

09-0261  
INCOME  
TAX YEAR: 2003  
SIGNED: 05-16-2011  
COMMISSIONERS: R. JOHNSON, M. CRAGUN  
EXCUSED: M. JOHNSON  
DISSENT: D. DIXON

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,  Petitioner,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</b>  Appeal No. 09-0261  Account No. ##### Tax Type: Income Tax Tax Year: 2003  Judge: Chapman
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**Presiding:**

D'Arcy Dixon Pignanelli, Commissioner  
Kerry R. Chapman, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER REP., CPA  
PETITIONER, 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 February 28, 2011.

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 year at issue is 2003.
3. On January 5, 2009, the Auditing Division of the Utah State Tax Commission (the "Division") issued a Notice of Deficiency and Estimated Income Tax ("Statutory Notice") to PETITIONER

(“Petitioner” or “taxpayer”) in regards to the 2003 tax year, in which it imposed additional income tax, penalties and interest (calculated through February 4, 2009), as follows:

Tax Year	Tax	Penalties	Interest	Total
2003	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

4. The taxpayer did not file a 2003 Utah tax return on the basis that he was not a Utah resident individual during 2003 and that he did not earn any Utah source income that would be subject to taxation by Utah. The Division, however, determined that the taxpayer was domiciled in Utah and, thus, a Utah resident individual for all of 2003. For this reason, the Division imposed tax on all income that the taxpayer earned in 2003. The taxpayer contends that he changed his domicile from Utah to COUNTRY 1 in September 2002 and remained domiciled in COUNTRY 1 until April 2004. In the alternative, the Division argues that a portion of the taxpayer’s income would be Utah source income subject to Utah taxation, even if the taxpayer were found to have been domiciled in COUNTRY 1 for the 2003 tax year.

5. On February 16, 2010, the Commission issued an Initial Hearing Order in this matter, in which a majority of the Commission found that the taxpayer was a Utah domiciliary for all of 2003 and that his 2003 income was subject to Utah taxation. The taxpayer timely appealed the Initial Hearing decision and requested a Formal Hearing.

6. PETITIONER was born in and is a citizen of COUNTRY 2. In 1990, when PETITIONER was 14, he moved from COUNTRY 2 to Utah with his mother and brother so that his mother could attend UNIVERSITY (“UNIVERSITY”). The taxpayer’s father remained in COUNTRY 2.

7. In 1994, PETITIONER’s mother graduated from UNIVERSITY and moved to STATE, where she continues to live. The taxpayer testified that he remained in Utah instead of moving to STATE with his mother so that he could finish his last year of high school. PETITIONER’s brother also remained in Utah. After the taxpayer finished high school, he continued to live in Utah to attend UNIVERSITY. He does

not contest that he was a Utah domiciliary between 1990 and September 2002, when he moved to COUNTRY 1 for work.

8. Prior to June 30, 2002, PETITIONER began discussions with COMPANY A (“COMPANY A”) to work at its manufacturing facility in CITY, COUNTRY 1. COMPANY A was headquartered in STATE 2. Although COMPANY A had no office in Utah, it had two clients in Utah, COMPANY B and COMPANY C. PETITIONER met PERSON A, a partner in COMPANY A, when PETITIONER had worked as an intern at COMPANY B prior to June 2002. PERSON A and PETITIONER traveled to COUNTRY 1 prior to June 30, 2002 to visit COMPANY A’s facilities and to determine whether PETITIONER would work for COMPANY A in COUNTRY 1.

9. PETITIONER, who had been present in the United States in 1990 under various visas, applied for a United States “Green Card” prior to traveling to COUNTRY 1 in June 2002 so that he would be able to work in COUNTRY 1 should COMPANY A offer him a job there. PERSON B testified that even though he could enter COUNTRY 1 under his COUNTRY 2 passport, he had to maintain a legal residency status in the United States in order to work for COMPANY A in COUNTRY 1. Although PETITIONER did not receive a United States Green Card until early 2003, he was able to work for COMPANY A in COUNTRY 1 while his application for a Green Card was being reviewed. PETITIONER explained that he is able to keep his Green Card as long as he returns to the United States at least two times a year. There is no time requirement on the length of the two visits necessary to retain a Green Card or any requirement that any of the visits to the United States had to be to Utah.

