

11-2422
TAX TYPE: INCOME
TAX YEARS: 2008 AND 2009
DATE SIGNED: 3-13-2013
COMMISSIONERS: B. JOHNSON, D. DIXON, R. PERO
EXCUSED: M. CRAGUN

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER,

Appeal No. 11-2422

Account No. #####

Tax Type: Income Tax

Tax Year: 2008 and 2009

Judge: Marshall

Presiding:

Jan Marshall, Administrative Judge

Appearances:

For Petitioner: TAXPAYER, *Pro Se*

For Respondent: RESPONDENT, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5, on November 15, 2012. This matter was before the Commission on Petitioner's ("Taxpayer") appeal of Utah Individual Income Tax audit deficiencies for the 2008 and 2009 tax years. On July 13, 2011, the Respondent ("Division") issued a Notice of Deficiency and Audit Change for the 2008 tax year. The amount of the deficiency was \$\$\$\$\$ in tax and interest in the amount of \$\$\$\$\$ through August 12, 2011. There were no penalties assessed on the audit. On July 13, 2011, the Division issued a Notice of Deficiency and Audit Change for the 2009 tax year. The amount of the deficiency was \$\$\$\$\$ in tax and interest in the amount of \$\$\$\$\$ through August 12, 2011. There were no penalties assessed on the audit.

APPLICABLE LAW

Tax is imposed on the state taxable income of every "resident individual." *See* Utah Code Ann. §59-10-104(1).

Utah Code Ann. §59-10-103 defines “resident individual” as follows:

- (q) “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.

Further guidance on the determination of resident individual status is provided in Administrative Rule R865-9I-2, set forth below, in relevant 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 the 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.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

Prior to the years at issue, the Taxpayer was a resident of Utah. In August 2008, the Taxpayer started his training and employment with the (X). He was originally sent to CITY-1 for training at the (X) Academy, and then assigned to CITY-2, STATE-1 for a permanent position with the (X). The Taxpayer

stated that when he applied with the (X), he was hoping he would be stationed somewhere on the west coast. When he received his assignment in STATE-1, he was told that he would need to remain there four to five years before he would be able to transfer out west. He was later told that it would be six to ten years before he could transfer. The Taxpayer stated that he did not like the hours he was working, and decided he did not want to remain in STATE-1 that long, and quit his job and returned to Utah on February 21, 2009.

Once the Taxpayer arrived in STATE-1, he rented an apartment in CITY-2. He provided a copy of his lease agreement, which was for the period of November 17, 2008 through November 30, 2009. The Taxpayer stated that he was allowed out of his lease early because the apartment complex was able to lease the unit to someone else. The Taxpayer provided copies of his renters and auto insurance in STATE-1, as well as receipts from utilities. The Taxpayer also provided receipts for the furniture he purchased for his apartment. The Taxpayer provided a letter from the STATE-1 Department of Public Safety showing that he was issued a driver license on December 30, 2008. The Taxpayer provided copies of his paystubs showing that he had state taxes withheld for STATE-1. In addition, the Taxpayer provided copies of checks showing his rent and utility payments in STATE-1, and noted that he had changed his banking institution to the (X) Credit Union.

The Taxpayer stated that he had reviewed the 2009 instruction booklet for domicile, residence, and part-year resident definitions. He argued that he had intent to abandon Utah as his domicile, was physically present, and had established a new residence in STATE-1. The Taxpayer stated that he took an equitable adjustment for the wages he earned in STATE-1 because he had already paid taxes on those wages in STATE-1.

The Division's representative provided copies of the Notices of Deficiency for the 2008 and 2009 tax years, the Petition for Redetermination, the Individual Income Tax TC-40 returns filed by Taxpayer for the year at issue, the Taxpayer's returns filed with the State of STATE-1 for the years at issue, IRS transcripts for the years at issue, the Domicile Survey letter, and record of the Taxpayer's Utah State Driver License.

The Division's representative stated that the audit disallowed the equitable adjustments taken by the Taxpayer for each of the years in question. He noted that in addition to taking the equitable adjustment, the Taxpayer had apportioned the income as a part-year resident. The Division's representative stated that the audit treated the Taxpayer as a full-year resident, with credit given for the taxes paid to STATE-1.

The Division's representative argued that the Taxpayer intended for Utah to remain his domicile, and did not have intent to remain in STATE-1. He noted that the Taxpayer used a Utah address on his returns for the years at issue. In further support, the Division's representative stated that the Taxpayer's

vehicle was registered in Utah, he got a Utah driver license when he returned, he left and returned to the same address, and the Taxpayer paid resident tuition at UNIVERSITY.

The question of whether one establishes or maintains a domicile in Utah is a question of fact. See *Clements v. Utah State Tax Comm'n*, 893 P.2d 1078, 1081 (Ct. App. Utah 1995), *Lassche v. Utah State Tax Comm'n*, 866 P.2d 618, 621 (Ct. App. Utah 1993), *Orton v. Utah State Tax Comm'n*, 864 P.2d 904, 907 (Ct. App. Utah 1993). Domicile is defined as “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.” Utah Admin. Code R865-9I-2(A)(1) (2005). Utah law requires that a person have a “permanent home” to claim a domicile. The Utah Supreme Court has held that “[d]omicile 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.” *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 615 (Utah 1978). Further, in *Clements v. Utah State Tax Comm'n*, 893 P.2d 1078 (Ct. App. Utah 1995), the Court determined that a person’s actions may be accorded greater weight in determining his or her domicile than a declaration of intent.

Taxpayer has the burden of proof in this matter. He testified that he intended to make working for the (X) a long-term career, being assigned to STATE-1 for a number of years, and then hoping to eventually be transferred to somewhere on the west coast. The Taxpayer took substantial steps in establishing a domicile in STATE-1; he rented an apartment, he obtained renters and automobile insurance, he changed his banking institution, and obtained an STATE-1 driver license. He explained that he had not changed his car registration because it was not due until June. The Taxpayer ultimately decided that a career with the (X) did not suit him and returned to Utah; but reviewing the facts and circumstances as a whole, the Taxpayer did establish a domicile in STATE-1 prior to his return to Utah. His return should be treated as if he were a part-year resident, rather than a full-year resident for the years in question. However, the Taxpayer is not entitled to the “equitable adjustment” for the wages he earned while in STATE-1. The income earned in STATE-1 is accounted for by doing the calculations on form TC-40B.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayer did establish a domicile in STATE-1. The equitable adjustment he claimed for both the 2008 and 2009 tax years is disallowed. The

Division is ordered to amend the audits to reflect a part-year resident status. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

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

DATED this _____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner