

05-1151
Audit
Signed 08/14/2006

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)		
	)	ORDER	
Petitioners,)		
	)	Appeal No.	05-1151
v.)		
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF THE	)	Account No:	#####
UTAH STATE TAX COMMISSION,	)	Tax Year:	2002
)		
Respondent.	)	Judge:	Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER REPRESENTATIVE, CPA
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 August 9, 2006.

On May 3, 2005, Auditing Division (“Division”) issued a Statutory Notice of Audit Change (“Statutory Notice”) to the Petitioners for the 2002 tax year. The Petitioners had filed a Utah part-year resident return on the belief that PETITIONER 1 was domiciled in STATE for a portion of the year. The Division determined that the Petitioners were both domiciled in Utah for the entire year and assessed additional tax on this basis. For the 2002 tax year, the Division imposed \$\$\$\$ in additional tax, plus interest. No penalties were assessed.

The following facts are relevant to determining the location of the Petitioners’ domicile during 2002. In July 1998, the Petitioners moved to Utah and became Utah domiciliaries. From this time until December 31, 2001, PETITIONER 1 worked for COMPANY A (“COMPANY A”) in CITY 1, Utah, and the

Petitioners and their two children lived in a rented home in CITY 2, Utah. On December 17, 2001, COMPANY A notified PETITIONER 1 that it was terminating his employment on December 31, 2001. PETITIONER 1 began seeking employment and was quickly hired by COMPANY B (“COMPANY B”) in STATE. PETITIONER 1 moved to STATE on January 2, 2002, to begin work at his new job. PETITIONER 2 and the Petitioner’s two children remained living in the rented home in CITY 2, Utah and did not intend to move to STATE until the summer of 2002. While employed in STATE, PETITIONER 1 never visited Utah, although PETITIONER 2 visited him on two different occasions.

Upon moving to STATE, PETITIONER 1 lived in an apartment in CITY 3, STATE and began his employment with COMPANY B as the plant manager of one of its facilities. Although it is unclear if PETITIONER 1’s employer paid for his apartment, PETITIONER REPRESENTATIVE proffered that COMPANY B paid for the apartment utilities, which resulted in PETITIONER 1 not receiving utility or even telephone bills at a STATE address. On March 15, 2002, PETITIONER 1 obtained the services of a doctor in CITY 4, STATE.

The Petitioners also explained that upon PETITIONER 1 taking the job in STATE, it was the family’s intention that PETITIONER 2 and the two children would also move to STATE. It was the Petitioners’ understanding that COMPANY B would pay the family’s relocation cost to STATE because his December 21, 2001 offer of employment from COMPANY B stated that “COMPANY B will provide you with a relocation allowance of \$\$\$\$ based on actual receipts.” To this end, PETITIONER 2 visited STATE in May 2002, during which time she visited different schools that her children might attend. During this visit, the Petitioners began to look at homes, but at this time, COMPANY B indicated it would not move the family to STATE, as it was considering transferring him to COUNTRY. In June 2002, COMPANY B was purchased by another company, COMPANY C.

On June 21, 2002, PETITIONER 1 obtained a STATE driver's license and registered to vote in STATE. He also bought a motorcycle and had it registered in STATE on this date. PETITIONER 1 used his CITY 3, STATE address for these purposes. While in STATE, PETITIONER 1 joined a motorcycle club that sponsored road trips and obtained medical services from a doctor in CITY 4, STATE.

In September 2002, COMPANY C closed the plant in STATE and terminated PETITIONER 1's employment. On September 10, 2002, he left STATE and returned to Utah. He and his family have lived in Utah since that time and in 2005, purchased the home in CITY 2 that they had rented for many years.

Although the Petitioner has a number of contacts with STATE during the eight months he lived and worked there, he also maintained a number of contacts with Utah during this period. First, his wife and children remained in Utah during the entire period and his children went to school in Utah. Second, his mother and brother lived in Utah. Third, he continued to use his CITY 2, Utah address for various purposes, including the filing of tax returns and the receipt of medical benefit explanations from (X) of STATE. Fourth, the Division claims that although he obtained a STATE'S driver's license, Utah records show that he never surrendered his Utah driver's license. Fifth, he maintained a joint bank account in Utah with his wife.

