

05-1512  
Audit  
Signed 07/14/2006

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1 & PETITIONER 2	)		
	)	<b>ORDER FROM INITIAL HEARING</b>	
	)		
Petitioner,	)		
	)	Appeal No.	05-1512
v.	)		
	)	Tax Type:	Income Tax
AUDITING DIVISION OF THE UTAH	)		
STATE TAX COMMISSION.,	)	Audit Period:	2002
	)		
Respondent.	)	Presiding:	Rees

---

**Presiding:**

Irene Rees, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 2  
For Respondent: RESPONDENT REPRESENTATIVE 1 and RESPONDENT  
REPRESENTATIVE 2, Auditing Division

STATEMENT OF THE CASE

Petitioners married and moved from Utah to STATE in 1999. PETITIONER 1 joined the military in 1999, but named Utah as his state of domicile in his military records. The couple filed joint return, which were prepared by a military tax preparer, each year that PETITIONER 1 remained in the military. In 2002, PETITIONER 1 separated from the military and the couple moved back to Utah in October 2002. Their 2002 Utah return declared all of PETITIONER 1's military income and income from a company that employed him upon his return to Utah. The return also declared PETITIONER 2's Utah income, from October through the end of the year. The return did not declare PETITIONER 2's STATE income earned from January to October.

The Auditing Division detected the error in the return and issued a statutory notice. PETITIONER 2 filed an appeal, seeking to be treated as a part year resident in 2002. An auditor in the Division recommended that Petitioners file an amended return to reflect PETITIONER 2's

status as a part-year resident. She prepared the amended return, but PETITIONER 1 (who is now PETITIONER 2's ex-husband) refused to sign the amended return. PETITIONER 2 filed the return anyway, but it was diverted to the error file for lack of PETITIONER 1's signature.

At the Initial Hearing, held June 12, 2006, Petitioner represented that she did everything she could to change her domicile. She testified that she held a STATE drivers license and vehicle registration, held a bank account in STATE and maintained a residence in STATE. PETITIONER 1 maintained his Utah bank account and added her name to the account after they were married. He also retained his Utah vehicle registration, and he may have added her name as joint owner.

The Division's position is that the domicile of a married couple typically follows the military spouse's domicile of record unless the non-military spouse proves otherwise. In this case, neither party offered documentary evidence to support a finding on the PETITIONER 2's domicile. However, PETITIONER 2 testified to the facts that tend to show she was domiciled in STATE, and the Division did not rebut the facts.

Additionally, PETITIONER 2 consulted with the Division and followed the auditor's advice to file an amended return. We presume for purposes of this order that the Division correctly advised PETITIONER 2 as to how to file a correct return.

#### DECISION

The fact that PETITIONER 1 refuses to sign the amended return has no bearing on the Commission's decision. The Commission's responsibility is to determine the correct tax liability, with or without PETITIONER 1's participation in the process. Under the circumstances set out here, the Commission directs the Division to accept the amended return.

In the hearing, PETITIONER 2 mentioned concerns about her ability to pay the outstanding tax liability. If neither party appeals this decision to a Formal Hearing, PETITIONER 2 can contact ( X ) of the Taxpayer Services Division at ##### to discuss payment arrangements.

Appeal No. 05-1512

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.

---

Irene Rees  
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 the balance resulting from this order within thirty days from the date of this order may result in a late payment penalty.

*IR/05-1512.inc.ini*