

05-0363
Audit
Signed 04/19/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioners,)		
)	Appeal No.	05-0363
v.)		
)		
AUDITING DIVISION OF)	Tax Type:	Income
THE UTAH STATE TAX)	Tax Years:	1992-2001
COMMISSION,)	Judge:	Phan
)		
Respondent.)		

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, Attorney at Law
PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing
RESPONDENT REPRESENTATIVE 3, Auditor

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 March 22, 2006.

Petitioner is appealing the assessment of Utah individual income tax and interest for the years 1992 through 2001. Petitioner had not filed Utah individual income tax returns for any of the years at issue. The Statutory Notices of Estimated Income Tax for each of those years were issued on February 24, 2005. Petitioner argues that he did not file Utah resident returns during any of the years at issue because he did not consider himself to be a Utah resident. The amount of the additional tax, penalties and interest as of the assessment date for each year are as follows:

Year	Tax	Penalties	Interest ¹
1992	\$\$\$\$	\$\$\$\$	\$\$\$\$
1993	\$\$\$\$	\$\$\$\$	\$\$\$\$
1994	\$\$\$\$	\$\$\$\$	\$\$\$\$
1995	\$\$\$\$	\$\$\$\$	\$\$\$\$
1996	\$\$\$\$	\$\$\$\$	\$\$\$\$
1997	\$\$\$\$	\$\$\$\$	\$\$\$\$
1998	\$\$\$\$	\$\$\$\$	\$\$\$\$
1999	\$\$\$\$	\$\$\$\$	\$\$\$\$
2000	\$\$\$\$	\$\$\$\$	\$\$\$\$
2001	\$\$\$\$	\$\$\$\$	\$\$\$\$

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year.

(Utah Code Sec. 59-10-104).

Resident individual is defined in Utah Code Sec. 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:

“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

¹ Interest continues to accrue on the unpaid balance.

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 Sec. 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 Sec. 59-1-401(10).)

DISCUSSION

Respondent based its audit on the assertion that Petitioner was a resident of Utah for tax purposes during all years at issue. Petitioner had not filed resident Utah Individual Income Tax Returns and maintains that he was not a resident of Utah, instead he states that he was a resident of STATE 1, STATE 2 and STATE 3 during the period in question. The issue in this appeal is whether Petitioner was a "resident individual" in the State of Utah for the purposes of Utah Code Sec. 59-10-103 during the audit years. 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 discussed by the courts in

² The 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).

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

During the period at issue Petitioner was working as an airline pilot. For the years 1992 and 1993 he was based out of CITY 1. When he stayed over in CITY 1 he stayed in hotels. He did not maintain a residence there, nor did he register a vehicle, obtain a STATE 3 Drivers License, register to vote or take any of the actions typical of establishing domicile. He did not file income tax returns in STATE 3 or claim to be a resident of STATE 3 for tax purposes. For the years 1993 through 2000 Petitioner was based out of CITY 2 and flew international flights. When staying over in STATE 2 he stayed in a hotel as he would also stay in hotels in various international locations. He did not file and pay STATE 2 income taxes, maintain a permanent domicile, have his personal mail delivered in STATE 2, register to vote, or take any of the steps typical in creating a domicile in STATE 2.

Petitioner indicates that during the audit years he had claimed to be a resident of STATE 1, understanding that you need to have a state residence for tax purposes. He claimed STATE 1 because he had friends and relatives who resided there and he often visited them. He also acknowledged he claimed STATE 1 due to the fact that there was no state income tax. However, he had less contact with STATE 1 than even STATE 2 or STATE 3. He did not establish a domicile in STATE 1. Merely claiming a state to be your residence for tax purposes does not make it your residence.

Domicile is defined by Utah Admin. Rule R865-9I-2 (2000)⁴ and the rule requires that once a 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. In this case it appears that Petitioner was always domiciled in Utah. Petitioner does have the burden of proof and does not present

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);

⁴ Utah Admin. Rule R865-9I-4 was revised in 2003. However, the Commission applies the prior rule

evidence that would indicate he had established a domicile outside of Utah. Throughout the audit period the only domicile that he maintained was in Utah. The only drivers license that he was a Utah licenses. The only vehicle he owned was registered and licensed in Utah, as well as kept in Utah. He received his mail in Utah. Petitioner had purchased a residence in Utah in 1996 and that is where he received his personal mail. Prior to that when in Utah he resided with his parents and maintained a post office box in CITY 3 for his personal mail

His minor child resided in Utah with Petitioner's ex-wife. Clearly he would have to commute to his base airports for work, and even as a pilot this is a significant commute. He would be spending most of his time in hotels. He indicates that he spent only seven to ten days per month in Utah.

In considering the factors presented the weight clearly indicates a Utah domicile as it was the only place that Petitioner actually maintained a residence. Domicile is not based on the number of days spent in the state, but instead the place where one maintains their permanent place of abode. Other than the Utah residence, Petitioner stayed in hotels and with friends. Petitioner argues that it is difficult to find documents or other evidence that go back fourteen years to 1992 and he has provided very little in the way of evidence. However, as he did not file returns there is no statue of limitations on when the assessment may be issued against him under Utah Code Sec. 59-10-536(3). Additionally the statute places the burden of proof on Petitioner at Utah Code Sec. 59-10-543.

Ten percent failure to file and ten percent failure to pay penalties were assessed for each of the years at issue. The Commission concludes that for the period from 1992 until 1996 when Petitioner did not own a residence in Utah and his base of operation was outside the state, although it is clear from the other factors that his domicile for tax purposes remained in Utah, the Commission does find reasonable cause for

concerning domicile that was in affect during the audit period.

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waiver of the penalties for these years. The Commission does sustain the penalties assessed for the subsequent years.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioner was domiciled in Utah for the tax years 1992 through 2001. Therefore, the audit is sustained as to the Utah income tax and interest accrued thereon. Sufficient cause has been shown for waiver of the penalties for the years 1992 through 1996. The penalties for the years 1997 through 2001 are sustained. 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 _____, 2006.

Jane Phan
Administrative Law Judge

Appeal No.

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 _____, 2006.

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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