

---

BEFORE THE UTAH STATE TAX COMMISSION

---

PETITIONER 1 & PETITIONER 2,

Petitioners,

vs.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND FINAL DECISION**

Appeal No. 08-1487

Account No. #####

Tax Type: Individual Income Tax

Tax Year: 2005 & 2006

Judge: Chapman

**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner

Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner PETITIONER REP, CPA

PETITIONER 1, Taxpayer

PETITIONER 2, Taxpayer

For Respondent: RESPONDENT REP 1, Assistant Attorney General

RESPONDENT REP 2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 2, 2009. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is individual income tax.
2. The tax years at issue are 2005 and 2006.
3. On June 5, 2008, the Auditing Division of the Utah State Tax Commission (the "Division") issued a Notice of Deficiency and Estimated Income Tax for the 2005 tax year and a Notice of Deficiency and Audit Change for the 2006 tax year ("Statutory Notices") to PETITIONER 1 & PETITIONER

2 (“Petitioners” or “taxpayers”), in which it imposed additional income tax for these two years.

4. In the Statutory Notices, the Division imposed additional income tax, penalties and interest (calculated through July 5, 2008), as follows:

Tax Year	Tax	Penalty	Interest	Total
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	<u>\$\$\$\$\$</u>
				<u>\$\$\$\$\$</u>

5. For the 2005 tax year, PETITIONER 1 filed a Utah married separate *part-year* resident return using the provisions for special instructions, while PETITIONER 2 filed a Utah married separate *full-year* resident return using the provisions for special instructions. In its Statutory Notice for the 2005 tax year, the Division determined that PETITIONER 1 was a Utah resident individual for the entirety of 2005 and changed the taxpayers’ 2005 returns to reflect both taxpayers as full-year Utah residents with a married filing joint status.

6. For the 2006 tax year, the PETITIONER 1 & PETITIONER 2 filed a joint Utah part-year resident return, as well as a joint STATE part-year resident return. In its Statutory Notice for the 2006 tax year, the Division determined that both taxpayers were Utah resident individuals for the entirety of 2006 and changed their Utah return to a full-year Utah resident return.

7. On June 9, 2009, the Commission issued an Initial Hearing Order in this matter, in which a majority of the Commission found “that PETITIONER 1 was not domiciled in Utah during the period from the end of April 2005 until May 15, 2006.” At the Formal Hearing, the taxpayers stated that they agreed with the decision in the Initial Hearing Order.

8. The Division appealed the Commission’s Initial Hearing Order. The Division asks the Commission to find that PETITIONER 1 was domiciled in Utah, and thus a resident individual of Utah,

for the entirety of the 2005. The Division concedes that the PETITIONER 1 & PETITIONER 2 were domiciled in STATE for approximately one month in April and May 2006. However, the Division asserts that PETITIONER 1 was domiciled in Utah for the remaining portions of 2006. In addition, it asserts that PETITIONER 1 was a Utah resident individual for the entirety of 2006 because he maintained a permanent place of abode in Utah and spent 183 or more days in Utah during 2006. For these reasons, the Division asks the Commission to sustain its assessments for both years at issue.

9. Neither party contended that it was important for the Commission to determine whether PETITIONER 2 was a full-year Utah resident for the 2006 tax year. As a result, the Commission will only address PETITIONER 1's status for the two years at issue.

10. The taxpayers had been residents of Utah for more than twelve years prior to the 2005 and 2006 tax years. They had first resided in CITY 1, Utah for ten years before selling their home there and purchasing a home in CITY 2, Utah, where they resided for two years. PETITIONER 1 was working as a corporate airline pilot in CITY 1, Utah during this twelve-year period.

11. In March 2005, PETITIONER 1 was laid off from his job in Utah, and the taxpayers immediately put their CITY 2, Utah home up for sale. The taxpayers claim that in PETITIONER 1's profession, there are limited opportunities for work in his field in Utah. PETITIONER 2 explained that even if PETITIONER 1 had been able to find immediate employment in Utah, he would have been starting with lower seniority, which generally meant lower pay. For these reasons, they were concerned that they would not be able to afford their home. In addition, they considered it likely that PETITIONER 1's future employment would not be in Utah.

