

08-0511  
AUDIT  
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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 08-0511  Account No. ##### Tax Type: Individual Income Tax Years: 2004  Judge: Chapman
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**Presiding:**

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP, Representative  
PETITIONER 1  
PETITIONER 2  
For Respondent: RESPONDENT REP 1, Assistant Attorney General  
RESPONDENT REP 2, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on December 9, 2008.

PETITIONER 1 & PETITIONER 2 (the “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of additional individual income tax for the 2004 tax year. On February 14, 2008, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”) to the taxpayers, in which it imposed additional tax and interest, as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2004	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

For the 2004 tax year, the taxpayers filed a Utah part-year resident return, on which they claimed to be Utah residents from June 28, 2004 through the remainder of the year. They claim that they were STATE residents from January 1, 2004 until June 28, 2004.

The Division has determined that the taxpayers were domiciled in Utah for all of 2004. As a result, the Division assessed them as full-year Utah residents for the entire year. The taxpayers ask the Commission to find that they were not domiciled in Utah from January 1, 2004 through June 28, 2004 and to abate the Division's assessment. The Division asks the Commission to find that the taxpayers were domiciled in Utah for all of 2004 and to sustain its assessment.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1)<sup>1</sup>, “a tax is imposed on the state taxable income . . . of every resident individual[.]”

2. For purposes of Utah income taxation, a “resident individual” is defined in UCA §59-10-103(1)(q), as follows in pertinent part:

- (i) “Resident individual” means:
  - (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
  - (B) an individual who is not domiciled in this state but:
    - (I) maintains a permanent place of abode in this state; and
    - (II) spends in the aggregate 183 or more days of the taxable year in this state.

3. Utah Admin. Rule R865-9I-2 (“Rule 2”) provides guidance concerning 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

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<sup>1</sup> All citations are to the 2004 versions of the Utah Code and the Utah Administrative Code, unless otherwise indicated.

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.

4. 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.

- 5. In individual income tax proceedings before the Tax Commission, UCA §59-10-543

provides, 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.

#### DISCUSSION

Section 59-10-103(1)(q)(A) provides that a person qualifies as a Utah resident individual if that person is domiciled in Utah. At issue is whether the taxpayers were domicile in Utah for the entirety of

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2004, as the Division claims; or whether the taxpayers were domiciled in STATE from May 6, 2003 until June 28, 2004, as the taxpayers claim.

The taxpayers were born and raised in Utah. They went to college at ( X ) in CITY 1, Utah until April 2003 when they graduated. After a college job's fair, COMPANY hired PETITIONER 1 for a position at a bank in STATE. The taxpayers moved to STATE on May 5, 2003 for PETITIONER 1 to begin his job. In 2004, PETITIONER 1 applied for a transfer to Utah. He received notice in April 2004 that he would be transferred to Utah later that year. The taxpayers moved back to Utah on June 28, 2004, at which time PETITIONER 1 began his job at COMPANY in Utah. PETITIONER 1 proffered that until the transfer was approved, he had no guarantee that COMPANY would transfer him back to Utah.

While the taxpayers were students in CITY 1, they rented an apartment, which they gave up when they moved to STATE. In STATE, they also rented an apartment, which they gave up when they returned to Utah. Once they returned to Utah, they rented a house in CITY 2. The taxpayers did not have any children until after returning to Utah in June 2004.

Upon moving to STATE, the taxpayers registered both of their vehicles in STATE. However, neither of the taxpayers obtained a STATE driver's license. They retained their Utah licenses for the entire period they lived in STATE. PETITIONER 1 was also registered to vote in Utah during the period the taxpayers lived in STATE. He did not vote during this period.

The Division proffered evidence to show that the taxpayers filed their 2003 Utah return on March 20, 2004. On this return, they showed their address to be in CITY 3, STATE. PETITIONER 2 included a check with the return that is dated March 20, 2004. The check also shows their address to be in CITY 3, STATE. The check supports the taxpayers' assertion that they had a checking account in STATE while they lived there.

The taxpayers received a number of 2003 W-2's in early 2004. While most of the forms were mailed to their STATE address, several were mailed to their old Utah address and forwarded to them.

During the period the taxpayers lived in STATE, PETITIONER 1 obtained three Utah resident hunting licenses, two on September 18, 2003 and one on April 28, 2004. PETITIONER 1 asserts that his father usually bought him the licenses as a gift. The Division, however, proffers that a person obtaining a Utah resident hunting license must sign a statement asserting that he or she is a Utah resident.

There is no question that the taxpayers were domiciled in Utah until they moved to STATE on May 5, 2003. Once domicile is established, Rule 2(A)(3) provides that domicile "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."

It is uncontested that the taxpayers rented an apartment in STATE once they moved there for PETITIONER 1 to work for COMPANY. Accordingly, the taxpayers established a physical presence in STATE and satisfied the second condition of Rule 2(A)(3). However, further analysis is needed to determine if the taxpayers met the other two conditions that would be necessary for them to have changed their Utah domicile to STATE.

Although the taxpayers assert that they intended their residence to be in STATE during the period at issue, the taxpayers' stated intent is only one factor to consider in deciding whether they changed their domicile from Utah to STATE. Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes<sup>2</sup> and have determined that a person's actions may be accorded greater

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2 The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals. See *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).

weight in determining his or her domicile than a declaration of intent.<sup>3</sup> Accordingly, the Commission must also look at the taxpayers' actions to determine whether the intent required by Rule 2(A)(3) exists.

The taxpayers retained some Utah contacts during the period they lived in STATE. The taxpayers retained their Utah driver's licenses while in STATE. Although this is one factor that could indicate that they only intended to remain in STATE temporarily, the Commission notes that their licenses did not expire while they lived in STATE. Of greater concern, however, is the fact that PETITIONER 1 represented that he was a Utah resident when he obtained Utah hunting licenses during the period he lived in STATE. At best, the Commission considers PETITIONER 1's explanation about the Utah hunting licenses to be disingenuous.

The taxpayers have the burden of proof to show that they changed their domicile from Utah to STATE. However, when the facts proffered at the Initial Hearing are looked at as a whole, the Commission finds that the taxpayers' steps were sufficient to show that they abandoned their Utah domicile and established domicile in STATE. They did not retain a home or apartment in Utah upon moving to STATE. They registered their vehicles in STATE and obtained a STATE bank account. They also used their STATE address for a majority of their financial mailings. Finally, the taxpayers did not know that COMPANY would transfer PETITIONER 1 to a job in Utah when they moved to STATE. Even though the taxpayers retained or established some Utah ties while living in STATE, the Commission believes that the totality of the evidence shows that they changed their domicile to STATE.

For these reasons, the Commission finds that the taxpayers were only domiciled in Utah for a portion of the 2004 tax year at issue in this appeal. Specifically, the Commission finds that the taxpayers were domiciled in STATE from January 1, 2004 until they moved back to Utah on June 28, 2004.

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<sup>3</sup> 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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DECISION AND ORDER

Based upon the foregoing, the Commission finds that the taxpayers were not full-year Utah resident individuals for 2004. The Commission finds that the taxpayers were Utah nonresidents from January 1, 2004 through June 28, 2004. The Division is ordered to revise its assessment accordingly. 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 \_\_\_\_\_, 2008.

\_\_\_\_\_  
Kerry R. Chapman  
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 \_\_\_\_\_, 2008.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner



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Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

**Notice:** If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.

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