

06-0793
Income
Signed 03/19/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	INITIAL HEARING ORDER
Petitioners,)	
)	Appeal No. 06-0793
v.)	
)	
AUDITING DIVISION OF)	Tax Type: Income
THE UTAH STATE TAX)	Tax Years: 2002
COMMISSION,)	Judge: Phan
)	
Respondent.)	

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
 RESPONDENT REPRESENTATIVE 2, Manager, Income Tax Auditing

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 December 1, 2006.

Petitioner is appealing the assessment of Utah individual income tax and interest for tax year 2002. Petitioner had not filed Utah returns for that year. The Statutory Notice of Estimated Income Tax was issued on May 3, 2006. The amount of the additional tax, penalties and interest as of the assessment date are as follows:

	Tax	Penalties	Interest ¹	Total Due on Notice
2002	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ 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 2002. Petitioner maintains that he was a resident of STATE during 2002. 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(1)(k) during the audit year. A person may be a resident of Utah for income tax purposes if they spend in the aggregate more than 183 days per year in Utah, or, in the alternative, a "resident individual" is one who is "domiciled" in the State of Utah.

It is clear that up through some point of time in 2001 Petitioner had been both a resident of, and domiciled in, Utah. He owned a house in CITY where he and his wife resided. He had filed Utah Resident Individual Income Tax returns prior to the year at issue. "Domicile" is defined by Utah Admin. Rule R865-9I-2 (2000)² and the rule requires that once a 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 question of whether one 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.³ As discussed by the courts in considering this issue, the fact finder may accord the party's activities greater weight than his or her declaration of intent.⁴ Additionally, Petitioner has the burden of proof to establish that the audit is incorrect. The

2 Utah Admin. Rule R865-9I-4 was revised in 2003. However, the Commission applies the prior rule concerning domicile that was in affect during the audit period.

3 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).

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

Commission notes that Petitioner never answered the domicile questionnaire issued by Respondent. Petitioner did not provide any documents as evidence to support his stated position at the hearing. Additionally, at the hearing, Petitioner could not always answer with specificity when events occurred.

Petitioner indicates that in 2001 he moved to STATE. He stayed for two months at an extended stay hotel and then indicates he rented an apartment in STATE where he stayed until 2003. After that he purchased a residence. He states it was his plan to make a permanent change of domicile to STATE. Petitioner is an electrician. He states that he was able to find work in STATE and eventually allowed to join the STATE electricians union, possibly in 2003. He continues to reside in STATE to this day.

Although Petitioner represents that he rented an apartment in STATE in 2001 or 2002, it does not appear that he abandoned his Utah domicile prior to or during 2002. Additionally he had taken some steps toward establishing a permanent domicile in STATE, but not all steps that are typical in such a situation. The facts that Petitioner proffered were that he and his wife left their CITY, Utah house vacant. They were worried renters would cause too much damage and they felt they could not sell the house because they owned more on it than the house was worth. He thinks that they did list their residence for sale sometime in 2002, but it did not sell. They did sell the Utah residence several years later. Petitioner maintains that his wife stayed with him, or with their daughter who also lived in CITY, but that his wife she did not continue to reside at their CITY residence.

Financial documents continued to be mailed to Petitioner's CITY, Utah address. Petitioner retained his Utah drivers license. Petitioner's vehicles were registered in Utah. Even in 2003 Petitioner registered his vehicle in Utah. He maintained his Utah Electrical Union membership, although he indicated he needed to maintain this until he could become a member in the STATE union, which apparently occurred in 2003. Also Petitioner maintained his Utah Electrician's Licenses. He points out that this was a necessity as

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

Appeal No. 06-0793

STATE does not yet provide an Electrician's License and the Utah license was recognized in other states. Based on these factors the Commission concludes that Petitioners remained domiciled in Utah during the tax year 2002.

Failure to file and failure to pay penalties were assessed with the audit. In this case the circumstances provide sufficient reasonable cause for waiver. Petitioner indicates he thought he did not owe taxes in Utah because he was living and working in STATE. The criteria for determining who is a resident individual for income tax purposes is more complicated, but it appears Petitioner was in the process of changing domicile during the 2002 tax year.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioner was domiciled in Utah for the tax year 2002. Therefore, the audit is sustained as to the Utah income tax and interest accrued thereon. Sufficient cause has been shown for waiver of the penalties. 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.

Appeal No. 06-0793

DATED this _____ day of _____, 2007.

Jane Phan
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 _____, 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.

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