10. On June 30, 2002, PETITIONER and COMPANY A entered into an Employment Agreement for PETITIONER to work as an Engineering Manager at COMPANY A’s CITY, COUNTRY 1 facility beginning on September 2, 2002. Division’s Exhibit R-1. The Employment Agreement provided that:

- a. the agreement would be in effect for 18 months with the option to renew and with either

party having the ability to terminate the agreement at will;

- b. “any notice or other communication under this Agreement shall be in writing, signed by the party making the same,” and for communications to PETITIONER, sent to the following address:

PETITIONER  
ADDRESS  
CITY 2, Utah ZIP

- c. COMPANY A would provide an apartment for PETITIONER in COUNTRY 1, along with 10 meals a week (2 meals for each work day);
- d. COMPANY A would provide to PETITIONER “2 round trip tickets . . . to and from the USA/COUNTRY 1;”
- e. COMPANY A would pay PETITIONER \$\$\$\$ for moving expenses; and
- f. COMPANY A would provide PETITIONER medical insurance coverage “equivalent to the benefits provided other employees of the Company in similar positions[.]”

11. In late August 2002, PETITIONER graduated from UNIVERSITY. He indicated that “although [he] had a month between the finalization of my job offer and actually moving to COUNTRY 1, [he] was in school for all but three days of that time[.]” Petitioner’s Exhibit 1. PETITIONER states that he had little time to pack and to take care of personal matters in Utah before moving to COUNTRY 1 on or around September 1, 2002.

12. At the time PETITIONER moved to COUNTRY 1 for work, his girlfriend, who was later to become his wife, continued living in Utah. PETITIONER’s girlfriend traveled to COUNTRY 1 to visit him in May 2003.

13. While working for COMPANY A, PETITIONER would travel to Utah on a regular basis on business to confer with COMPANY A’s two Utah clients, COMPANY B and COMPANY C. PETITIONER

estimates that he traveled from COUNTRY 1 to Utah four or five times in 2003 and that he worked in Utah five days on each trip.

14. PETITIONER continued to work for COMPANY A in COUNTRY 1 until October 2003, when he returned to Utah on unpaid leave. PETITIONER explained that problems between the partners began in mid-2003 and resulted in his work environment in COUNTRY 1 becoming too difficult to continue working. Although PETITIONER left COUNTRY 1 and returned to Utah in October 2003, he stated that he believed that the problems between the partners would be resolved to allow him to return to COUNTRY 1 to work for COMPANY A at a later date. PETITIONER stated that he did not know that he would not be returning to work for COMPANY A in COUNTRY 1 until April 2004, around the time his Employment Agreement with COMPANY A expired without COMPANY A engaging in discussions with him to renew it.

15. PETITIONER has lived in Utah since returning from COUNTRY 1 in October 2003, although he visited his girlfriend's parents in STATE 3 at least once in late 2003 or early 2004. PETITIONER proposed to his girlfriend on December 31, 2003, and they discussed living in COUNTRY 1 together. PETITIONER explained that his future wife was not unfamiliar with LANGUAGE culture, as she had lived in COUNTRY 2 for a time, and that he wanted their children to become well-versed in LANGUAGE. PETITIONER stated that he started to look for other employment when it became apparent in 2004 that the situation with COMPANY A was not working out.

16. PETITIONER and his girlfriend married in August 2004, at which time they rented an apartment in CITY 3, Utah. Between returning to Utah in October 2003 and his marriage in August 2004, PETITIONER indicated that he stayed with friends in CITY 2, Utah. Although PETITIONER has held two positions since his marriage that required him to travel to COUNTRY 1 for work, he and his wife continue to live in Utah. PETITIONER admits that he has been a Utah domiciliary since April 2004, when the term of

his Employment Agreement with COMPANY A expired.<sup>1</sup> PETITIONER explained that he has been eligible to petition for United State citizenship since two years after his marriage, but has elected not to do so, explaining that “COUNTRY 2 has done him no wrong.”

