

05-1071
Audit
Signed 11/14/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, AND FINAL ORDER
Petitioner,)	
)	Appeal No. 05-1071
v.)	Audit Period: 2002 and 2003
)	
AUDITING DIVISION OF THE UTAH)	Tax Type: Income
STATE TAX COMMISSION)	
)	Judge: Rees
Respondent.)	

Presiding: Commissioner D'Arcy Dixon Pignanelli; Administrative Law Judge Irene Rees

Appearances:

 For Petitioners:

 PETITIONER 1, Petitioner

 For Respondent:

 RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Auditing Division

BACKGROUND

 This matter is before the Commission on Petitioner's request for a Formal Hearing concerning an audit assessment issued by the Division. The Formal Hearing was held on October 2, 2006.

 At issue is whether Petitioner, PETITIONER 1, was domiciled in Utah during the 2002 and 2003 tax years. The facts are as follows:

1. Prior to the 2002 tax year, Petitioners both lived and worked in Utah. Both had family in Utah throughout the audit period.

2. In early 2001, PETITIONER 1 was laid off from his job at COMPANY in Utah. Thereafter, he landed a senior management job for a STATE 1 company in April 2001. The company hired him to work out of a branch office in CITY 1, STATE 2 and to oversee various projects in that region.
3. PETITIONER 1 testified that he lived in STATE 2 continuously during the audit period and that he shared an apartment there with a co-worker.
4. At the time that PETITIONER 1 accepted employment in STATE 2, PETITIONER 2 was enrolled as a student at the UNIVERSITY 1. She looked into transferring her college credits to a university in STATE 2. However, because the UNIVERSITY 2 of STATE 2 was three hours away from CITY 1, she decided to remain in Utah and complete her degree before joining her husband in STATE 2. She graduated in 2004.
5. Prior to PETITIONER 1 losing his job in Utah, the couple had located a vacant building lot in CITY 2 that they wished to purchase. Even though PETITIONER 1 had relocated to STATE 2, the couple proceeded to buy the lot and build a home on it.
 1. The Petitioners entered a contract in the middle of the summer of 2001. Under the contract, Petitioners agreed to pay 10-15% down in installments over time, then purchase the home after its completion.
 2. Actual ownership of the property did not transfer to the Petitioners until November of 2001.
 3. PETITIONER 2 moved into the home when it was completed and she has lived there ever since.
6. The couple had their first child in July of 2004. The couple's second child was born in 2006.

7. PETITIONER 1 testified that at some point his wife decided she would prefer to remain in Utah. He also testified that he became concerned about the stability of his company's long-term contracts with a prominent client. Given the uncertainty about the company's future projects and his wife's expressed interest in remaining in Utah, PETITIONER 1 resigned his position and returned to Utah in December of 2005.
8. During the audit period, the couple owned two vehicles that were registered and insured in Utah. PETITIONER 1 also had use of a company-owned vehicle in STATE 2.
9. PETITIONER 2 maintained her Utah drivers license throughout. PETITIONER 1 obtained a STATE 2 drivers license that was valid through 2006.
10. PETITIONER 1 obtained a STATE 2 fishing license for 2003. Neither belonged to any clubs or organizations during that time.
11. Petitioners maintained banking accounts at two Utah credit unions during the audit period. PETITIONER 1 also maintained a bank account in CITY 1 STATE 2.
12. PETITIONER 1 claims that he was physically located in STATE 2 for more than 300 days each year during his employment there. However, records indicate that he obtained student loans for classes at COLLEGE during the time he claims to have been a STATE 2 resident. PETITIONER 1 stated that he took some short courses at the college, but did not attend as a regular student. He did not believe that the tuition was different for residents and non-residents, so he could not show that he paid non-resident tuition.
13. Petitioners consulted a Utah CPA for guidance on filing their tax returns during the audit period. They were advised to file a joint federal return, but to file the Utah return under the special instructions provisions.

14. There was no testimony as to whether PETITIONER 1 used Utah medical and dental providers in Utah, and there is no indication that he registered to vote in STATE 2. Petitioners did not answer those questions in the Interrogatories. Therefore, we presume he did not seek medical attention in STATE 2. We also presume he did not register to vote in STATE 2.
15. During the audit period, Petitioners were both listed in a Utah phone book at their CITY 2 address. Petitioner stated that he was not listed in a STATE 2 phone book because he only used a wireless phone in STATE 2.