12. PETITIONER 1 was able to find new employment quickly and was hired by COMPANY A, a Utah corporation, to work in STATE 2. PETITIONER 1 began his employment with COMPANY A on March 20, 2005. The company immediately sent him to STATE 3 for two weeks of

training, after which he returned to STATE 2 to begin work. Within a week of beginning work in STATE 2, PETITIONER 1 determined that the company's airplanes were unsafe and terminated his employment with the company. PETITIONER 1 worked for COMPANY A for less than thirty days. He did not lease an apartment in STATE 2. In addition, he did not have his personal belongings shipped to STATE 2 and did not establish any other contacts with STATE 2.

13. While PETITIONER 1 was working in STATE 2, PETITIONER 2 had remained in Utah to sell their home and to make arrangements to move their belongings to STATE 2. Due to the short period of PETITIONER 1's employment in STATE 2, the taxpayers never started the move to STATE 2.

14. After leaving the employment of COMPANY A in STATE 2, PETITIONER 1 returned to Utah while he looked for different employment. PETITIONER 1 was only in Utah for two weeks before he found employment to work for an air ambulance company in CITY 3, Nevada. At the end of April 2005, PETITIONER 1 moved to CITY 3, Nevada and started working for this company.

15. Upon moving to CITY 3 in April 2005, PETITIONER 1 entered into a six-month lease to rent an apartment there. PETITIONER 2, however, did not move to CITY 3. She continued to live in Utah and continued to work at the job she had held since 2002.

16. The taxpayers sold their home in CITY 2, Utah on May 13, 2005. PETITIONER 2 decided to remain in Utah and rented a home in CITY 4, Utah on a month-to-month basis. Although the taxpayers were not certain, they believed that PETITIONER 2 leased this home in her name only. PETITIONER 2 did travel to CITY 3 to look at homes in contemplation of the taxpayers purchasing a home to which they would both move. However, they did not purchase a home in CITY 3. PETITIONER 2 was unable to find a home that she liked that they could afford. In addition, the taxpayers indicated that soon after Mr. Christopher moved to CITY 3, there was talk that he would be transferred to Elko, Nevada.

17. PETITIONER 1 worked in CITY 3 for about six months. In October 2005, the air

ambulance company transferred him to work in Elko. PETITIONER 1 stayed at accommodations provided by his employer and began to look for other employment because he could not rent an apartment in Elko due to a housing shortage. He stated that there was a one-year waiting list to rent an apartment in Elko. PETITIONER 1 worked in Elko for approximately three months and terminated his employment with the air ambulance company in January 2006 once he was offered a job in STATE. PETITIONER 1 stated that he had had no intention to look for other employment until he was transferred to Elko and was unable to obtain an apartment there. He also stated that he did not apply for any positions in Utah while looking for other employment during this time.

18. PETITIONER 1 stated that he visited Utah only three or four times during the period he lived and worked in Nevada.

19. On February 12, 2006, PETITIONER 1 began working for COMPANY B in STATE. PETITIONER 2 had decided that she would move to STATE with him. PETITIONER 1 went to STATE first and lived in an RV park until they purchased a home in STATE on April 7, 2006. PETITIONER 2 moved out of the month-to-month rental in CITY 4, Utah on April 1, 2006, at which time they moved their belongings to their STATE home.

20. Within a few weeks of moving into the STATE home, however, PETITIONER 1 received an unsolicited offer for employment in Utah with COMPANY C, and the taxpayers determined that they should accept the offer. In addition, the taxpayers' adult children lived in Utah. They listed their STATE residence for sale and moved back to Utah. The taxpayers moved back to Utah on May 7, 2006, at which time they rented a home in CITY 6, Utah. PETITIONER 1 started employment with COMPANY C on May 15, 2006. Eventually they sold their STATE home, and in August 2006, they purchased a home in South Jordan, Utah.

21. PETITIONER 1 was hired as a permanent employee, not a temporary employee, of the companies he worked for outside of Utah during the audit period. However, during the time that PETITIONER 1 worked and lived in Nevada and STATE, he maintained his Utah driver's license and had a vehicle that was registered in Utah in these states. Neither party indicated whether PETITIONER 1 re-registered his vehicle in Utah during the 12-month period he lived and worked in Nevada and STATE.

22. PETITIONER 1 did not register to vote in either Nevada or STATE and did not open a bank account in either state. The taxpayers indicated that PETITIONER 2 took care of all banking matters for both of them.