17. PETITIONER stated that he had little time to dispose of his personal property in Utah prior to moving to COUNTRY 1 on or about September 1, 2002. He placed most of his personal property in a storage unit in Utah, a storage unit that his mother had originally rented when she moved to STATE in 1994. PETITIONER stated that much of his furniture had been purchased with funds provided by his father, so that it was not entirely up to him to decide on the final disposition of the furniture. He also stated that he gave a good portion of his belongings to his brother, who remained in Utah.

18. PETITIONER also claims that the \$\$\$\$ of moving expenses “provided by COMPANY A was grossly insufficient to move all of [his] belongings to COUNTRY 1.” Petitioner’s Exhibit P-1. PETITIONER stated that he purchased some personal property in COUNTRY 1 for the apartment COMPANY A provided him, including a stereo and utensils. He stated that he left these items and other items, including textbooks, clothing, DVDs, a bed and food, at his apartment in COUNTRY 1 when he returned to Utah on unpaid leave. PETITIONER further stated that on his business trips to Utah, he would visit his storage unit and chose items of personal property to take back to COUNTRY 1 with him.

19. While PETITIONER was working for COMPANY A in COUNTRY 1, he had all of his mail that originated in COUNTRY 1 sent to his apartment in COUNTRY 1. However, he had all mail that originated elsewhere sent to one of two addresses in the United States, due to the risk of mail being lost if it were sent to COUNTRY 1. He had a portion of his mail sent to the address of a family in CITY 2, Utah, the FAMILY, with whom he had been friends for years and with whom he had lived for a year while in high

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<sup>1</sup> PETITIONER filed 2004 and 2005 Utah nonresident returns on which he claimed that he was a resident of STATE 2, which conflicts with PETITIONER’s assertion that he has been domiciled in Utah since April 2004. However, the 2004 and 2005 tax years are not at issue in this appeal.

school. He also had a portion of his mail sent to his mother's address in CITY 4, STATE. As an example, PETITIONER's Utah driver's license renewal notice was sent to the Cannon's CITY 2, Utah address in 2003. In addition, his Green Card was sent to a United States address in early 2003.

20. In COUNTRY 1, an employer is required to pay an employee's income taxes. As a result, PETITIONER was not required to file and pay LANGUAGE income taxes himself. PETITIONER filed a 2003 United States federal income tax return in early 2004, on which he used a CITY 2, Utah address. It is not known what address was used on PETITIONER's 2002 federal income tax return that he filed in early 2003 or whether PETITIONER used a Utah tax preparer to prepare his 2002 return. However, PETITIONER stated that his 2002 federal return "probably" showed a CITY 2, Utah address.

21. During the time PETITIONER worked in COUNTRY 1, he visited COUNTRY 2 once.

22. PETITIONER kept his Utah bank account after moving to COUNTRY 1, where he opened a separate bank account. COMPANY A directly deposited PETITIONER's paycheck into the Utah account, and PETITIONER would transfer small amounts to his LANGUAGE account to cover his expenses in COUNTRY 1. PETITIONER indicated that keeping money in a United States account and transferring only enough to an account in COUNTRY 1 was the "modus operandi of most expatriates who worked and lived in COUNTRY 1." Petitioner's Exhibit P-1. He stated that he was advised by both his employer and associates to safeguard his money in this manner, given the uncertainties and restrictions of the LANGUAGE financial system. PETITIONER explained that once you had money in COUNTRY 1, it was difficult to get it out.

23. PETITIONER owned a Toyota Camry that was registered in Utah at the time he moved to COUNTRY 1. Because his father had provided the funds to purchase the car, PETITIONER did not believe that he could decide alone how to dispose of it. PETITIONER indicated that it was decided that he would give the car to his brother. However, title to the car was not transferred from PETITIONER to his brother until July 2003. PETITIONER indicated that he had no idea that the vehicle's title was not transferred closer

to the date he moved to COUNTRY 1. PETITIONER stated it required a “family intervention” for him to get the Camry back after his return to Utah in 2003.

24. PETITIONER had a Utah driver’s license at the time he moved to COUNTRY 1. He never surrendered his Utah driver’s license during the period he worked for COMPANY A. Nor did he obtain a LANGUAGE driver’s license, as his employer provided him a car and driver. PETITIONER renewed his Utah driver’s license on September 26, 2003, presumably during one of his business trips to Utah, as it occurred prior to his returning to Utah on unpaid leave in October 2003. PETITIONER explained that he kept his Utah driver’s license because he needed a driver’s license from a state in the United States in order to drive on trips to the United States. He stated that it was his understanding that the United States would not recognize an international driver’s license.

