

06-0570
Income Tax
Signed 11/02/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING DECISION

Appeal No. 06-0570

Account No. #####

Tax Type: Income Tax

Tax Year: 1998, 2002, 2003

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER

For Respondent: RESPONDENT REPRESENTATIVE, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on August 6, 2007. Petitioner is appealing an audit deficiency of Utah individual income tax and interest for the years 1998 and 2002. Tax year 2003 had also been audited, but Petitioner represented at the hearing that the issues that she had with 2003 had been resolved when the audit was subsequently amended. The Original Statutory Notices of Estimated Tax for 1998 and 2002 had been issued on April 13, 2006. Petitioner had timely appealed the original audits. Based on information provided subsequent to the original audits, Respondent issued Amended Notices of Deficiency and Estimated income Tax on April 11, 2007. The amount currently at issue is that indicated on the amended audits and for each year is as follows:

	Tax	Penalty	Interest	Total
1998	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

2002 \$\$\$\$\$ \$\$\$\$\$ \$\$\$\$\$ \$\$\$\$\$

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.

Domicile is clarified at Utah Administrative Rule R865-9I-2(A) (1998 & 2002)¹ 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. . .

¹ The rule defining domicile was revised in December 2002. For its decision in this matter the Commission applies the prior rule that was in effect throughout most of the period at issue.

DISCUSSION

Respondent based its audit on the assertion that Petitioner was a resident of Utah for tax purposes during both 1998 and 2002. Petitioner did not file Utah Individual Income Tax Returns for either of these tax years as it was her position that she was not a Utah resident during either of these years. The issue before the Commission is whether Petitioner was a "resident individual" of Utah for the purposes of Utah Code Sec. 59-10-103(1)(k). From the information presented Petitioner did not spend in the aggregate more than 183 days per year in Utah during either period in question. A resident individual, in the alternative, is one who is "domiciled" in the State of Utah.

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.² 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.³

Prior to 1998 Petitioner was a resident of STATE 1. She had been living and working in STATE 1 for UNIVERSITY since 1991. In June of 1998 she purchased a travel trailer that was parked at a leased space in an RV park at (X) in CITY, Utah. Throughout the entire period at issue she continued to rent the pad space at this trailer park. She indicates that she had purchased the travel trailer not with the intent to reside there at that point but was thinking more about an eventual retirement. However, as her STATE 1

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,

drivers license was about to expire she did obtain a Utah drivers license in July 1998. She states that she had decided that she would move back to STATE 2 where she was originally from and go back to graduate school. She indicates that at this time she obtained a Utah drivers license because she did not plan on returning to STATE 1. She also obtained a Utah post office box for the interim. She had been renting a house in STATE 1 and states she continued to live there until September or October of 1998.

By November 1998 she was residing with friends in STATE 2 until she was later able to rent an apartment in 1999. She indicates that she had obtained a drivers license in STATE 2 at some point in 1999 and remained there to finish the masters program through the end of 2001. Respondent states that Utah records do not show that the Utah license was ever surrendered, which would be typical if one obtained a license in another state. Petitioner was unable to provide STATE 2 drivers license records to support she obtained a licenses from that state.

Petitioner was then hired in January 2002 to teach at (X), which was located in STATE 1, about 35 miles from CITY, Utah. She indicated that she rented teacher housing at the school, but had thought about staying at her trailer in CITY and commuting to the school. She registered her vehicle in Utah during 2002. She indicates that she did continue to rent the teacher housing until January 2003, then she moved to the travel trailer. Respondent points out that for 2002 she had filed a Non Resident STATE 1 return, claiming the STATE 1 source income. She had also used her Utah address on the STATE 1 and Federal returns, but, of course, by the time she would have filed the returns she had moved to Utah. Her 2002 W-2 from the employment in STATE 1 was mailed to her address in STATE 1.

Considering these few facts that were presented in this matter and also that the burden of proof is on Petitioner, the Commission concludes that Petitioner had changed her domicile to Utah in July 1998, at

Inc., 583 P.2d 613, 614 (Utah 1978);

the time she obtained a Utah drivers license. She had already purchased the travel trailer and started to lease a space in an RV Park which she maintained throughout the entire period. At that point in time she could have renewed her license in STATE 1, but she chose to obtain one in Utah, and she left the travel trailer in Utah and continued to lease the trailer pad, while she traveled to STATE 2 to attend graduate school. She indicated that the trailer was the type that had wheels and could be moved by a pickup truck.

After graduate school, she was offered a job teaching in STATE 1, at a school near CITY, Utah. In January 2002 she began working in STATE 1, renting teacher housing there. But she continued to maintain the travel trailer in Utah, she registered her vehicle in Utah, and according to Respondent continued to have a Utah drivers license. She did not obtain an STATE 1 drivers license. She filed her STATE 1 return as a non-resident of that state. All these factors support that she returned, after attending graduate school to a Utah domicile.

In considering the facts the Commission finds that there is cause for waiver of the failure to file and pay penalties issued for both 1998 and 2002. The tax year 1998 would have been the first year that Petitioner would have been required to file a Utah return and certainly as she was primarily working in STATE 1 and then moving to STATE 2, the tax filing requirements would have been difficult to understand. And again in 2002, Petitioner's income was from her job in STATE 1 where she was renting housing at the school. Petitioner explained that she just was not aware she could be required to file returns in both states and certainly this is a difficult area of law to understand. The Commission finds cause for waiver of penalties.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioner became domiciled in Utah in July 1998. Therefore the audit is to be amended to reflect a part year resident status for 1998 from that date forward. The Commission abates all penalties assessed for that year. For 2002,

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the Commission finds that Petitioner was domiciled in Utah throughout the entire year. Respondent is to make sure that Petitioner has been given credit for the taxes that she has paid to STATE 1 in 2002. The Commission finds that Petitioner was a Utah resident for income tax purposes for that entire year, and is therefore subject to Utah individual income tax. The Commission waives all penalties for tax year 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 _____, 2007.

Jane Phan
Administrative Law Judge

Appeal No. 06-1554

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 _____, 2007.

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. Petitioner may contact Taxpayer Services at (801) 297-7703 to make payment arrangements.

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