

94-1552

INCOME

SIGNED: 02-01-1996

COMMISSIONERS: W. OVESON, R. TEW, J. PACHEO, A. SHEARER

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
Petitioners,	:	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
v.	:	AND FINAL DECISION
)	
AUDITING DIVISION OF THE	:	Appeal No. 94-1552
UTAH STATE TAX COMMISSION,)	
	:	Account Nos. #####-1
Respondent.)	#####-2
	:	Tax Type: Income Tax

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on December 19, 1995. Jane Phan, Administrative Law Judge, heard the matter for and on behalf of the Commission. Present and representing the Petitioners by telephone conference were PETITIONER REP., Tax Representative, and PETITIONER 1. Present and representing the Respondent were RESPONDENT REP. 1, Assistant Attorney General, RESPONDENT REP. 2 and RESPONDENT REP. 3 of the Auditing Division.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is income tax.
2. The period in question consists of the tax years of 1990, 1991 and 1992.

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3. Petitioners had filed resident individual income tax returns for 1990, 1991 and 1992. Petitioners subsequently filed amended nonresident returns for these years. The 1991 return was processed and a refund issued to Petitioners. However, prior to issuing the refund for 1990 and 1992 Respondent audited the account and disallowed the 1990 and 1992 amended returns. On September 26, 1994 Respondent issued a Statutory Notice requesting return of the refund for 1991 in the amount of \$\$\$\$\$ and interest of approximately \$\$\$\$\$.

4. Petitioners are appealing the assessment for 1991 and asking that the amended returns for 1990 and 1992 be allowed.

5. Petitioners owned a home in CITY, Utah and resided in the state until 1986 when Petitioners moved to COUNTRY so Petitioner PETITIONER 1 could work as a civilian for the U.S. Air Force. In COUNTRY housing was provided by the U.S. Air Force.

6. Petitioners did not have minor children during the subject period.

7. Petitioners did not sell their home in CITY, Utah, because when they first went to COUNTRY in 1986 Petitioners thought that they might return to Utah. Petitioners' son, who was an adult during the years in question, resided in Petitioners' home in Utah.

Petitioners did not change the telephone bill or telephone directory which continued to list Petitioners as if they resided at the CITY residence.

8. When they first went to COUNTRY Petitioners did not know how long Petitioner PETITIONER 1 would be allowed to work in

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COUNTRY. He was concerned about getting in his forty years as a civilian employee with the Air Force so he could retire. In 1988 he was told that he could continue to work in COUNTRY until he retired. At that time Petitioners determined that they would stay in COUNTRY until Petitioner PETITIONER 1 could retire then they would move to STATE.

9. Petitioners had originally filed Utah resident individual income tax returns during the years in question.

10. Petitioners visited Utah at least once during the audit period and Petitioner PETITIONER 1 renewed his Utah drivers license in 1991. Petitioners kept a bank account in Utah. Petitioners did not register cars in Utah during the audit period.

11. Petitioners did not subject themselves to the income tax laws of COUNTRY, nor attempt to give up U.S. Citizenship to become permanently domiciled in COUNTRY.

12. Petitioners returned to the United States in 1993 but did not return to Utah. They moved to STATE where they continue to reside.

13. At the Initial Hearing in this matter the Commission waived the assessment of interest for the 1991 year because the Commission had erred in refunding the money to Petitioners. This was not challenged by the Respondent at the Formal Hearing.

CONCLUSIONS OF LAW

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

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A "resident individual" is either:
a. an individual who is domiciled in this state for any period of time during the taxable year; or
b. an individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate 183 or more days of the taxable year in this state. (Utah Code Ann. §59-10-103(1)(j).)

For purposes of determining whether an individual is domiciled in this state, "domicile" shall mean:

The place where an individual has a true, fixed, permanent home and principal establishment, and to which place he or she has (whenever he or she is absent) the intention of returning. It is the place in which a person has voluntarily fixed the habitation of himself or herself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home. (Rule R865-9I-2, Utah Administrative Code).

After domicile has been established, two things are necessary to create a new domicile; first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for before a person can be said to have changed his or her domicile, a new domicile must be shown. (Rule R865-9I-2, Utah Administrative Code).

DISCUSSION AND ANALYSIS

The issue presented in this appeal is whether Petitioners were "domiciled" in the State of Utah for the purposes of Utah Code Ann. §59-10-103(1)(j) during the years 1990, 1991 and 1992. Petitioners assert that they were not domiciled in the State of Utah during these years and Respondent maintains that Petitioners were

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domiciled in the State of Utah.

In order for the Commission to find for Petitioners, Petitioners must show that: 1) they abandoned their Utah domicile; and 2) that they intended to establish and did in fact establish domicile in COUNTRY. Petitioners failed to meet the second prong of this test. Petitioners did not intend to establish a permanent domicile in COUNTRY. Petitioners testified that they intended their stay in COUNTRY to be temporary. Originally they thought they would stay in COUNTRY a couple of years. When they learned that they could be employed longer in COUNTRY, Petitioners determined they would stay only until Petitioner PETITIONER 1 could retire. Petitioners did not in fact establish a domicile in COUNTRY. They did not give up U.S. Citizenship, attempt to obtain COUNTRY citizenship, nor subject themselves to the COUNTRY equivalent of income tax laws. It has been the long standing policy of the Tax Commission that U.S. citizens working aboard, subject to federal income tax, remain domiciled within the United States for tax purposes, unless they give up U.S. Citizenship, become a permanent citizen of the foreign country and subject to the income taxes laws of the foreign country. Generally, the domicile within the United States for tax purposes is the last state in the United States at which the taxpayer resided.

DECISION AND ORDER

Having reviewed all of the facts, the Commission finds that Petitioners were domiciled in the State of Utah during the years of 1990, 1991 and 1992 for the purposes of Utah Code Ann. §59-10-103. Therefore Petitioners income is taxable by the State of Utah for

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these years.

Based on the forgoing the Commission sustains the assessment as it pertains to individual income tax as set out in the Statutory Notice for 1991. The Commission affirms its decision to waive the interest assessed relating to 1991. Further, the Commission sustains the disallowance of the amended returns for 1990 and 1992. It is so ordered.

DATED this _____ day of _____, 1996.

BY ORDER OF THE UTAH STATE TAX COMMISSION.

W. Val Oveson
Chairman

Roger O. Tew
Commissioner

Joe B. Pacheco
Commissioner

Alice Shearer
Commissioner

NOTICE: You have twenty (20) days after the date of a final order to file a Request for Reconsideration with the Commission. If you do not file a Request for Reconsideration with the Commission, you have thirty (30) days after the date of a final order to file a.) a Petition for Judicial Review in the Supreme Court, or b.) a Petition for Judicial Review by trial de novo in district court. (Utah Administrative Rule R861-1A-5(P) and Utah Code Ann. §§59-1-601(1), 63-46b-13 et. seq.)

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