APPLICABLE LAW

1. For purposes of Utah Income Tax, a Utah resident is “an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state. . . .” Utah Code Ann. 59-10-103.
2. “‘Domicile’ is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.” Utah Admin. Rule R865-9I-2 (1). Intent is determined by the “totality of the facts and circumstances surrounding the situation.” Utah Admin. Rule R865-9I-2 (2).
3. Once a taxpayer establishes a domicile, that domicile is not lost until:
 1. The taxpayer demonstrates a specific intent to abandon the former domicile;
 2. The taxpayer is actually present in the new place of domicile; and
 3. The taxpayer demonstrates an intent to stay in the new domicile permanently.Utah Admin. Rule R865-9I-2 (3).

4. A taxpayer who has not severed all ties with Utah may satisfy the tests for establishing a new domicile if the facts, circumstances and individual's actions demonstrate that the taxpayer no longer intends his previous domicile to be his permanent home and a place in which he intends to return. Utah Admin. Rule R865-9I-2 (4).
5. Couples that qualify to use Special Instructions may file a federal return as married filing joint and file Utah returns as married filing separate. Couples that do not qualify to use Special Instructions must file the Utah return using the same filing status as their federal return.
6. To file using Special Instructions, one spouse must be a full-year Utah resident and the other spouse must be a full-year nonresident. If either spouse is a part-year resident, they cannot file using Special Instructions.
7. Under Utah Code Ann. §59-10-119, if one spouse is a Utah full-year resident and the other spouse is a full-year non-resident and they file joint federal returns, they must compute their state taxable income as if their federal taxable incomes had been determined separately. The taxes are calculated in accordance with Utah's administrative rules and income tax instructions.
8. Under Utah Code Ann. §59-10-543, the taxpayer has the burden of proof.

DISCUSSION

At issue in this case is whether PETITIONER 1 was a non-resident during the tax years in question. There is no real dispute about the facts set forth in this opinion. The parties do disagree, however, as to whether the facts of this case support Petitioner's contention that PETITIONER 1 was a non-resident during the audit period.

Domicile determinations are always fact-intensive inquiries. It is not enough that a

taxpayer declare an intention to change his domicile to another state. The Commission looks at the facts and the taxpayer's actions in their entirety. In this case, PETITIONER 1 sought a position in STATE 2 after he lost his job in Utah. The position came with a high level of responsibility and PETITIONER 1 considered it a prudent career move. He moved to STATE 2 in 2001 and remained there until late 2005.

The length of PETITIONER 1's employment tends to support his claim that he was not hired into a temporary position. Nevertheless, there are a number of facts that weigh against a finding for the Petitioners. Most striking is the fact that the couple purchased property and built a home in Utah *after* they had decided to relocate to STATE 2. PETITIONER 1 testified that they considered the property to be a good investment. Yet one might expect the couple to invest in property in STATE 2 if that was to be their home.

PETITIONER 2 moved from a CITY 3 apartment to the new home in CITY 2 in 2001, in spite of the fact that it extended her commute to the UNIVERSITY 1. There is no evidence that she attempted to market or lease the property after she graduated in 2004 or that she was prepared to move to STATE 2.

Meanwhile, PETITIONER 1 did little to establish permanent roots in STATE 2. He shared an apartment rather than making any investment in property in the place he says he intended to make his home. There is no evidence that he ever registered to vote in STATE 2 or that he established commercial relationships in STATE 2 with doctors, dentists, accountants, etc. He maintained a vehicle in Utah with Utah registration. He operated through joint Utah bank accounts with his wife. He attended classes at the COLLEGE. He was listed in the phone book at the CITY 2 address.

Even if PETITIONER 1 accepted employment in STATE 2 with the thought of eventually moving his family there, he kept one foot in Utah during the tax years in question. The Petitioners failed to prove, by a preponderance of the evidence, that PETITIONER 1 established

a new domicile in STATE 2.

DECISION

Based on the foregoing, the Commission affirms the audit assessment. However, the penalty, if any, is waived because the Petitioners relied on professional tax advice in filing their returns and the advice was not unreasonable, given the circumstances.

Dated this _____ day of _____, 2006.

Irene Rees,
Administrative Law Judge

The Commission has reviewed and agrees with this decision.

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