

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Commissioner

Commissioner

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