#### 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)(s), 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 “domicile” and “permanent place of abode,” 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

---

<sup>1</sup> All citations are to the 2005 versions of the Utah Code and the Utah Administrative Code, unless otherwise indicated.

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.

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. UCA §59-1-401(13) (2009) provides that “[u]pon 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.”

6. UCA §59-1-1417 (2009) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

- (1) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
- (2) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
- (3) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;



- (a) required to be reported; and
- (b) of which the commission has no notice at the time the commission mails the notice of deficiency.

### DISCUSSION

The issue before the Commission is whether PETITIONER 1 was a "resident individual" of Utah for income tax purposes for the entirety of the 2005 and 2006 tax years. Section 59-10-103(1)(s) provides that a person is a Utah resident individual for those periods during which a person is "domiciled" in Utah. It also provides that if a person is not domiciled in Utah, he or she is, nevertheless, a Utah resident individual if he or she: 1) maintains a permanent place of abode in Utah; and 2) spends in the aggregate 183 or more days of the taxable year in Utah. The Division claims that PETITIONER 1 was domiciled in Utah for the entirety of 2005 and, except for a one-month period in April and May 2006, for the entirety of 2006. In addition, the Division asserts that even though Mr. Christensen was not domiciled in Utah for the entirety of 2006, he was a Utah resident individual for the entire year because he maintained a permanent place of abode in Utah and was present in Utah for 183 or more days that year.

I. Domicile of PETITIONER 1. There is no question that PETITIONER 1 was domiciled in Utah until March 20, 2005, when he began his employment with COMPANY A. In addition, there is no question that PETITIONER 1 was domiciled in Utah beginning on May 15, 2006, when he began his employment with COMPANY C in Utah. The Commission must determine whether PETITIONER 1 changed his domicile from Utah to another state during the interim, when he lived and worked in STATE 2, Nevada and STATE.

Rule 2(A)(1) provides that "[d]omicile 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." 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.”

a. *Move to STATE 2.* In the Initial Hearing Order, the Commission found that PETITIONER 1 did not change his domicile from Utah to STATE 2 for the short period he lived and worked there. At the Formal Hearing, the taxpayers stated that they agreed with the Initial Hearing Order. In addition, no evidence or testimony was submitted at the Formal Hearing to convince the Commission that PETITIONER 1 changed his domicile from Utah to STATE 2. Accordingly, the Commission finds that PETITIONER 1 was domiciled in Utah for the period he worked for COMPANY A in STATE 2 in March and April 2005.

b. *Move to CITY 3, Nevada.* PETITIONER 1 moved to CITY 3 in April 2005 to work for an air ambulance service, at which time he entered into a six-month lease to rent an apartment in CITY 3. Based on these facts, the Commission finds that PETITIONER 1 meets the second of the three criteria necessary to change his domicile from Utah to Nevada. Specifically, the Commission finds that PETITIONER 1 established an “actual physical presence in a new domicile” pursuant to Rule 2(A)(3)(b).

The other two criteria that must be present for a person to change domicile involve a person’s intent. For domicile to change, Rule 2(3)(a),(c) requires “a specific intent to abandon the former domicile” and “the intent to remain in the new domicile permanently.” In addition, Rule 2(A)(1) provides that “[d]omicile 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” (emphasis added).

PETITIONER 1 stated that he had no intent to return to Utah once he moved to CITY 3. Nevertheless, PETITIONER 1’s stated intent is only one factor to consider in deciding whether he changed

his domicile from Utah to Nevada when he moved to CITY 3. 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 weight in determining his or her domicile than a declaration of intent.<sup>3</sup> Accordingly, the Commission must also look at PETITIONER 1's actions to determine whether the intent required by Rule 2 exists.

In this case, PETITIONER 1 moved to Nevada, worked in Nevada and entered into a six-month lease for an apartment. He and his wife sold their Utah home and looked, at least once, for a home in CITY 3 to buy. In addition, PETITIONER 2 rented a home on a month-to-month basis in Utah. Furthermore, PETITIONER 1 subsequently accepted a job transfer to another city in Nevada, at which time he began looking for different employment in states other than Utah. He found new employment in STATE, where he and his wife purchased a home and moved. After moving away from Utah and living in Nevada and STATE, PETITIONER 1 rarely visited Utah.

