

05-0359  
Individual Income Tax  
Signed 02/14/2007

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)		
	)	<b>ORDER</b>	
Petitioner,	)		
	)	Appeal No.	05-0359
v.	)		
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF THE	)	Account No:	#####
UTAH STATE TAX COMMISSION,	)	Tax Year:	2001
	)		
Respondent.	)	Judge:	Chapman

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**Presiding:**  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, 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 January 30, 2007.

On January 20, 2005, the Auditing Division (“Division”) issued a Statutory Notice of Audit Change (“Statutory Notice”) to the Petitioner for the 2001 tax year, in which it imposed \$\$\$\$ in additional tax, plus interest. No penalties were imposed.

PETITIONER filed a Utah 2001 part-year resident tax return claiming to be a Utah resident individual from January 1 until November 1, 2001 and a STATE resident from November 1, 2001 through the remainder of the year. The Division determined that PETITIONER was a Utah resident individual for the entire 2001 tax year and, as a result, assessed tax on the income she earned while living and working in STATE in November and December 2001. The Division also assessed additional tax concerning an insurance

deduction taken on the return, which the Petitioner does not contest. Accordingly, the only issue before the Commission is whether the Petitioner was a Utah resident individual during November and December 2001.

PETITIONER does not contest that she was domiciled in Utah until November 2001. PETITIONER had owned a home and lived in CITY 1, Utah and worked in Utah for a period of time prior to 2001. Prior to accepting employment with COMPANY A in 1999, PETITIONER had been a freelance consultant. COMPANY A is an advertising agency based in CITY 2, STATE, with offices in CITY 2, CITY 3, and various other cities. PETITIONER initially worked out of the CITY 3 office, with clients that included the ( X ). In May 2000, PETITIONER accepted a new position with COMPANY A where she managed seven employees located in the CITY 2 office and one to two employees in the CITY 3 office. She explains that both she and the company anticipated that she would be able to conduct her new duties while living in Utah, but soon found out that her presence was required nearly every week in CITY 2.

In August 2001, PETITIONER proffers that she decided to move to CITY 2. PETITIONER states that at this time, she looked on the Internet for properties to buy in CITY 2, but never consulted a real estate agent because of the hectic circumstances surrounding the events of September 11, 2001. Because COMPANY A works with the CITY 2 tourist industry, PETITIONER explains that she was working 16-hour days in CITY 2 after September 11, 2001 to ensure the vitality of the city's tourist trade. In October 2001, COMPANY A rented a residence for PETITIONER to live in and continued to do so until she ended her employment with the company and returned to Utah in March 2002. Since March 2002, PETITIONER has been a freelance consultant and has lived at her CITY 1, Utah residence.

After moving to CITY 2 in October 2001, PETITIONER returned to Utah several times that year to meet with two Utah clients and to rent out a portion of her CITY 1 residence. However, she was not present in Utah more than a few days each visit. On November 16, 2001, PETITIONER rented out the

basement of her CITY 1 home to a “friend of a friend” pursuant to a month-to month lease. Prior to moving to CITY 2, PETITIONER had rented out a portion of her home on a similar basis on occasion. PETITIONER explains that she did not attempt to sell her CITY 1 home because she never intends to sell it and because it is an easily-rented property.

PETITIONER also explains that she did not take many steps to officially establish her domicile in STATE because of the hectic work schedule imposed by the events of September 11, 2001. For example, PETITIONER maintained a Utah driver’s license and Utah registration for her vehicle the entire time she was in STATE. PETITIONER also proffers that the hectic work schedule prevented her from searching for a home to purchase. In addition, PETITIONER explains that she did change the address to which her mail was sent because it was easily forwarded from Utah to STATE. However, PETITIONER states that it was her intent since August 2001 to move to and change her domicile to STATE. She asks the Commission to consider her intent to change her domicile, her looking on the Internet for STATE properties and the unusual circumstances and her hectic work schedule caused by the events of September 11, 2001 and, based on these factors, find that she had changed her domicile from Utah to STATE for the last two months of 2001.

The Division argues that PETITIONER never abandoned her Utah domicile and never established a new domicile in STATE. In addition to maintaining a home in Utah, the Division cites the facts that she never leased or bought property in STATE and never relinquished her Utah driver’s license and vehicle registration. The Division also maintains that official documents, such as bank statements and Internal Revenue Service W-2 forms, were sent to her CITY 1 address, not to her STATE address. The Division acknowledges that COMPANY A sent out two sets of W-2’s to PETITIONER, one to her Utah home and one to her STATE address. However, neither set shows when it was sent or whether one set was an amendment to the other.

APPLICABLE LAW

Under Utah Code Ann. §59-10-104(1), “a tax is imposed on the state taxable income . . . of every **resident individual**” (emphasis added). For purposes of Section 104(1), a “resident individual” is defined in UCA §59-10-103(1)(k) for the year at issue to mean:

- (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. . . .

