

05-1030  
Audit  
Signed 08/09/2006

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,	)	<b>ORDER</b>	
	)		
Petitioner,	)		
	)	Appeal No.	05-1030
v.	)	Account No.	#####
	)		
AUDITING DIVISION OF	)	Tax Type:	Income
THE UTAH STATE TAX	)	Tax Years:	2001 & 2002
COMMISSION,	)		
	)		
Respondent.	)	Judge:	Jensen

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**Presiding:**  
Clinton Jensen, Administrative Law Judge

**Appearances:**  
For Petitioner: PETITIONER REPRESENTATIVE  
PETITIONER  
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General  
RESPONDENT REPRESENTATIVE 2, Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on February 9, 2006, pursuant to the provisions of Utah Code Sec. 59-1-502.5.

Petitioner is appealing the assessment of Utah individual income tax and interest for the years 2001 and 2002. Petitioner filed non-resident Utah returns for the 2002 and 2003 tax years.

The Division issued Statutory Notices of Estimated Income Tax for 2001 and 2002 on July 20, 2005. According to the Notices, the amount of the additional tax, penalties and interest as of the assessment date for each year are as follows:

	Tax	Penalties	Interest <sup>1</sup>
2001	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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<sup>1</sup> Interest continues to accrue on the unpaid balance.

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 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 for 2001 and 2002. Petitioner had filed non-resident Utah Individual Income Tax Returns for 2001 and 2002. Petitioner represents that she was a resident of STATE for these years. 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. Petitioner represents that she did not spend in the aggregate more than 183 days per year in Utah during the period in question. The Respondent did not contest this. A resident individual, in the alternative, is one who is "domiciled" in the State of Utah. The parties focused on the issue of domicile at the hearing.

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.<sup>2</sup> As discussed by the courts in considering this issue, the factfinder may accord the party's activities greater weight than his or her declaration of intent.<sup>3</sup>

Prior to the years at issue, Petitioner had been a resident of the state of Utah and operated a business in nutrition counseling and iridology, or the reading of eyes. In July 2000, the state of Utah took legal action against Petitioner for the unauthorized practice of medicine. Although Petitioner maintained that her practice in nutrition and iridology was not a medical practice, she nonetheless moved her practice to CITY 1, STATE. She indicated that she moved to STATE in July or August of 2000. The Petitioner submitted copies of two business licenses issued by the City of CITY 1. The first license was issued August 7, 2001 and

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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).

3 See Clements v. Utah State Tax Comm'n 893 P.2d 1078 (Ct. App. 1995); and Allen v. Greyhound Lines,

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indicated a license period of six months, which would have thus expired on February 7, 2002. A second license, also for a six-month period, bore an issue date of August 1, 2002 and would thus have expired on February 1, 2003. The Petitioner did not provide evidence of licensure for the periods August 1, 2000 to August 6, 2001, February 8, 2002 to July 31, 2002, or the time after February 1, 2003.

As part of the presentation of evidence, both parties relied on the Petitioner's answers to a series of domicile questions sent by the Division to the Petitioner. The Division sent these questions (the "Domicile Questionnaire") to the Petitioner on February 2, 2005. The Petitioner provided answers to the Domicile Questionnaire and signed it on February 25, 2005 with a certification that "the above information is true and complete to the best of my knowledge." The Domicile Questionnaire contains a statement that it is requesting information for both spouses, if married. This statement is prominent at the beginning of the Domicile Questionnaire in all capital letters and is underlined.

Question 1 asks for federal and state income tax returns for both spouses, if married, for 2000, 2001, and 2002. The Petitioner provided various state and federal tax returns in response to the Division's request, but did not disclose that she had a husband living in Utah. In fact, notwithstanding a clear notice that each of 22 separate questions should include answers for "both spouses, if married" the Petitioner answered 22 questions and failed to disclose that she was married and had a husband residing in Utah. The Petitioner filed as a single person on 2000, 2001, 2002, and 2004. But for 2001, 2002, and 2003, PETITIONER'S name appears as the wife of Utah Resident ( X ) on ( X )'s tax returns. In hearing, PETITIONER read from her marriage license and testified that she and ( X ) were married on November 27, 2000. ( X ) lives in CITY 2, Utah. PETITIONER indicated that although she and her husband were currently married, they have been off and on for the past 31 years.

