

11-1271
INCOME- DOMICILE
TAX YEAR: 2006
SIGNED: 03-15-2012
COMMISSIONERS: R. JOHNSON, D. DIXON, M. CRAGUN
EXCUSED: M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 11-1271 Account No. ##### Tax Type: Income Tax Tax Year: 2006 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
 PETITIONER REP.
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on December 12, 2011. Petitioner (Taxpayer) is appealing an audit deficiency of Utah individual income tax for the year 2006. The Statutory Notice of Deficiency and Estimated Income Tax had been issued on March 7, 2011. Taxpayer timely appealed the audit. Respondent ("Division") had arranged to amend the audit just prior to the hearing, but the amended audit was to be issued on December 15, 2011. The amended audit would give the Taxpayer credit for taxes paid to STATE 1. The amount of the original audit deficiency and the amended audit deficiency at issue are as follows:

	Tax	Penalty	Interest	Total as of Notice Date ¹
2006 Original	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006 Amended	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104(1) (2007)² as follows:

...a tax is imposed on the state taxable income, as defined in Section 59-10-112, of every resident individual...

Resident individual is defined in Utah Code Sec. 59-10-103(1)(v) (2007) as follows:

(k)(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)(v)(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(1) as follows:

(1) Domicile

(a) 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.

(b) 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.

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

1 Interest continues to accrue on the unpaid balance.

2 The Utah Individual Income Tax Act has been revised and provisions renumbered subsequent to the audit period. The Commission cites to and applies the provisions that were in effect during the audit period on substantive legal issues.

- (ii) Domicile applies equally to a permanent home within and without the United States.
- (c) A domicile, once established, is not lost until there is a concurrence of the following three elements:
 - (i) a specific intent to abandon the former domicile;
 - (ii) the actual physical presence in a new domicile; and
 - (iii) the intent to remain in the new domicile permanently.
- (d) 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.

The applicable statutes specifically provide that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code Sec. 59-1-1417 provides:

In a proceeding before the commission, the burden of proof is on the petitioner. . .

Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part. (Utah Code Sec. 59-1-401(13).)

DISCUSSION

Respondent based its audit on the assertion that Petitioner was a resident of Utah for tax purposes for all of 2006. Petitioner had not filed resident Utah Individual Income Tax Returns and maintains that he had moved to STATE 1 in May 2006 and remained there until February of the following year. He had filed a part year Individual Income Tax Return in STATE 1 for 2006 and paid taxes to that state. These taxes are the basis of the credit allowed by the Division in the amended audit. The issue in this appeal is whether Petitioner was a "resident individual" in the State of Utah for the purposes of Utah Code Sec. 59-10-103(1)(k) during all of 2006, or whether he changed his domicile to STATE 1 beginning in May 2006. From the information presented Petitioner did not spend in the aggregate more than 183 days per year in Utah during 2006. A resident individual, in the alternative, is one who is "domiciled" in the State of Utah.

The question of whether one establishes or maintains a domicile in Utah is a question of fact. The Commission has considered this issue in numerous appeals and whether someone is a "resident individual" for state tax purposes has been addressed by the appellate courts in Utah.³ As discussed by the courts in

³ The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court

considering this issue, the fact finder may accord the party's activities greater weight than his or her declaration of intent.⁴ In this case the Taxpayer had been domiciled in Utah prior to May 2006. Once domicile has been established in Utah three things must be shown to establish a new domicile: 1) a specific intent to abandon the former domicile; 2) the actual physical presence in a new domicile; and 3) the intent to remain in the new domicile permanently. See Utah Admin. Rule R865-9I-2(1).

At the hearing the Taxpayer stated that it was his intent to leave Utah and move to STATE 1 permanently. The information provided by the Taxpayer indicated that he had met the second criteria. There was an actual physical presence in STATE 1. The question is whether the facts show the first and third criteria; the intent to abandon the Utah domicile and the intent to remain in the STATE 1 domicile permanently. The Taxpayer had been working in Utah in a STORE in MALL. He had been renting an apartment in Utah with a roommate prior to May 2006. He did not own a residential property. He had two vehicles registered in Utah prior to May 2006. The STORE chain for which he was working offered him a position to open a new store in STATE 1 and be the manager of the store. He moved to STATE 1 in May 2006 for that purpose. Additionally, his fiancé also moved to STATE 1 and found a job there.

