

06-1097
Individual Income Tax
Signed 04/03/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
	)	ORDER	
Petitioner,)		
	)	Appeal No.	06-1097
v.)		
	)	Tax Type:	Individual Income Tax
AUDITING DIVISION OF THE	)	Account No:	#####
UTAH STATE TAX COMMISSION,	)	Tax Year:	2003
)		
Respondent.	)	Judge:	Chapman

Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
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 March 21, 2007.

On August 2, 2006, Auditing Division (“Division”) issued a Statutory Notice of Audit Change (“Statutory Notice”) to the Petitioner for the 2003 tax year, based on information from the Internal Revenue Service showing that the Petitioner had a greater amount of income in 2003 than he reported on his Utah tax return. The Division’s assessment imposed \$\$\$\$ in additional tax, plus interest. No penalties were imposed.

The Petitioner admits that he earned the additional income in 2003, but states that he did not report it because he had moved to STATE in June 2003 and earned the income there. At issue is whether the Petitioner was a Utah resident individual for the entirety of the 2003 tax year. If so, the income the Petitioner earned in STATE would be subject to Utah taxation.

The Division states that the Petitioner is a Utah resident individual for the entirety of 2003 based on either of two criteria: 1) that the Petitioner remained domiciled in Utah for the period in 2003 that he was living and working in STATE; or 2) even if the Petitioner had changed his domicile to STATE in 2003, he maintained a permanent home in Utah for the entirety of 2003 and was present in Utah at least 183 days during 2003.

The Petitioner states that he moved from STATE to Utah with his family in 1999 and lived with them in Utah from 1999 through May 2003, except for the two years he spent on his church mission. The Petitioner explains that in May 2003, his brother, who lived in STATE, offered him a job, which he accepted. The Petitioner moved to STATE in early to mid-June 2003 and lived in STATE for approximately five months until mid-November 2003, when he accepted a better job offer and moved back to Utah. In Spring 2004, the Petitioner moved back to STATE, where he has lived ever since.

Prior to moving to STATE, the Petitioner lived in his family's Utah home and paid rent to them. During the approximately five months in 2003 that the Petitioner resided and worked in STATE, he lived at his brother and sister-in-law's home, paying rent to them. The Petitioner retained his Utah driver's license and Utah vehicle registration during all of 2003, including the period he was in STATE. Prior to moving to STATE in 2003, the Petitioner had a bank account at BANK, which he retained in STATE because a bank branch was located approximately thirty minutes from his STATE residence. During the Petitioner's time in STATE in 2003, he had some of his mail forwarded to him and changed his address to STATE for other mail.

The Division argues that the Petitioner remained domiciled in Utah during the five months he lived and worked in STATE in 2003 because of the significant contacts he maintained with Utah and because he did not establish significant contacts with STATE in 2003. The Division proffers that the Petitioner's

parents lived in Utah. It also proffers that he retained his Utah driver's license and Utah vehicle registration during the entirety of 2003 and that he returned to Utah after living in STATE for approximately five months in 2003. Furthermore, the Petitioner did not rent his own apartment or purchase property in STATE during the months he lived there in 2003. For these reasons, the Division claims that the Petitioner neither abandoned his Utah domicile or established a new one in STATE in 2003 and, as a result, remained a Utah domiciliary for the entirety of 2003. Accordingly, the Division asks the Commission to sustain its assessment.

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). “State taxable income” is defined in UCA §59-10-112 to mean “in the case of a resident individual means his federal taxable income (as defined by §59-10-111) with the modifications, subtractions, and adjustments provided in §59-10-114 . . .”

