

BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER 1 & PETITIONER 2,

Petitioner,

vs.

AUDITING DIVISION OF THE  
UTAH STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING DECISION**

Appeal No. 08-1833

Account No. ##### - 1, ##### - 2

Tax Type: Income Tax

Tax Years: 2005

Judge: Jensen

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**Presiding:**

Clinton Jensen, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER 1, Taxpayer

For Respondent: RESPONDENT REP, Manager, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on March 23, 2009 in accordance with Utah Code §59-1-502.5.

The Petitioner named above (the “Taxpayer”) is appealing the assessment of Utah individual income tax and interest for the 2005 tax year by the Auditing Division of the Utah State Tax Commission (the “Division”). The Division issued a Statutory Notice of Deficiency and Audit Change for the 2005 tax year on August 20, 2008. In the Notice, the Division claimed that the Taxpayer owed an additional \$\$\$\$ in tax and \$\$\$<sup>1</sup> in interest.

The Taxpayer challenges the Division’s audit because the Taxpayer maintains that Utah has no claim to taxes on income earned when the Taxpayer was living outside of Utah. The Division’s position is that the Taxpayer was a resident of Utah for all of 2005 and that this gives Utah the right to tax income of the Taxpayer subject to Utah law.

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. (Utah Code §59-10-104) (2005).

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<sup>1</sup> Interest continues to accrue on the unpaid balance.

Resident individual is defined in Utah Code Sec. 59-10-103(1)(s) (2005) as follows:

- (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 such 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.
- (ii) For purposes of this Subsection (1)(s)(i)(B), 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(A) (2005) as follows:

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.

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

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.

State taxable income is defined in Utah Code Ann. §59-10-112 as follows:

"State taxable income" in the case of a resident individual means his federal taxable income (as defined by Section 59-10-111) with the modifications, subtractions, and adjustments provided in Section 59-10-114 . . .

Federal taxable income is defined in Utah Code Ann. §59-10-111 as follows:

"Federal taxable income" means taxable income as currently defined in Section 63, Internal Revenue Code of 1986.

Taxable income is defined in the Internal Revenue Code at 26 U.S.C. 63 as:

Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

Gross income is defined in the Internal Revenue Code at 26 U.S.C. 61(a) as:

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; ...

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(11).)

#### DISCUSSION

The Division based its audit on the assertion that the Taxpayer was a resident of Utah for tax purposes for the 2005 tax year. On April 15, 2006, the Taxpayer filed a Utah Individual Income Tax Return for the 2005 tax year. On September 14, 2006, the Taxpayer filed an amended Utah return. The Taxpayer explained that the original return included a great deal of income that the Taxpayer earned outside the State of Utah and that this income should not be included for purposes of calculating Utah taxes. The issue in this appeal is whether The Taxpayer was a "resident individual" in the State of Utah for the purposes of Utah Code Sec. 59-10-103 during the audit year. The Taxpayer represents that he did not spend in the aggregate more than 183 days per year in Utah during the period in question. The Division did not contest this. A resident individual,

in the alternative, is one who is "domiciled" in the State of Utah. The parties focused on the issue of domicile at the hearing.

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.<sup>2</sup> 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.<sup>3</sup>

The Taxpayer indicated that he spent 221 days in STATE 1, attended church there, and does all of his banking in STATE 1. The Taxpayer indicates that in 2005, he spent 102 days in CITY 1, Utah and 22 days in CITY 2 Utah. The Taxpayer indicates that he spent the remaining time, approximately 20 days, in STATE 2 and STATE 3. On that basis, the Taxpayer asks that the Commission determine that the Taxpayer does not have sufficient ties to Utah to allow taxation as a Utah resident.

The Division points out that the Taxpayer admitted that he was a Utah resident in 2004. The Division argued that the Taxpayer had not taken sufficient steps as of 2005 to abandon his Utah domicile and create a new one in STATE 1. The Division points to the Taxpayer's ties with Utah to support its contention that the Taxpayer's domicile in Utah for the 2005 tax year made the Taxpayer a resident of Utah for 2005.

To resolve the issues in this case, the Commission considers the evidence presented by the parties regarding the Taxpayer's ties to various states. In 2005, the Taxpayer had a Utah driver license. The Taxpayer did not vote in 2005, but voted in Utah for 2004 and 2008. The Taxpayer had two vehicles in 2005, both with Utah title and registration. In 2005, the Taxpayer owned a home in CITY 1, Utah, a farm in CITY 2, Utah, and a home in CITY 3 STATE 1. The Taxpayer acquired the CITY 1 home in 1954, the CITY 2 home in 1999, and the CITY 3 home in 2004. The Taxpayer had considered selling the CITY 1 home to the SCHOOL DISTRICT, but had not taken any steps to do this as of the hearing before the Commission.

The Taxpayer has adult children that live in CITY 4, Utah and CITY 5, STATE 1. The Taxpayer held no hunting or fishing licenses in 2005. The Taxpayer was retired in 2005 but claimed income from property

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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 in the following cases: ( X ) v. State Tax Comm'n, 866 P.2d 618 (Utah Ct. App. 1993); ( X ) v. State Tax Comm'n, 839 P.2d 1078 (Utah Ct. App. 1995), ( X ) v. State Tax Comm'n, 830 P.2d 230 (Utah 1992), and ( X ) v. State Tax Comm'n, 864 P.2d 904 (Utah Ct. App. 1993).

3 See ( X ) v. Utah State Tax Comm'n 893 P.2d 1078 (Ct. App. 1995); and ( X ) v. Greyhound Lines, Inc., 583 P.2d 613, 614 (Utah 1978);

rented to COMPANY A, COMPANY B, AND COMPANY C. Additionally, the Taxpayer claimed a loss from farming operations of approximately \$\$\$\$\$. The documents provided by the Taxpayer indicate banking in Utah as well as dealings with a bank in STATE 1.

The Taxpayer indicates that he filed 2005 tax returns from CITY 3, STATE 1. He considered CITY 3 his permanent place of abode, but agrees that he has not yet abandoned his Utah home. The Taxpayer had his church records in CITY 3 and taught Sunday School there. He indicated that he had doctors and attorneys in both Utah and STATE 1. His insurance agents were in both STATE 1 and Utah because he had properties in both places. He received a tax exemption on his CITY 1 home on the basis of it being his primary residence.

The Commission weighs the evidence before it mindful of the requirements of Utah law. To end a Utah residency, Utah law requires both the abandonment of a Utah domicile and the creation of a new domicile elsewhere. The Commission agrees that the Taxpayer has taken steps to establish a home in STATE 1. However, as of 2005, the Taxpayer's significant ties to Utah do not support a finding that the Taxpayer had abandoned his domicile in Utah. As of 2005, the Taxpayer still maintained a home in CITY 1, Utah, operated a farm in CITY 2, Utah, and received a tax benefit for the CITY 1 home as a primary residence. The Taxpayer still maintained a Utah driver license and titled and registered his vehicles in STATE 1. These factors persuade the Commission that the Taxpayer still had a domicile in Utah in 2005.

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission finds that Petitioner was domiciled in Utah for the 2005 tax year. Therefore, the audit is sustained as to the Utah income tax for the 2005 tax year and interest accrued thereon. The Commission waives penalties for this period. 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

Appeal No. 08-1833

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

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Clinton Jensen  
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 \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

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