

05-0026
Audit
Signed 01/10/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
)	ORDER	
Petitioners,)		
)	Appeal No.	05-0026
v.)	Account No.	#####
)		
AUDITING DIVISION OF)	Tax Type:	Income
THE UTAH STATE TAX)	Tax Year:	
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER 1
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 October 26, 2005.

Petitioners are appealing the assessment of Utah individual income tax and interest for the year 2002. The Statutory Notice of Estimated Income Tax was issued on December 14, 2004. The amount of the additional tax at issue is \$\$\$\$\$, along with the interest that as of the date of the audit had been \$\$\$\$\$. No penalties were assessed with the audit.

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) (2002) 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 . . .

DISCUSSION

Respondent based its audit on the assertion that Petitioner was a resident of Utah throughout all of 2002. Petitioners had filed a Utah Individual Income Tax Return as part-year residents and additionally claimed some deferred compensation as Utah source income.

The issue in this appeal is whether Petitioners were "resident individuals" in the State of Utah for the purposes of Utah Code Ann. §59-10-103(1)(k) for the full year, or whether they changed their resident status for tax purposes at one point during the year. From the information presented, Petitioner did not spend the aggregate of 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. Petitioners were clearly residents and domiciled in the State of Utah prior to 2002 and up through at least October 2002. In 2001 and many years prior they had filed returns as Utah residents. In order to show that they were no longer domiciled in Utah during the period in question Petitioners must show: 1) that they abandoned their Utah domicile; and 2) that they intended to and did in fact establish a new domicile in another state.

The facts as presented by the parties indicate that Petitioners intended to eventually establish a new domicile in the (X) and were in the process of moving toward this goal during 2002. However, they never actually abandoned their Utah domicile or established a new domicile elsewhere during 2002.

Petitioners had been residing in Utah for many years and PETITIONER 1 retired from his employment with COMPANY in 1999. In 1999 Petitioners owned a residence in CITY 1, Utah and in 2001 they purchased a second residence in CITY 2, STATE 1. They treated the CITY 1 residence as their primary residence. They had Utah drivers licenses, Utah car registrations, Utah fishing licenses and considered themselves Utah residents up to 2002. Petitioner states that his intent with the STATE 1 residence was not to be a permanent residence, but instead their winter residence. In 2002, however, they had decided that they would sell the CITY 1 residence and purchase a residence in (X), which was where they were originally from and nearer to where their children resided. They indicated that when they returned from STATE 1 in the spring of 2002, they put their CITY 1 Residence up for sales. It sold much more quickly than anticipated in July 2002. They were not ready to leave CITY 1 at that point so they rented a residence in CITY 1 for the next three months. They left CITY 1 at the end of October 2002 for their residence in STATE 1.

However, Petitioner stated that they did not intend for STATE 1 to be their primary residence. So they retained their Utah drivers licenses and Utah car registrations. They spent the winter at the STATE 1 residence and then purchased a residence in STATE 2 and obtained STATE 2 drivers licenses during the spring of 2003.

In this matter it is clear that Petitioners left Utah at the end of October 2002, intending to abandon their Utah domicile and establish a new one. However, it took several months for Petitioners to actually accomplish this. The factors indicate that they had not established a tax domicile in STATE 1, based on their intent that the residence there never be their primary residence. Because they had not established a new primary residence they did not change their drivers licenses or vehicle registrations and clearly had not established a new domicile outside the state of Utah during 2002.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioners remained domiciled in Utah through the end of 2002 and are liable for Utah individual income taxes as resident individuals for the entire year. Petitioners are, however, entitled to a credit for income taxes paid to the state of STATE 1 based on the limitations set out in the rule. 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

Appeal No. 05-0026

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.

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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