The Taxpayer rented an apartment in STATE 1. The Taxpayer's roommate in Utah took over the lease on the Utah apartment. He also left one of his vehicles in Utah for the roommate. The Taxpayer drove his CAR 1 out to STATE 1. He stated that this vehicle died in STATE 1 so he did not register it there. Once in STATE 1 he purchased a CAR 2 in June 2006. He did get this vehicle registered in STATE 1 on temporary tags which he kept renewing as it would not pass the emissions test. The Taxpayer stated that he did not open a bank account in STATE 1, but also that he had not had one in Utah. He did work to open the new STORE in STATE 1 and worked there as planned. However, it ended up that he had to open and close the store every day and that he was not able to leave the store while it was open and he was working 7 days a week. He stated that it was 80 hour work weeks. He states that he did not obtain an STATE 1 Driver License because of the long hours he was at work or register to vote in STATE 1. His fiancé did, however, obtain an STATE 1 Driver License. Mail was sent to STATE 1 as the Taxpayer did not have a residence in Utah during this period. Because of the job situation not being as he had hoped and that the Taxpayer and his fiancé decided

and the Court of Appeals in the following cases: *Lassche v. State Tax Comm'n*, 866 P.2d 618 (Utah Ct. App. 1993); *Clements v. State Tax Comm'n*, 839 P.2d 1078 (Utah Ct. App. 1995), *O'Rourke v. State Tax Comm'n*, 830 P.2d 230 (Utah 1992), and *Orton v. State Tax Comm'n*, 864 P.2d 904 (Utah Ct. App. 1993).

4 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);

they did not like living in STATE 1 because of the heat and the traffic, the Taxpayer returned to Utah in 2007 to look for new employment.

After reviewing the facts, the weight does support his statements that he intended to abandon Utah and intended to establish a permanent domicile in STATE 1. The Taxpayer did not own a residence at this time in any state. He leased in Utah. He was able to make arrangements for that lease so that he could move to STATE 1, where he also leased an apartment beginning May 1, 2006. He did not maintain a place of abode in Utah while he was living and working in STATE 1. He purchased a car in STATE 1, he obtained temporary registrations for the car in STATE 1. He lived fulltime in that state and worked more than full time in that state. His mail was sent to STATE 1 while he was there. The Taxpayer has stated that it was his intent to move there permanently, it just did not work out as planned. The audit should be revised to a Utah part-year resident status, with the Taxpayer as a resident of Utah from January 1, 2006 through the end of April 2006 and a resident of STATE 1 from May 1, 2006 through the end of the year.

Regarding penalties, these would be adjusted based on the new tax amount resulting from the part-year Utah resident status. Since the Taxpayer would owe tax in Utah only for the period that he was domiciled in Utah, January 1 through April 30, 2006, the penalties would still be the 10% failure to file timely and 10% failure to pay timely penalties, but reduced based on the reduced tax amount due on the part-year Utah return. Because the Taxpayer had previously been a Utah resident and had been filing and paying taxes in Utah and had filed a part-year resident return in STATE 1, he should have been aware that he would also need to file a part-year resident return in Utah for the first four months of the year and these revised penalties should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the information presented at the hearing, the Commission orders the Division to revise its audit based on the Taxpayer being a part-year resident of Utah from January 1, 2006 through April 30, 2006 and the penalties and interest are to be reduced 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:

Appeal No. 11-1271

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 _____, 2012.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

NOTICE: If a Formal Hearing is not requested, failure to pay the balance due as determined by this order within thirty days of the date hereon, may result in a late payment penalty. Petitioner may contact Taxpayer Services at (801) 297-7703 to make payment arrangements.