Because PETITIONER 1 was only absent from Utah for eight months in 2002, was domiciled in Utah both before and after this absence, and maintained a number of other contacts with Utah during his absence, the Division contends that his absence from Utah was due to a special or temporary purpose. As a result, the Division argues that he did not intend to change his domicile to STATE and remained a Utah domiciliary for the entire period he lived and worked in STATE. Accordingly, the Division asks the Commission to sustain its assessment. The Petitioners, on the other hand, contend that the facts show that PETITIONER 1 intended to permanently move to STATE and change his domicile beginning on January 2, 2002, and only because of unforeseen circumstances did he return to Utah in September 2002. For these

reasons, the Petitioners ask the Commission to find that PETITIONER 1 was domiciled in STATE, not Utah, for income tax purposes for that period of time he lived and worked in STATE.

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. Until the rule’s amendment in December 9, 2002 and including that portion of the 2002 tax year during which PETITIONER 1’s domicile is at issue, 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 both PETITIONER 1 and PETITIONER 2 as Utah resident individuals for the entirety of the 2002 tax year. The Petitioners do not contest the Division's determination that PETITIONER 2 was a Utah resident individual for the entire year. Furthermore, they agree that PETITIONER 1 was a Utah resident individual on January 1, 2002, and for the period September 10, 2002 through December 31, 2002. However, the Petitioners contend that PETITIONER 1 was only a part-year Utah resident individual because he had changed his domicile to STATE for the period beginning January 2, 2002, the date he moved from Utah to STATE, and ending September 10, 2002, the date he moved back to Utah.

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. Because PETITIONER 1 did not present in Utah from January 1, 2002 through September 10, 2002 (i.e., 253 days), he would not have been present in Utah 183 days in 2002. Accordingly, at issue in this appeal is whether PETITIONER 1 was domiciled in Utah for the period beginning January 2, 2002 and ending September 10, 2002.

If the Commission determines that the evidence and testimony proffered at the Initial Hearing shows that PETITIONER 1 was domiciled in STATE during the period at issue, it will order the Division to

adjust its assessment to reflect his part-year Utah resident individual status. On the other hand, should the Commission determine that PETITIONER 1 was domiciled in Utah for the period at issue, it will consider him a full-year Utah resident individual and sustain the Division's assessment.

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 permanent home, not for a special or temporary purpose, but with the intent to make a permanent home and to which he intends to return whenever absent. Once a domicile has been established, two things are necessary for a person to change his domicile: 1) the abandonment of his or her old domicile; and 2) the intention and establishment of a new domicile.

The circumstances of this case make it difficult to determine whether PETITIONER 1 abandoned his Utah domicile and established a new one in STATE for the period at issue. PETITIONER 1 was only absent from Utah for eight months, during which time his family remained in Utah and he maintained other contacts with Utah during this period. Furthermore, the fact that he never purchased a home in STATE, in addition to his continuing Utah contacts, could be deemed a lack of intent to abandon Utah and establish a permanent home in STATE. Furthermore, some of his contacts with STATE, such as obtaining a STATE driver's license, registering to vote in STATE, and registering a motorcycle in STATE, occurred after COMPANY B informed him that it would not relocate his family to STATE because of the potential transfer to COUNTRY.

Nevertheless, the Commission does not believe that the Petitioner would have had his wife visit STATE in May 2002 and search for schools for their children to attend unless his intent had been, upon obtaining employment in STATE, to abandon Utah and establish a permanent domicile in STATE. Such an intent is also supported by the fact that he did not visit Utah during the period he lived and worked in STATE. It only appears that PETITIONER 1's intent to establish a permanent domicile in STATE changed once

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COMPANY B informed him about his possible transfer to COUNTRY and the subsequent sale and closure of the plant that he managed. Once this intent changed, he did not abandon STATE until September 10, 2002. Under these circumstances, the Commission finds that PETITIONER 1 demonstrated an intent to abandon Utah and establish a new domicile in STATE on January 2, 2002, and that he remained domiciled in STATE until he abandoned STATE and returned to Utah on September 10, 2002.

DECISION AND ORDER

Based upon the foregoing, the Commission finds that PETITIONER 2 was a Utah resident individual for the entirety of the 2002 tax year. Furthermore, the Commission finds that PETITIONER 1 was domiciled in STATE, not Utah, for the period beginning January 2, 2002 through September 10, 2002. Accordingly, the Commission orders the Division to amend its audit for the 2002 tax year to reflect PETITIONER 2's status as a Utah resident individual for the entirety of 2002; and to reflect PETITIONER 1's status as a Utah nonresident individual for the period January 2, 2002 through September 10, 2002 and as a Utah resident individual for the other portions of 2002. 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.

Appeal No. 05-1511

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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