



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) (2001) as follows:

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 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 . . .

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 Petitioners were domiciled in Utah during the years at issue. Petitioners had not filed resident Utah Individual Income Tax Returns and maintain that they had moved to STATE and were no longer residents or domiciled in Utah during the tax years.

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). A "resident individual" is one who spends in the aggregate more than 183 days per year in Utah, or, in the alternative, one who is "domiciled" in the State of Utah. Petitioners were clearly residents and domiciled in the State of Utah prior to 1997. 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 STATE.

The facts as presented by the parties indicate that the PETITIONERS purchased a residence in STATE late in 1997 and that they did move there for a period of time at least in 1998 and 1999. However, the facts are clear that at least PETITIONER 2 and the children did not abandon their Utah domicile.

They did purchase a house in STATE, children attended school in STATE for possibly a two-year period, they transferred their church records to STATE. PETITIONER 1 obtained a STATE driver's license, STATE resident hunting licenses, concealed weapons permit as well as worked full time in STATE. Dental care and at least one doctor visit for the children occurred in STATE during 1998.

However, the PETITIONERS maintained a residence of significant value in Utah. They did not try to sell or lease the residence. They left the utilities on and three telephone lines going into the

residence. PETITIONER 2 operated a trucking business and the business address remained the address of the Utah residence. Although some mail was sent to the STATE address during the audit period, some mail was also sent to Utah at the post office box that Petitioners maintained throughout the audit period. PETITIONER 2 retained her Utah driver's license and several of the children had Utah driver's licenses during the period at issue. PETITIONER 2 was registered to vote in Utah and voted in Utah for elections in 1997, 1999, 2000, and 2001. She was elected to the local Utah school board in 2000. Vehicles were registered in Utah. During the hearing she indicated that she had returned to Utah in 2000 with the children. In addition several of the minor children were receiving W-2's from employment in Utah during 1999, 2000 and 2001. One child, ( X ) had worked in Utah at a drug store during 1999 and 2000. He had filed a Utah Resident Return for 1999 and would have been 16 at that time. From the facts it appears that Petitioners may have had two residences, one in Utah and one in STATE, but it is clear that PETITIONER 2 and her children did not abandon the Utah domicile.

From the information that was presented PETITIONER 1 had the most ties to the state of STATE. The Tax Commission has found on occasion that a husband and wife may have a separate state domicile for income tax purposes where it is clear that one spouse has severed ties to the state of Utah, has established a domicile in the other state and intends to remain indefinitely in the other state. When this happens the income from each spouse is taxed separately to the state of domicile of the spouse. However, there is a heavy burden on the taxpayer to overcome the presumption that his or her domicile is with his or her family. PETITIONER 1 did not attend the hearing and PETITIONER 2 could not answer some of the relevant questions at the hearing regarding PETITIONER 1. The PETITIONERS have the burden of proof in this matter and there was simply insufficient evidence to determine if PETITIONER 1 had abandoned his Utah domicile.

The penalties assessed with the audit were 10% failure to file penalties and 10% failure to pay penalties. The Tax Commission may waive penalties on a showing of reasonable cause. Since the family did not move to STATE until after the residence was purchased and the purchase appears to have occurred in November 1997, the Commission does not find cause for waiver of the penalties for that year. In addition PETITIONER 2 and the children had returned to Utah in 2000 and possible as early as 1999. The Commission does not find sufficient basis for waiver of the penalties.

DECISION AND ORDER

Based upon the information presented at the hearing, and the records of the Tax Commission, the Commission sustains the audit assessment of additional tax, penalties and interest for the tax years 1997, 1998, 1999 and 2001. 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

Appeal No. 05-0091

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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