The Commission recognizes that PETITIONER 1 did not perform a number of actions often associated with changing ones domicile, such as obtaining a new driver's license, changing vehicle registration and opening bank accounts. In addition, within six months of moving to Nevada, circumstances changed that resulted in PETITIONER 1's decision to look for a new job. As a result, this case is difficult to determine whether the requisite intent was present to show that PETITIONER 1 changed his domicile to Nevada. However, when the taxpayers' actions are looked at as a whole, the Commission finds that they

---

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).

3 *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).

demonstrate not only PETITIONER 1's intent to abandon his Utah domicile, but also an intent to remain in his new domicile permanently. The Commission finds that upon moving to Nevada, PETITIONER 1 intended to establish a permanent home in Nevada to which, at least initially, he intended to return upon being absent. For these reasons, the Commission finds that PETITIONER 1 changed his domicile from Utah to Nevada when he moved to Nevada near the end of April 2005.

c. *Subsequent moves to Elko, Nevada, STATE and Utah.* The Commission has found that PETITIONER 1 changed his domicile from Utah to Nevada in late April 2005. Based on the events that occurred subsequent to this move, the Commission finds that PETITIONER 1 did not change his domicile back to Utah until the taxpayers moved from their STATE home to Utah on May 7, 2006. The taxpayers moved into a rented home in CITY 6, Utah on May 7, 2006, and PETITIONER 1 began work with COMPANY C in Utah on May 15, 2006. Based on this information, the Commission finds that PETITIONER 1 did not reestablish a domicile in Utah until May 7, 2006, when the taxpayers moved into the CITY 6 home. The Commission recognizes that in the Initial Hearing Order, the Commission found that PETITIONER 1 changed his domicile back to Utah on May 15, 2006, the date his employment at COMPANY C began. However, based on the testimony at the Formal Hearing, the Commission finds that his domicile changed May 7, 2006, when he moved back to Utah.

d. *Domicile Summary.* The Commission finds that PETITIONER 1 was not domiciled in Utah from late April 2005 through May 7, 2006.

II. Permanent Place of Abode and Presence in Utah of 183 or More Days During 2006.  
The Division argues that regardless of PETITIONER 1's domicile during 2006, he was a resident individual of Utah for the entirety of 2006 because he maintained a permanent place of abode in Utah and was present in Utah for 183 or more days during 2006. Section 59-10-103(1)(s)(i)(B) provides that for "an individual who is not domiciled" in Utah, that person is, nevertheless, a Utah resident individual if he or she "maintains a

permanent place of abode” in Utah and “spends in the aggregate 183 or more days of the taxable year” in Utah.

The Commission, however, is not persuaded that PETITIONER 1 was a resident individual of Utah for the entirety of 2006 pursuant to Section 59-10-103(1)(s)(i)(B). First, that subsection applies to a person who is not domiciled in Utah. PETITIONER 1 was domiciled in Utah for most of 2006. Second, evidence shows that neither taxpayer maintained a permanent place of abode in Utah for a portion of 2006, specifically from April 1, 2006 to May 7, 2006. Third, the Utah home that PETITIONER 2 lived in prior to April 1, 2006 was rented in her name alone. Given these specific circumstances, the Commission finds that PETITIONER 1 was not a Utah resident individual for the entirety of 2006.

III. Penalties. The Division assessed penalties for the 2005 tax year, but not the 2006 tax year. In accordance with the above rulings, the 2005 tax assessment should be reduced significantly. However, should any tax deficiency remain for the 2005 tax year, the Commission will consider whether reasonable cause exists to waive any remaining penalties. Section 59-1-401(13) authorizes the Commission to waive penalties upon a showing of reasonable cause. The Commission has found in prior cases that “domicile” is a difficult legal concept to understand and to implement and that penalties assessed in domicile cases should generally be waived. The Commission finds no reason to depart from its general practice in this case. Accordingly, the Commission finds that reasonable cause exists to waive any remaining penalties.

#### CONCLUSIONS OF LAW

1. The Commission finds that PETITIONER 1 was not a Utah resident individual between late April 2005 and May 7, 2006.
2. The Commission finds that reasonable cause exists to waive all penalties in this matter.