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 R865-91-2 (“Rule 2”) further explains when a person is “domiciled” in Utah for income tax purposes, as follows in pertinent part:

A. Domicile.

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or

circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

a) a specific intent to abandon the former domicile;

b) the actual physical presence in a new domicile; and

c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

Utah Admin. Rule R884-24P-52 ("Rule 52") sets forth a non-exhaustive list of factors or

objective evidence that is determinative of domicile, as follows:

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

- d) listings in official government publications or other correspondence;
 - e) driver's license;
 - f) voter registration; and
 - g) tax rolls;
11. location of public schools attended by the individual; or the individual's dependents;
12. the nature and payment of taxes in other states;
13. declarations of the individual:
- a) communicated to third parties;
 - b) contained in deeds;
 - c) contained in insurance policies;
 - d) contained in wills;
 - e) contained in letters;
 - f) contained in registers;
 - g) contained in mortgages; and
 - h) contained in leases.
14. the exercise of civil or political rights in a given location;
15. any failure to obtain permits and licenses normally required of a resident;
16. the purchase of a burial plot in a particular location;
17. the acquisition of a new residence in a different location.

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.

UCA §59-1-401(11) authorizes the Commission to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause.

DISCUSSION

The Division assessed tax on the income the Petitioner earned in STATE in 2003 after determining that he was domiciled in, and thus a resident individual of, Utah for the entirety of the 2003 tax year. The Petitioner claims that the income he earned in STATE should not be taxed by Utah because he had changed his domicile from Utah to STATE for the five months in 2003 that he lived in STATE.

If the evidence and testimony proffered at the Initial Hearing show that the Petitioner was domiciled in Utah when he lived and worked in STATE in 2003, the Commission will find that he is a Utah resident individual pursuant to Section 59-10-103(1)(k) for the entirety of the 2003 tax year and sustain the audit assessment. On the other hand, if the testimony and evidence show that the Petitioner was domiciled in STATE for the five months in 2003 that he worked there, the Commission will find that he is not a Utah resident individual for this portion of the 2003 tax year and will reverse the Division's assessment.

For purposes of Utah's individual income tax, "domicile" is defined in Section (A) of Rule 2, which provides in pertinent part:

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

....

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

- a) a specific intent to abandon the former domicile;
- b) the actual physical presence in a new domicile; and
- c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

There is no question that the Petitioner was domiciled in Utah from 1999 through mid-June 2003, when he first went to STATE. It also appears that he may have permanently abandoned his Utah domicile and established a STATE domicile when he returned to STATE in the Spring of 2004, since he has remained there ever since. However, between June 2003 and the Spring of 2004, it is more difficult to determine the Petitioner's domicile because he moved back and forth between the two states.

There are few facts to suggest whether he abandoned his Utah domicile or established a new one in STATE during 2003. Regardless, the Petitioner has the burden to prove that he changed his domicile in June 2003 to STATE by abandoning his Utah domicile and establishing one there. The Petitioner did not change his Utah driver's license or Utah car registration during the period in 2003 that he lived in STATE, a fact that supports the Division's contention that he did not abandon his Utah domicile. Other facts proffered at the hearing are less indicative of whether the Petitioner changed his domicile. Because the few facts that exist suggest that the Petitioner did not abandon his Utah domicile in 2003 and because the Petitioner moved back to Utah after only five months in STATE, the Commission is not persuaded that the Petitioner has shown that he was domiciled in STATE for the five months in 2003 that he lived and worked there. Accordingly, the Commission finds that the Petitioner was a Utah resident individual for all of 2003 and, as a result, sustains the Division's assessment of tax on the income he earned in STATE during 2003.

Finding that the Petitioner was domiciled in Utah during 2003 precludes the Commission from having to rule on the Division's other line of argument, specifically that the Petitioner maintained a permanent home in Utah while living and working in STATE and that he was present in Utah 183 or more days in 2003.

Appeal No. 06-1097

Lastly, the Petitioner requested that the Commission waive the assessment of interest due to his lack of knowledge concerning the domicile issue. Commission policy is to waive interest if it arises from the error of a Tax Commission employee. Such circumstances do not exist in this matter. Accordingly, the Commission does not find reasonable cause to waive the interest assessment.

DECISION AND ORDER

Based upon the foregoing, the Commission sustains the Division's assessment of additional tax and interest and denies the Petitioner's appeal. 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.

Kerry R. Chapman
Administrative Law Judge

Appeal No. 06-1097

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 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.

KRC/06-1097.int