

14-911
TAX TYPE: INDIVIDUAL INCOME TAX
TAX YEAR: 2009
DATE SIGNED: 2-3-2015
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING DECISION Appeal No. 14-911 Account No. ##### Tax Type: Individual Income Tax Tax Year: 2009 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
 TAXPAYER-2, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
 RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on January 15, 2015 in accordance with Utah Code Ann. §59-1-502.5.

Petitioner (the “Taxpayer”) is appealing the assessment of Utah individual income tax and interest for the 2009 tax year. On March 10, 2014, the Auditing Division of the Utah State Tax Commission (the “Division”) sent a Statutory Notice of Deficiency. The Statutory Notice indicated that the Taxpayer owed additional tax and interest as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest¹</u>
2009	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. Utah Code Ann. §59-10-104(1).

Utah Code Ann. §59-10-103(1)(q) defines “resident individual” 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 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.

(ii) For purposes of Subsection (1)(q)(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, Utah Administrative Rule R865-91-2(A) provides as follows:

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 a 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) a specific 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 requirements 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 Utah Legislature has provided that the taxpayer generally bears the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-1-1417 provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner”

DISCUSSION

The Division based its audit on the assertion that the Taxpayers were full year residents of Utah for tax purposes for 2009. The Taxpayers did not file a 2009 Utah individual income tax return on the

advice of a tax professional who indicated that there were not sufficient ties to Utah to require a Utah return. The issue in this appeal is whether either of the Taxpayers were a "resident individual" in Utah for the purposes of Utah Code Ann. §59-10-103 during the audit year. The parties agree that the Taxpayers did not spend in the aggregate more than 183 days per year in Utah during the period in question. 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 Utah appellate courts have addressed the circumstances under which someone is a "resident individual" for state tax purposes.² As discussed by the courts in considering this issue, the factfinder may accord the party's activities greater weight than his or her declaration of intent.³

The Taxpayers explained that when TAXPAYER-1 retired in 2008, they were living in STATE but planned to move to Utah. They were so sure that they would be moving to Utah to retire that they filed a 2008 non-resident Utah tax return and registered most of their cars in Utah as they came due for registration renewal. They owned a home in CITY-1, Utah that they had rented to tenants for many years. In 2008, they did not renew their tenant's lease so that they could remodel the CITY-1 home and eventually move into it.

To make the move to Utah as they had planned, the Taxpayers had to sell two boats in STATE. One of the boats, a 40 foot Owens cruiser, had been the Taxpayers' only home for approximately ten years. It had a 14-foot beam (or width). The boat had spacious sleeping quarters, a full galley, two heads (bathrooms), and air conditioning. The boat was in a marina slip on the RIVER delta that had 50-amp power service, running water, and marina bathroom facilities that included showers. The Taxpayers explained that while their boat had equipment to clean discharge water to a point that it could be discharged directly into the RIVER, they preferred to use strategies including making use of marina pump-out service and using marina showers to limit their discharge into the waters in which they boated.

The Taxpayers' other boat was a 32 foot Bayliner with a 12-foot beam. It was in the same marina as the Taxpayers' larger boat. The Taxpayers kept the Bayliner on a device that would raise it from the water when it was not in use. They did much of their recreational boating on the Bayliner, reserving the larger Owens for its role as their home.

TAXPAYER-1 STATE driver license expired in October 2008. He surrendered it in Utah and received a Utah driver license. TAXPAYER-2 had a STATE driver license. It did not expire, so she kept

² The Utah Supreme Court and the Court of Appeals have addressed issue of domicile for Utah individual income tax purposes in the following cases: *Lassche v. State Tax Comm'n*, 866 P.2d 618 (Utah App. 1993); *Clements v. State Tax Comm'n*, 839 P.2d 1078 (Utah 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 App. 1993).