Question 2 asks which state issued driver licenses. PETITIONER lists "N/A – Did not drive because of eye surgery." Post-hearing document submissions indicate that PETITIONER renewed her Utah

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driver license on May 16, 2001. The Petitioner took this action in May of the first of the two years in which she now indicates she had abandoned her domicile in Utah. The license was valid through May 19, 2006. The Petitioner made no showing that she ever took action to cancel her Utah driver's license or gain a driver's license or identification card in STATE. Question 3 asked about voter registration. The Petitioner indicated "STATE" and later provided a copy of her STATE voter registration dated July 24, 2000.

Question 4 asked the Petitioner to indicate vehicle type and year registered in each state. PETITIONER responded, "1995 Lexus – registered in STATE in 2000." STATE DMV records verified that PETITIONER'S Lexus was continuously registered in STATE from April 28, 2000 to April 28, 2006. PETITIONER explained that even though she does not drive, she keeps a car registered because her children drive for her. She indicated that four of her five children live in CITY 2, Utah but did not indicate where the other child lives.

At hearing, counsel for the Division asked PETITIONER about two other vehicles, a Lincoln and a Pontiac. PETITIONER admitted that she did own both vehicles and that both were registered in Utah. These cars, like the Lexus, were continuously registered. When asked why she did not list the Lincoln or the Pontiac on the Domicile Questionnaire, PETITIONER indicated that she "didn't think it was necessary."

In response to questions 5, 6, and 7, which asked about real property and similar living arrangements, the Petitioner described two homes – one in CITY 1, STATE and one in CITY 2, Utah. Question 8 asked about hunting and fishing licenses, which were not applicable because the Petitioner had none.

The Domicile Questionnaire included several questions about family living arrangements. Question 9 asked "[I]n what city and state did your spouse and children reside?" The Petitioner answered, "Children are all grown." Questions 10 and 11 asked about children's schools and were not applicable. Question 12 asked how many days "you, your spouse and your children [were] in Utah?" and asked the

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Petitioner to indicate the purpose of the visits to Utah. PETITIONER responded that she had been in Utah approximately 100 to 120 days each year to check on properties and visit with some of her children. She did not disclose any visits to her husband in Utah in the three years covered in the domicile questionnaire. Question 13 asked about plans to live with family after completion of job in another state “if you worked in a different state than your family was located.” The Petitioner indicated “N/A.”

Question 14 asked about banking. PETITIONER indicated bank accounts at BANK 1 in CITY 1, STATE and at BANK 2 in CITY 2. With regard to income, PETITIONER reported her self-employment in STATE and her investments in Utah in response to questions 15 and 16. Answers to the remaining questions, 17 through 22, indicate that PETITIONER filed her federal returns from an address in STATE, considers her permanent place of abode to be STATE, and has professional advisers in both STATE and Utah.

While the Petitioner has expressed a desire to make her domicile in STATE and has answered the Division’s Domicile Questionnaire in a way that supports that conclusion, her activities suggest that she had not abandoned her Utah domicile as of the 2001 and 2002 tax years. These activities, not included in her answers to the Domicile Questionnaire, include having a husband living in Utah, her appearing in Utah in May, 2001 to renew her Utah driver’s license, her maintaining her Utah driver’s license through 2006, and her maintaining the licenses on two vehicles in Utah in addition to the one vehicle for which she maintained licensure in STATE. Taking the facts of this case in totality, PETITIONER has not sustained her burden of proof with regard to her claim that she has abandoned her domicile in Utah for purposes of the 2001 and 2002 tax years.

DECISION AND ORDER

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Based upon the information presented at the hearing, the Commission finds that Petitioner was domiciled in Utah for the tax years 2001 and 2002. Therefore, the audit is sustained as to the Utah income tax, penalties and interest accrued thereon. 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.

\_\_\_\_\_  
Clinton Jensen  
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, 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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