

06-1027
Income
Signed 04/18/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	
)	INITIAL HEARING ORDER
Petitioner,)	
)	Appeal No. 06-1027
v.)	Account No. #####
)	
AUDITING DIVISION OF)	Tax Type: Income
THE UTAH STATE TAX)	Tax Years: 2000, 2002
COMMISSION,)	Judge: Robinson
)	
Respondent.)	

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER, *pro se*, by phone

For Respondent: RESPONDENT REPRESENTATIVE, Manager, 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 Sec. 59-1-502.5, on January 4, 2007.

Petitioner is appealing the assessment of Utah individual income tax and interest for tax years 2000 and 2002. Petitioner had not filed Utah returns for those years. The Statutory Notices of Estimated Income Tax were issued on July 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
2000	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
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) (2000) 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

“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.

Petitioner filed resident returns from 1996 through 1999. He used a P.O. Box in CITY 1, Utah as his mailing address for those returns. In the early part of 2000 he moved to STATE 1. However, financial information such as 1099's and W-2's continued to be sent to the P.O. Box in CITY 1 during the periods at issue. Such documents for the 2001 tax year were mailed to ADDRESS in CITY 1. This is the address of Petitioner's residence from 1996 until he moved to STATE 1 in early 2000. Petitioner continued to use the CITY 1 address for some purposes

2 Utah Admin. Rule R865-9I-2 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, Inc., 583 P.2d 613, 614 (Utah 1978);

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throughout the periods in issue. He filed a 2001 Utah income tax return as a part-year resident using the CITY 1 address.

Petitioner provided a copy of his 2000 federal tax return. It lists a P.O. Box in CITY 2, STATE 1 as the home address. COMPANY A of CITY 3, STATE 1 prepared the return on January 31, 2001. Petitioner also provided a copy of a statement from STATE 1 COMPANY B. It shows interest income of \$\$\$\$\$ for 2000.

Petitioner supplied a copy of his 2002 federal tax return. It lists a P.O. Box in CITY 4, Utah as the home address. COMPANY A of CITY 5, Utah prepared the return on March 10, 2003.

Petitioner had a Utah driver's license that listed his address in CITY 1, Utah. He had the license through May of 2002. Petitioner said he moved to STATE 2 in 2002.

Petitioner had vehicles titled and registered at the CITY 1 address. A 1992 Ford was titled to Petitioner in Utah in July of 2000. Petitioner renewed the Utah registration of a 1986 Ford in April of 2001. The lien holder of the vehicles was a credit union in Utah. Petitioner acknowledged he may have kept Utah tags on his vehicles until they expired.

Petitioner was domiciled in Utah from 1991 through 1999. Though he went to STATE 1 to work in 2000, he used his CITY 1 address throughout the audit periods. He had a Utah driver's license through May of 2002. He had vehicles titled and registered in Utah. He was a part year resident in 2001.

The evidence persuades the Commission that Petitioner accepted work in 2000 and 2002 that took him out of Utah. However, the evidence shows Petitioner did not sever his ties to

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Utah, and that he continued to return to Utah. Based on these factors the Commission concludes that Petitioner remained domiciled in Utah during the tax year 2000 and 2002.

Failure to file and failure to pay penalties were assessed with the audit. Petitioner apparently thought he did have to file returns or pay income taxes in Utah because he was living and working out of state in 2000 and 2002. However, Petitioner's misapprehension of the need to file and pay does not rise to the level of reasonable cause.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioner was domiciled in Utah for the tax years 2000 and 2002. He did not timely file or pay in those two years. Therefore, the audit is sustained. 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

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Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

R. Spencer Robinson
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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