25. PETITIONER explains that under his Employment Agreement with COMPANY A, COMPANY A was required to provide him medical insurance coverage. PETITIONER explained that because he was the first COMPANY A employee from the United States to work in COUNTRY 1, COMPANY A asked him to purchase his own medical policy and to let COMPANY A reimburse him for the cost of the policy. He states that he bought a Utah medical policy because of the limited time he had available between accepting the job with COMPANY A and leaving for COUNTRY 1. PETITIONER obtained medical services both in Utah and in COUNTRY 1 while he was covered under the policy. He explained that his costs under the Utah policy were lower if he obtained medical services in Utah instead of some other state or country.

26. PETITIONER indicated that he intended to work for COMPANY A indefinitely when he took the job in COUNTRY 1 in 2002 and that he never intended for the job to end in 18 months, the term set forth in the Employment Agreement, or sooner. He also noted that because he was a bachelor during the period he worked for COMPANY A in COUNTRY 1, he had fewer needs than most other people. It is for



this reason, he explained, that he had no “permanent” home in Utah to which to return when he took unpaid leave from his job in COUNTRY 1 in October 2003. Instead, he stayed with friends in Utah until he married in August 2004 and got an apartment. He believes that the contacts he maintained with Utah while working in COUNTRY 1 in 2002 and 2003 can be explained because of the circumstances surrounding mail delivery and financial institutions in COUNTRY 1 and because of the limited amount of time he had to settle his affairs in Utah prior to moving to COUNTRY 1. For these reasons, PETITIONER asks the Commission to find that he changed his domicile from Utah to COUNTRY 1 in September 2002 and that he was not a Utah domiciliary during the 2003 tax year.

27. The Division, on the other hand, contends that PETITIONER’s actions do not show an intent to both abandon his Utah domicile and establish a new domicile in COUNTRY 1. PETITIONER was admittedly domiciled in Utah until moving to COUNTRY 1 in September 2002. PETITIONER’s apartment and car in COUNTRY 1 were provided by his employer. PETITIONER kept most of his money in a Utah bank account, not a LANGUAGE bank account, and had his paycheck deposited directly into his Utah account. PETITIONER had a Utah medical policy while living and working in COUNTRY 1. He also had a vehicle registered in his name in Utah for most of the period he worked in COUNTRY 1. He maintained a Utah driver’s license and renewed it during the period he was working in COUNTRY 1. Most of the taxpayer’s important mail was not sent to COUNTRY 1, but to addresses in the United States, including Utah. PETITIONER stored a significant portion of his personal possessions in a Utah storage unit. When PETITIONER took unpaid leave from his job with COMPANY A in COUNTRY 1, he returned to Utah instead of remaining at his apartment in COUNTRY 1, where he left a number of items of personal property. PETITIONER’s job with COMPANY A in COUNTRY 1 afforded him a number of opportunities to come to Utah on business trips, where he could visit his girlfriend, brother, and long-time friends. For these reasons,

the Division asks the Commission to find that PETITIONER remained domiciled in Utah when he moved to COUNTRY 1 to work for COMPANY A and that he was a Utah domiciliary for all of the 2003 tax year.

28. Should the Commission decide that PETITIONER was domiciled in COUNTRY 1 and not Utah for the 2003 tax year, the Division asserts that a portion of his 2003 income is Utah source income that is, nevertheless, subject to Utah taxation. RESPONDENT REP. 2 stated that the income PETITIONER earned in 2003 while physically present in Utah on business trips for COMPANY A should be considered Utah source income.

29. PETITIONER's 2003 Federal Adjusted Gross Income ("FAGI") was \$\$\$\$\$. Respondent's Exhibit 2. PETITIONER testified that all of this FAGI was earned prior to him returning to Utah on unpaid leave in October 2003. PETITIONER explained that he did not engage in any other employment after returning to Utah in October 2003, as he was optimistic that his situation with COMPANY A would change so that he could return to his job with COMPANY A in COUNTRY 1.

