

13-1730
TAX TYPE: INCOME TAX
TAX YEARS: 2005, 2006, 2007 and 2008
DATE SIGNED: 9-24-2014
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

vs.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 13-1730

Account No. #####

Tax Type: Income Tax

Tax Year: 2005, 2006, 2007 and 2008

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, CPA

REPRESENTATIVE-2 FOR TAXPAYER, Trustee

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney

General

RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 14, 2014, for an Initial Hearing in accordance with Utah Code §59-1-502.5. The representatives for Petitioner (Taxpayer), who is deceased are appealing audit deficiencies of Utah individual income tax, penalties and interest for tax years 2005 through 2008. The Notices of Deficiency and Estimated Income Tax were issued on June 21, 2013. The Taxpayer's representatives timely appealed the audit. The amount of the audit deficiencies as shown on the Notices are as follows:

	Tax	Penalties	Interest	Total as of Notice ¹
2005	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2006	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2007	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2008	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Sec. 59-10-104(1) (2008)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)(q) (2008) as follows:

(q)(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-2³ 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.

(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.

² The Utah Individual Income Tax Act has been revised and provisions renumbered during the audit period although the law as it relates to the issues in this appeal remained substantially the same for the years 2005 through 2008. For convenience the Commission cites to the 2008 provisions.

³ In 2011 the Utah Legislature substantially revised the provisions of the Utah Code regarding domicile, adopting Utah Code 59-10-136. These revisions are significant and this decision, therefore, should not be considered to provide guidance for tax year 2011 and later years.

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.

. . .

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. . .

The Tax Commission has authority to waive penalties under Utah Code Sec. 59-1-401(13) which provides:

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.

DISCUSSION

Respondent ("Division") based its audit on the assertion that the Taxpayer was a resident of Utah for individual income tax purposes during 2005 through 2008 and it was the representatives' for the Taxpayer's position that she was a resident of STATE during these years. The issue in this appeal is whether Taxpayer was a "resident individual" in the state of Utah for the purposes of Utah Code Sec. 59-10-104, or whether she changed her domicile to STATE. Under Utah Code Sec. 59-10-103, a resident individual is one who maintains a permanent place of abode in this state and spends in the aggregate more than 183 days per year in Utah, or in the alternative a resident individual is one who is "domiciled" in Utah. In this matter the Division argues that the Taxpayer remained domiciled in Utah for the years at issue.

The question of whether one 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.⁴ As discussed by the courts, the fact finder may determine intent "based on the 'totality of the facts and circumstances surrounding the situation,' and the taxpayer's statement of intent is only one

⁴ 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: *Benjamin v Utah State Tax Comm'n*, 250 P.3d 39, 2011 UT 14 (Utah 2011). *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).

factor of many to be considered. ‘In determining whether a party has established a Utah domicile, the fact finder may accord the party’s activities greater weight than his or her declaration of intent.’” *Benjamin v Utah State Tax Comm’n*, 250 P.3d 39, 2011 UT 14, prg. 22 (Utah 2011) (Citations Omitted).

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. It was not disputed that the Taxpayer was a resident and domiciled in Utah prior to 2004. She and her husband owned a home in Utah and a cabin property. The Taxpayer had a Utah Driver License and was registered to vote in Utah. She had filed Utah resident tax returns prior to 2005. The representatives for the Taxpayer explain that in 2003, the Taxpayer’s husband had numerous health problems and they had decided to move to CITY-1 where their son was residing. The son was a medical doctor. In 2003 they started construction on a one level residence adjacent to their son’s residence in CITY-1. At the hearing, the Taxpayer’s daughter explained that her mother had custom designed the CITY-1 home to meet their needs. It was a smaller, one level home and easier for them to live in as they were advancing in age. She also recalls that her mother loved the STATE home and wanted to live there for the rest of her life.

HUSBAND OF TAXPAYER had died in 2003, before the completion of the residence in STATE. He was buried at a cemetery in Utah. The Taxpayer also had a prepaid burial plot at the Utah cemetery. The Taxpayer started to reside at the STATE property full time in 2004. She registered to vote in STATE on August 24, 2004. The Utah Driver License record shows that the Taxpayer’s Utah license expired August 30, 2005 and it was not renewed. It did not appear that the Taxpayer obtained one in STATE. It was the Daughters testimony that her mother lived at the STATE residence full time, but would come back to Utah to visit for short periods of time around Christmas and in July. The daughter also stated that she had registered a vehicle in STATE. In addition she had used the STATE address on her federal tax returns. After moving to STATE she started seeing STATE doctors. The Division did not provide other financial tax reporting documents to show where they had been addressed, which the Division has done in other cases. When the Taxpayer came back to Utah she would stay in her residence in CITY-2, otherwise it was empty. The Taxpayer’s daughter said her mother did not sell her Utah home, or her Utah cabin property. She states her mother did not need the money and wanted to keep those properties to pass them on to her kids. She said her mother had the one son and two grandchildren in CITY-1. In Utah she had three children and ten grandchildren. The Taxpayer had died while in Utah in 2009. Her daughter had explained that she had been here for a visit and

suffered a head injury that led to her death. She is buried next to her husband in the prepaid cemetery plot.

It was the Division's position that the Taxpayer had moved to CITY-1 for just a special or temporary purpose and that was her and her spouse's health issues. They note that although she registered to vote in STATE, she did not obtain a STATE Driver License. She had a prepaid burial plot with her husband in Utah. Her tax accountant was in Utah. She had banking in both states. She registered a vehicle in Utah as well as snowmobiles used with the cabin property in Utah. She maintained her Utah residence and did stay there when she came to visit the children and grandchildren who lived in Utah.

Upon review of the facts in this case, it is difficult because of the age of the audit period and that the Taxpayer has been deceased for many years. The Division argues that the move to STATE was for a special or temporary purpose, that being for medical care or a medical condition. However, in this situation, there was no indication that the Taxpayer's medical condition was a temporary condition, she was elderly and her health issues the type that would be expected to last for the rest of her life. Moving to a new location for the rest of one's life seems to be something more permanent than leaving for a special or temporary purpose. The Taxpayer had constructed a residence in STATE custom to her needs, registered to vote in STATE, found doctors in STATE and spent most of her time in that state. She used the STATE address for tax returns. She was elderly and did not have a Driver License during this time in either state. The facts do show the intent to abandon the Utah domicile, to remain in the STATE domicile permanently and the physical presence in STATE. The Taxpayer was no longer a Utah resident for tax purposes from 2005 through 2008.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Division is to adjust the audit on the basis that the Taxpayer was not a Utah resident from 2005 through 2008. 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 _____, 2014.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.