³ See *Clements v. Utah State Tax Comm'n* 893 P.2d 1078 (Utah App. 1995); see also *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 614 (Utah 1978).

using it throughout 2008. Neither Taxpayer voted in 2008. The Taxpayers were listed as owners on land in CITY-2 Utah. They explained that TAXPAYER-1's parents wished to will the property to the Taxpayers and did so by adding the Taxpayers to the property title. The Taxpayers also owned a cabin near RANCH in RURAL COUNTY.

In 2009, TAXPAYER-1 applied for and received Utah resident hunting and fishing licenses. The Taxpayers did their banking with BANK-1, a regional bank that had branches in STATE and Utah. They originally opened the BANK-1 account in STATE. They received a loan from BANK-2 in Utah to remodel their CITY-1 home. The Taxpayers received mail in both STATE and Utah. They generally used their CITY-1 address for state and federal tax returns. TAXPAYER-1 was a member of the CLUB in CITY-3, STATE. The Taxpayers received most of their medical care in STATE in 2009. In November 2009, they transferred medical records to CITY-1 MEDICAL CENTER.

The Taxpayers discussed their actual living arrangements in 2009. TAXPAYER-2 lived in STATE and visited Utah five times. TAXPAYER-1 indicated that he spent approximately 30% of his time in Utah and 70% in STATE. He came to Utah to remodel his CITY-1 home and to help his parents move into their home on their property in CITY-2. When he was in STATE, he lived with his wife on their boat. In Utah, he lived in a motor home that he parked in the driveway of his CITY-1 home when he was working there and on his parents' property in CITY-2 when he was helping them have a mobile home placed on property there.

When asked why he lived in a motor home rather than his CITY-1 home or his parents' home in CITY-2, he explained that his parents received their certificate of occupancy in September and that he then spent more time trying to get his CITY-1 home remodeled. He had gutted most of the CITY-1 home including kitchen and bathroom areas and thus did not have basic health and safety facilities at his CITY-1 home for most of the year. In November 2009, however, a combination of cold weather and the completion of at least limited kitchen and bathroom facilities at the CITY-1 home made it advantageous for TAXPAYER-1 to start sleeping inside the CITY-1 home when he came to Utah to work on it.

In January and February 2010, the Taxpayers received offers to sell both of their boats in STATE. By March 2010, the boats were both sold and both Taxpayers moved into their home in CITY-1.

Utah Administrative Rule R865-9I-2(A) guides the Commission's decisions on domicile. Subsection (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." Subsection (3) provides that 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) a specific intent to remain in the new domicile permanently.

In making these determinations, the Commission may accord the party's activities greater weight than his or her declaration of intent. *See Clements v. Utah State Tax Comm'n* 893 P.2d 1078 (Utah App. 1995); *see also Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 614 (Utah 1978).

Applying these rules, the Taxpayers had stated intent to make Utah their permanent home when they retired. However, under Utah law, the Commission looks to the Taxpayers' actions to determine domicile. TAXPAYER-1 spent substantial time in Utah and was remodeling a home there with plans to move into that home. However, he stayed in Utah only long enough to work on his own home and to help his parents with theirs. He lived in motor home parked in his driveway for most of the time he spent in Utah. This seems less a home than the STATE boat in which the Taxpayers had resided for ten years.

The Taxpayers' steps to make Utah a permanent home were substantial and would have supported a change in domicile had their boats sold and allowed them to carry out their stated plans. On the basis of those steps, the Division acted reasonably in making a preliminary determination that it looked like the Taxpayers had changed their domicile for 2009. But closer examination of the evidence supports a conclusion that while the Taxpayers were moving toward a Utah domicile in 2009, those efforts had not yielded sufficient results to meet the three part test of Utah Administrative Rule R865-9I-2(A)(3) to demonstrate a change to a Utah domicile for the 2009 tax year.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

On the basis of the information presented at the hearing, the Commission finds that Taxpayers were not domiciled in Utah for the 2009 tax year and were not a full-year residents of Utah for tax purposes in 2009. There is good cause to abate the Division's audit as to the Utah income tax, interest, penalties for the 2009 tax year. 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 _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner