

06-1227
Income Tax
Signed 11/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

vs.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING DECISION

Appeal No. 06-1227

Account No. #####

Tax Type: Income Tax

Tax Year: 1999

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 September 10, 2007. Petitioner is appealing an audit deficiency of Utah individual income tax and interest for the year 1999. The Original Statutory Notice of Estimated Tax for 1999 had been issued on September 5, 2006. Petitioner had timely appealed the audit. The amount currently at issue is as follows:

	Tax	Penalty	Interest	Total
1999	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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. . . .

Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part. (Utah Code Sec. 59-1-401(11).)

DISCUSSION

Respondent based its audit on the assertion that Petitioner was a resident of Utah for tax purposes during 1999. Petitioner argues that he was a resident of STATE during most of 1999. 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 1999. 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

At some point prior to 1999 Petitioner had established Utah domicile. Once a domicile has been established two things are necessary to create a new domicile: 1) an abandonment of the old domicile; and 2) the intention and establishment of a new domicile. Petitioner had established a domicile in Utah at least by 1997. He was going to school in CITY 1, Utah and he had obtained a Utah drivers license. In 1997 he purchased a mobile home where he resided while he was finishing school. The mobile home was located in a trailer park where he leased the trailer space. The Utah domicile was established, and the facts do not indicate that Petitioner abandoned Utah as his domicile or intended to, and actually established a new domicile in STATE.

In June of 1997 Petitioner was offered a teaching position in CITY 2. He then graduated from

1 The rule defining domicile was revised effective December 2002. The Commission applies the rule in effect during the audit period.

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,

College in Utah, in July 1997. Although he had already had the CITY 2 job offer, he renewed his Utah Drivers License in July 1997. He explained that this was because he never intended to stay in STATE very long. In August 1997 Petitioner moved in with his parents at their residence in the CITY 2 area. He states that he did pay them rent, but provides no written lease or receipts. He had leased out the mobile home that he owned in Utah to a third party. He indicates that the mobile home remained leased until May 1999. He acknowledges that he did visit Utah during the summers, but would stay with his sister who had a residence near CITY 1. During the school year, he was both teaching and coaching so that he did not have significant time to spend in Utah. He continued teaching in CITY 2 and resided there with his parents through the 1998/1999 school year. He states that he did have a STATE bank account and received mail at his parent's residence in STATE. However, he had never obtained a STATE drivers license and in February 1999 he registered his vehicle in Utah.

In July 1999, Petitioner married (X). She was a Utah resident at the time of the marriage, but she moved to STATE with Petitioner until November 1999 when Petitioner resigned his position in CITY 2 and the couple moved to Utah, back to the mobile home that they had maintained in this state. They did work some in Utah in December 1999.

All these factors indicate that Petitioner did not intend to make a permanent residence in STATE as he did not take the actions typical in establishing a new domicile. There was no STATE drivers license, vehicle registration or even an independent residence. He maintained significant ties to Utah, the mobile home, drivers license and vehicle registrations. Furthermore, Petitioner explained the renewal of the license in Utah was because he did not intend to stay in CITY 2 very long.

However, the issue of domicile is complicated. Petitioner's income was primarily earned in

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

STATE and he was spending most of his time there, so it is understandable that he misunderstood his Utah filing requirements for the 1999 year. For this reason there is sufficient cause for waiver of the penalties.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioner remained domiciled in Utah throughout the year at issue and sustains the Statutory Notice as it pertains to the tax and the interest assessed thereon. The penalties are hereby waived. 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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