Utah Admin. Rule R865-9I-2 (“Rule 2”) further explains when a person is “domiciled” in Utah for income tax purposes. For the 2001 tax year, Section D. of Rule 2 provided 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 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 domicile, a new domicile must be shown.

UCA §59-10-543 provides that the taxpayer bears the burden of proof, with limited exceptions, in proceedings involving individual income tax before the Tax Commission, as follows:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

- (1) whether the petitioner has been guilty of fraud with intent to evade tax;
- (2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and
- (3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed and a petition under Title 59, Chapter 1, Part 5 is filed, unless such increase in

deficiency is the result of a change or correction of federal taxable income required to be reported, and of which change or correction the commission had no notice at the time it mailed the notice of deficiency.

#### DISCUSSION

The Division assessed the Petitioner as a Utah resident individual for the entire 2001 tax year. Pursuant to Section 59-10-103(1)(k), a person is a Utah resident individual if he or she is either: 1) present in the state at least 183 days in a year and maintains a permanent place of abode; or 2) domiciled in Utah. The Petitioner proffers that she was not present in Utah 183 days or more in 2001 and that she was not domiciled in Utah beginning November 1, 2001. The Division maintains that the Petitioner should be considered a Utah resident individual for the entire year under both criteria set forth in Section 59-10-103(1)(k). The Commission will first consider whether PETITIONER was a Utah domiciliary for the entirety of 2001. If the Commission concludes that she was, the Commission need not address the second criterion; i.e., whether she was present in Utah 183 days or more and maintained a permanent place of abode.

Domicile. For purposes of Utah's individual income tax, "domicile" is defined in Rule 2 to mean the place where a person has voluntarily fixed his or her permanent home, not for a special or temporary purpose, but with the intent to make a permanent home and to which he or she intends to return whenever absent. For the Petitioner to prevail, she must show by a preponderance of the evidence that she not only abandoned her Utah domicile, but that she also established a new domicile in STATE. Where the Petitioner has established her permanent home not for a mere special or temporary purpose, but with the intent of making a permanent home, and whether the Petitioner has changed her domicile are not only questions of intent, but also questions of fact. Although the Petitioner has declared that she intended to abandon her Utah domicile and establish a new domicile in STATE, a person's stated intent is only one factor to consider in this matter.

Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes<sup>1</sup> and have determined that a person's actions may be accorded greater weight in determining his or her domicile than a declaration of intent.<sup>2</sup> Accordingly, the Commission must also examine PETITIONER'S actions to determine whether she changed her domicile from Utah to STATE.

PETITIONER took few steps to abandon her Utah domicile. Although she rented out a portion of her CITY 1 home after moving to STATE, the Commission notes that she had also rented out a portion of her home in the past while living there. As a result, this fact does not convince the Commission that she intended to abandon Utah as her domicile. Furthermore, PETITIONER has explained that she did not have time to take action to relinquish other indicia of Utah domicile, such as her Utah driver's license, her Utah vehicle registration, and her Utah mailing address. For the same reasons, she did not have time to establish indicia of STATE domicile, such as leasing or purchasing property, obtaining a STATE driver's license, etc.

When all of these factors are considered, the Commission finds that the Petitioner was domiciled in Utah for the entirety of the 2001 tax year. Although PETITIONER lived and worked in STATE for five or six months, she took few, if any, actions to establish her domicile there, other than being present and working there. For these reasons, the Commission finds that the Petitioner neither abandoned her Utah domicile nor established a new domicile in STATE. Accordingly, the Commission finds that PETITIONER was domiciled in Utah during November and December 2001, the period in question, and as a result, was a Utah resident individual for income tax purposes during this period. Accordingly, the Commission sustains the

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1 The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals. See *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).  
2 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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Division's assessment of additional income tax, as imposed in its Statutory Notice. Because the Commission has determined PETITIONER to be a Utah resident individual under the domicile criterion, it need not address whether she would have also been a Utah resident individual under the criterion concerning her presence in Utah 183 days or more during the year.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Petitioner was domiciled in Utah for the entirety of the 2001 tax year, as a result, was a Utah resident individual for income tax purposes for the entire year. For this reason, the Commission finds that all income earned by the Petitioner in 2001 is subject to Utah income tax, even though it may not have been earned in Utah. Accordingly, the Commission sustains the Division's assessment of additional tax and interest for the 2001 tax year and denies the Petitioner's appeal. 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 \_\_\_\_\_, 2007.

\_\_\_\_\_  
Kerry R. Chapman  
Administrative Law Judge

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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 \_\_\_\_\_, 2007.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay any remaining balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

*KRC/05-0359.int*