

05-0622
Audit
Signed 09/11/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	05-0622
v.)		
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF THE	)	Account No:	#####
UTAH STATE TAX COMMISSION,	)	Tax Year:	1999
)		
Respondent.	)	Judge:	Chapman

STATEMENT OF THE CASE

The Petitioner is appealing an audit deficiency of additional Utah individual income tax, which Auditing Division (“Division”) imposed in a Statutory Notices of Estimated Income Tax (“Statutory Notice”) dated April 14, 2005. The Petitioner requested that the Commission issue its initial decision upon a review of the written record and has waived his right to proffer oral arguments at an Initial Hearing. Accordingly, the Commission makes its initial decision based solely on the documents that the Petitioner submitted on May 24, 2006 and that the Division submitted on June 15, 2006.

The Petitioner did not file a Utah income tax return for the 1999 tax year. The Division determined that the Petitioner was a Utah resident individual for the 1999 tax year and imposed \$\$\$\$ in Utah income tax, a 10% failure to file penalty, a 10% failure to pay penalty, and interest.

There appears to be no dispute that the Petitioner was a Utah resident individual prior to May 1998, when he moved to STATE 1 for employment. Prior to May 1998, the Petitioner had lived and worked in Utah, where he had purchased a home in 1991. Between May 1998 and 2000, the Petitioner lived and worked in STATE 1 and STATE 2, but maintained his Utah home, where his adult son continued to live and the Petitioner occasionally visited. The Petitioner asserts that he considered himself domiciled in STATE 1, not Utah, during this period. From January through December 2000, however, the Petitioner states that he

maintained an apartment in STATE 3 because of the travel required by his job, but considered his domicile in 2000 to be Utah. Furthermore, upon moving to STATE 1, the Petitioner stated that he had “no plans to return to Utah or anywhere in particular” and was “content to reside wherever employment dictated.”

While in STATE 1, the Petitioner rented an apartment and opened a bank account and investment account there. He also registered his vehicle in STATE 1. He received mail at his address in STATE 1 address, including a Form W-2 for the 1998 and 1999 tax years and used the address on his 1998 STATE 1 part-year resident income tax return, which would have filed in 1999.

However, upon moving to STATE 1, the Petitioner maintained his home in Utah and visited Utah on various occasions. He also maintained a Utah bank account at COMPANY, where statements for the first five months of 1999 show that the Petitioner made a number of purchases while in Utah in 1999. The Petitioner also admits that he sometimes used his Utah address “as a permanent mailing address” during 1999.

For example, the Petitioner used his Utah address when filing his 1998 and 1999 federal income tax returns in 1999 and 2000, respectively. He also used the Utah address when he filed his 1998 Utah part-year resident income tax return in April 1999. The Petitioner also maintained his Utah driver’s license during the time he lived in STATE 1.

The Petitioner also proffered the 1999 STATE 1 part-year resident return that he filed, which shows that he paid STATE 1 \$\$\$\$ in tax for the 1999 tax year on the income that the Division asserts is also subject to Utah taxation. The Petitioner asks the Commission to reverse the Division’s assessment of tax, penalties, and interest based on his payment of tax to STATE 1. The Division asks the Commission to sustain its assessment in its totality.

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 years 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. Effective for the 1999 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 does not contend that the Petitioner was present in Utah for 183 or more days in 1999. Accordingly, the Petitioner will not be considered a Utah “resident individual” for the 1999 tax year, pursuant to Section 59-10-103(1)(k), if the evidence the parties proffered is sufficient to show that he was “domiciled” in STATE 1, not Utah, during 1999. For purposes of Utah’s individual income tax, “domicile” is defined in Section D. of Rule 2, which provides in pertinent part:

"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.

Whether the Petitioner established his “true, fixed, permanent home and principal establishment . . . not for a mere special or temporary purpose, but with the present intention of making a permanent home” in Utah or STATE 1 after May 1998, is not only a question of intention, but also one of fact.

The Petitioner stated in his written answers to the Division’s questions that upon moving to STATE 1, he had “no plans to return to Utah or anywhere in particular” and was “content to reside wherever employment dictated.” The Petitioner’s stated intent does not, on its own, clearly show an intent to abandon his Utah domicile and establish a new domicile in STATE 1. Furthermore, the Petitioner’s actions do not indicate such an intent. Not only did he maintain ownership of real property in Utah, but he also maintained a bank account in Utah, which he often used, and his Utah driver’s license. He also used his Utah address as a

“permanent mailing address” and has maintained these ties even after he left STATE 1 and lived and worked in other states. Lastly, the ties to STATE 1 that he established while working there appear to be temporary ones when compared to the ties he maintained with Utah during 1999. For these reasons, the Commission finds that the Petitioner’s actions show that he never abandoned his Utah domicile upon moving to STATE 1 and, as a result, was domiciled in Utah for the 1999 tax year.

The Statutory Notice that the Division issued is an estimate of the Petitioner’s Utah income tax liability for the 1999 tax year, based on incomplete information. The assessment was imposed prior to the Petitioner providing the Commission with additional information, including his 1999 STATE 1 tax return, which appears to show that the Petitioner paid income tax to STATE 1 on the same income on which the Division has imposed tax. Accordingly, the Division is ordered to determine if the Petitioner qualifies for a credit against his 1999 Utah tax liability for the taxes he paid to STATE 1 and, if so, to deduct any allowable credit from the assessment it imposed. Otherwise, the Division’s assessment is sustained.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that the Petitioner was domiciled in and, thus, a Utah resident individual for income tax purposes for the 1999 tax year. Accordingly, except for any credit that may be due the Petitioner because of the taxes he paid to STATE 1, the Division’s assessment is 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

Appeal No. 05-0622

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.

Kerry R. Chapman
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 _____, 2006.

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.

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