30. PETITIONER estimated that he made four to five business trips to Utah in 2003 and that each trip lasted between five to seven days. PETITIONER explained that he did not work weekends, so each trip involved five days of work. If PETITIONER made five business trips to Utah in 2003 and worked five days on each trip, he would have worked 25 days in Utah prior to going on unpaid leave in October 2003. The Commission takes administrative notice that there were 195 weekdays in 2003 prior to October 1, 2003. If PETITIONER's 2003 FAGI of \$\$\$\$\$ represents 195 days of work, then 25/195 of the wages, or \$\$\$\$\$, would have been earned on days that the taxpayer was working in Utah in 2003. Neither party presented evidence to show that the portion of PETITIONER's 2003 wages that were earned while he was physically present in Utah is an amount other than \$\$\$\$\$.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1)<sup>2</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)(p), 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 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.

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<sup>2</sup> All citations are to the 2003 versions of the Utah Code and the Utah Administrative Code, unless otherwise indicated.

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.

....

4. Utah Admin. Rule R884-24P-52(E) ("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. For purpose of determining a nonresident individual's state taxable income, UCA §59-10-117

provides, as follows in pertinent part:

(1) . . . , federal adjusted gross income derived from Utah sources shall include those items includable in federal "adjusted gross income" (as defined by Section 62 of the Internal Revenue Code) attributable to or resulting from:

....

(b) the carrying on of a business, trade, profession, or occupation in this state.

....

(2) For the purposes of Subsection (1):

....

(c) Salaries, wages, commissions, and compensation for personal services rendered outside this state shall not be considered to be derived from Utah sources.

....

6. UCA §59-1-401(13) (2010) 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."

7. UCA §59-1-1417 (2010) 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

Section 59-10-104(1) provides that the income earned by a Utah resident individual is subject to Utah taxation. Section 59-10-103(1)(p) provides that a person is a Utah resident individual for periods during which a person is domiciled in Utah. The first issue concerns the Division's claim that PETITIONER was domiciled in Utah for the 2003 tax year. The Division contends that PETITIONER did not take sufficient steps to change his domicile from Utah to COUNTRY 1 after moving to COUNTRY 1 on or about September 1, 2002 to work for COMPANY A. If the Commission decides that PETITIONER remained domiciled in Utah for the 2003 tax year, the Division's assessment of additional tax and interest will be sustained because all income earned in 2003 would be subject to Utah taxation regardless of where earned.

If PETITIONER is found to have been domiciled in Utah for the 2003 tax year, the second issue concerning Utah source income would be moot, as all of PETITIONER's 2003 income would already be subject to Utah taxation. If, on the other hand, PETITIONER is found to have changed his domicile from Utah to COUNTRY 1 for 2003, the Commission will need to address the second issue to determine whether or not any of the income PETITIONER earned in 2003 is Utah source income subject to Utah taxation.

Domicile of PETITIONER. There is no question that PETITIONER was domiciled in Utah until September 2002, when he moved to COUNTRY 1 for his job with COMPANY A. In addition, there is no question that PETITIONER was again domiciled in Utah after April 2004. The Commission must determine whether PETITIONER was a Utah domiciliary between these dates and specifically for the 2003 tax year.

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.”

PETITIONER moved to COUNTRY 1 in September 2002 for work, at which time he moved into an apartment provided by his employer. PETITIONER lived in this apartment until he returned to Utah on unpaid leave in October 2003. These facts show that PETITIONER meets the second of the three criteria necessary to change his domicile from Utah to COUNTRY 1. Specifically, the PETITIONER 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 stated that he had no intent to return to Utah once he moved to COUNTRY 1 and that he intended to live and work in COUNTRY 1 indefinitely. Nevertheless, PETITIONER’s stated intent is only one factor to consider in deciding whether he changed his domicile from Utah to COUNTRY 1 when he moved there for work. Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes<sup>3</sup> and have determined that a person’s actions may be accorded greater weight in

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<sup>3</sup> 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).

determining his or her domicile than a declaration of intent.<sup>4</sup> Accordingly, the Commission must also look at PETITIONER's actions to determine whether the intent to change domicile, as required by Rule 2, exists.