Kerry R. Chapman  
Administrative Law Judge  
DECISION AND ORDER

Based upon the foregoing, the Commission finds that PETITIONER 1 was not a Utah resident individual between late April 2005 and May 7, 2006. The Commission also finds that reasonable cause exists to waive all penalties imposed in this matter. The Commission orders the Division to revise its assessments to reflect this ruling. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

R. Bruce Johnson  
Commission Chair

D'Arcy Dixon Pignanelli  
Commissioner

Michael J. Cragun  
Commissioner

PARTIAL CONCURRENCE AND PARTIAL DISSENT

I respectfully disagree in part with my colleagues in this matter. Although the Commission has determined in the past that it is possible for a husband and wife to establish separate state tax domiciles, certainly the party that has changed domicile must demonstrate along with the physical presence in the new state, the intent to abandon the former domicile and the intent to remain in the new domicile permanently. In determining whether the taxpayer has this intent, the Commission must consider the totality of the facts and the circumstances. See Utah Admin. Rule R865-9I-2(A) ("Rule 2"). I do not dispute that the PETITIONER 1 & PETITIONER 2 were either in the process of abandoning their domicile, and may have even abandoned for part of the audit period. However, PETITIONER 1 did not obtain a driver's license in Nevada, register his

vehicles in Nevada, register to vote there or purchase a residence in that state. Clearly these actions would have taken some time and effort on his part, but would demonstrate an intent to remain in Nevada on a more permanent basis. PETITIONER 1's family remained in Utah. He rented a temporary apartment in Nevada, and, not only did he and his wife not purchase a home in Nevada, there is no indication that they did anything more than a cursory attempt to see if they could find a home. A taxpayer must do something more than move to another state, get a job, and rent an apartment on a temporary basis to change a domicile for state tax purposes. Rule 2 A.2. provides that "intent will not be determined by . . . the occurrence of any one fact or circumstance . . . ." The only circumstances that occurred were obtaining employment, renting an apartment, and spending a few days looking for a home.<sup>4</sup> It is important to note that the taxpayers never looked for a home in CITY 3 after their initial, unsuccessful search. These actions do not, in and of themselves, support an intent to remain indefinitely in CITY 3 and are insufficient to establish a domicile. Every single action that was taken by the Christopersons, as cited by the majority to demonstrate intent, cannot be distinguished, even in their totality, from identical actions that would be taken by individuals who move to another state, merely to consider if they may want to stay there permanently. From what I read in the decision, it appears that a permanent move was distinguished from a temporary relocation by the fact that the Christopersons were not in Nevada long enough to take enough of the more substantive steps normally cited by the Commission as dispositive, e.g., licenses, registrations, memberships, etc. Presumably these additional steps would have been taken if the Christopersons had remained in Nevada long enough. I don't find the decision to be persuasive. I find that it is possible that the PETITIONER 1 & PETITIONER 2 were only in the process of determining whether they would be able to establish a new domicile in Nevada; there is little evidence that they fully intended to do so.

---

<sup>4</sup> Although the PETITIONER 1 & PETITIONER 2 put their home up for sale, by their own testimony, this was due at least in part with affordability, and would have listed the home even if PETITIONER 1 had found employment in Utah.

In short, this is a burden of proof issue. Either the PETITIONER 1 & PETITIONER 2 had the full intent of remaining in Nevada, or they took the first employment opportunity available and were considering whether Nevada was a viable option for their permanent home. The evidence is ambiguous.

One final, minor point: I observe, and find it curious, that the only direct statement attributed by the majority to PETITIONER 1, regarding his express intent, was that he “stated that he had no intent to return to Utah.” This is not the same as stating that he intended to remain in Nevada permanently.

On the other hand, I find that PETITIONER 1 changed his domicile from Utah to STATE once he moved to that state for employment in February 2006. The facts showed that the taxpayers purchased a home in STATE soon after PETITIONER 1’s move in February, as they were able to close and move into the home in early April 2006.

I concur with the majority that PETITIONER 1 was not a Utah resident individual for the entirety of the 2006 tax year under the criteria concerning permanent place of abode and presence in Utah for 183 or more days. I also agree with the majority’s decision to waive all penalties in this matter.

---

Marc B. Johnson  
Commissioner

**Notice of Appeal Rights:** You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.

KRC/08-1487.fof