Although PETITIONER moved to COUNTRY 1 for work, he maintained significant contacts with Utah while in COUNTRY 1. He maintained a Utah driver's license and renewed it during the period he was working in COUNTRY 1. When he went on unpaid leave in October 2003 for what he anticipated to be a short period of time, he returned to Utah instead of remaining at his apartment in COUNTRY 1. PETITIONER indicated that he retained many of his Utah contacts because of the short period of time he had between graduation and his move to COUNTRY 1. However, PETITIONER returned to Utah on business numerous times while working in COUNTRY 1 and did not eliminate these contacts with Utah. PETITIONER also maintained a Utah bank account and had a Utah medical policy. He received most of his important mail in the United States, including Utah. He used Utah as his address on federal tax returns that were filed for 2003. Pursuant to 59-1-1417, the taxpayer has the burden to show that the Division's assessment is incorrect, which he has not done. When PETITIONER's actions are looked at as a whole, it does not appear that he had the necessary intent to abandon his Utah domicile and establish a new one in COUNTRY 1. For these reasons, it should be found that PETITIONER was domiciled in Utah for all of the 2003 tax year and that he was a full-year resident individual of Utah for 2003. Because all of PETITIONER's 2003 income is subject to Utah taxation due to his being domiciled in Utah for 2003, the Commission need not address the Division's source income argument.

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 implement and that penalties assessed in domicile cases should generally be waived. The

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<sup>4</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).



Appeal No. 09-0261

Commission finds no reason to depart from its general practice in this case. Accordingly, the Commission finds that reasonable cause exists to waive any penalties that the Division imposed in its assessment.

CONCLUSIONS OF LAW

1. PETITIONER was domiciled in Utah for the 2003 tax year and, as a result, was a Utah resident individual for the 2003 tax year. Accordingly, the Division's assessment of additional tax and interest should be sustained.

2. Reasonable cause exists to waive all penalties in this matter.

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Kerry R. Chapman  
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Commission finds that PETITIONER was a Utah resident individual for the 2003 tax year and sustains the Division's assessment of additional tax and interest. In addition, the Commission waives all penalties that have been assessed in this matter. It is so ordered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

R. Bruce Johnson  
Commission Chair

Marc B. Johnson  
Commissioner

Michael J. Cragun  
Commissioner

DISSENT

I respectfully dissent from my colleagues.

In this situation we have a young, single person who did not require a lot of personal effects or connections to make a place his home. This taxpayer is a COUNTRY 2 citizen, who left a father in COUNTRY 2 and moved to the United States with his mother, completed high school living with another family in Utah while his mother accepted employment in another state, and at a very young age, upon completing college, moved to COUNTRY 1. His home was where he had a bed and put his suitcase down.

In *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613 (Utah 1978) the Court ruled:

Domicile is based on residence and intent to remain for an indefinite time. The intention need not be to remain for all time, it being sufficient if the intention is to remain for an indefinite period.

Appeal No. 09-0261

All of PETITIONER's ties to Utah are due to the short amount of time he had to move to COUNTRY 1, advice given to him by his employer, and his unique family situation. PETITIONER testified that he had to act quickly after graduating from college to move to COUNTRY 1 and accept the employment in COUNTRY 1 and that most of his limited possessions were not paid for by him and therefore he could not sell them, but had to store them until his father could decide what he wanted done with them.

The Division did not dispute that mail services in COUNTRY 1 are so uncertain that few expatriates actually have all their mail delivered to a COUNTRY 1 mailbox or residence. In terms of the driver's license, the taxpayer stated he renewed the license because he understood he needed it to drive in the US and renewal of the license was not denied to him.

I believe PETITIONER took the steps he was familiar with to make the apartment in COUNTRY 1 his new residence with the intent to remain an indefinite period of time; however, I find a six-month leave of absence from his work was longer than one would expect to determine if he was going to continue his life in COUNTRY 1. For the tax 2003 tax year in question, I would find the Taxpayer was domiciled in COUNTRY 1 from January 1, 2003 to October 31, 2003, but became domiciled in Utah beginning November 1, 2003. He is subject to taxes on the portion of Utah source income he earned in Utah while domiciled in COUNTRY 1, and for the two months he was domiciled in Utah. I would waive any associated penalties.

D'Arcy Dixon Pignanelli  
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. §§59-1-601et seq. and 63G-4-401 et seq.

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