

98-1161
INCOME
TAX YEARS: 1993, 1994
SIGNED: 06-19-2001
COMMISSIONERS: P. HENDRICKSON, R. JOHNSON, P. DEPAULIS, M. JOHNSON

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL DECISION
)	
v.)	Appeal No. 98-1161
)	Account No. #####
AUDITING DIVISION OF)	
THE UTAH STATE TAX)	Tax Type: Income Tax
COMMISSION,)	
)	Judge: Davis
Respondent.)	

Presiding:

G. Blaine Davis, Administrative Law Judge
Palmer DePaulis, Commissioner

Appearances:

For Petitioner: PETITIONER SPOUSE, the wife of Petitioner
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, from the Auditing Division
 RESPONDENT REP. 3, from the Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 15, 2000. 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 years in question are 1993 and 1994.

3. Petitioner is from Utah, and his parents were in Utah at all times at issue in this proceeding.

4. In 1991, Petitioner was living in CITY, Utah. He previously served a tour of duty in the United States Navy, and decided to rejoin the military to make a career therein. Accordingly, he joined the United States Coast Guard. As a consequence, he went to STATE 1 with the Coast Guard in approximately December of 1991. While he was in STATE 1, someone with the Coast Guard advised him that he would be able to avoid paying state income taxes to Utah if he obtained an STATE 1 driver's license, registered to vote, and registered his motor vehicle in STATE 1. Based thereon, he took those actions.

5. Petitioner intended to make the military his career, so it was not important to him where he was domiciled. He stated that he intended to abandon his Utah domicile and take STATE 1 as his domicile.

6. In approximately July 1993, Petitioner was transferred from STATE 1 to STATE 2, where he remained until approximately March 1994, when he was forced out of the Coast Guard because of budget cuts. Upon his exit from the military, he requested to be returned to Utah, and was returned immediately to Utah. Petitioner has not returned to STATE 1 since he was transferred to STATE 2 in 1993. Therefore, in 1993, Petitioner was in STATE 1 for approximately one-half of the year and was in STATE 2 for the remainder of the year. For 1994, Petitioner was in STATE 2 for approximately three months and in Utah for the rest of the year.

7. For a portion of the time Petitioner was in STATE 1, he had an STATE 1 driver's license, was registered to vote in STATE 1, had a bank account in STATE 1, had a

mailing address in STATE 1, and registered his motor vehicle in STATE 1. During the time Petitioner was in STATE 1, he did not have a motor vehicle registered in the State of Utah. When Petitioner was discharged from the military in 1994, he had the Department of Defense move him to Utah and not to STATE 1. The Department of Defense forms on file with the military initially designated Utah as his place of residence, and STATE 1 as his residence for the later part of his service. Petitioner enlisted in the military from Utah and returned to Utah, and did not have any other employment during his time in the Coast Guard.

8. During his time in STATE 1, Petitioner lived in apartments which were leased by the military. He did not own any real property in either Utah or STATE 1.

9. (PARARAPH REMOVED)

10. Petitioner had a banking account in the State of STATE 1 during the time he was stationed there.

11. Petitioner did not have a wife or children in either Utah or STATE 1 during the years at issue.

12. Since the discharge of Petitioner from the military, he has remained primarily in Utah, and has not returned again to the State of STATE 1. Following his return to Utah after his discharge from the military, Petitioner married a woman from Utah and remains here, which he represents is based upon the desire of his wife to remain in Utah.

13. Petitioner filed his 1993 and 1994 income tax returns from a Utah address, although he has represented that this was because he was discharged from the military in 1994,

and was living in Utah by the time the tax returns were filed.

14. The W-2 form issued to Petitioner by the Coast Guard for 1993 and 1994 showed his state as STATE 1.

15. Petitioner did not file an income tax return in the State of STATE 2 for any of the tax years, 1991 through 1994.

APPLICABLE LAW

1. A resident individual means an individual who is either domiciled in this state for any period of time during the taxable year, or 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).)

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

3. A person's intentions are determined by his or her action, and not by verbal declarations.

DISCUSSION

Petitioner argues strongly that he was not domiciled in Utah because it was his intention to remain in STATE 1 in the military and eventually retire from the military. However, that representation does not necessarily constitute either abandoning his Utah domicile, nor that he established a new domicile in the State of STATE 1, any more than it means a person establishes a domicile in Utah when they are stationed in the State of Utah for military purposes. In fact, there are legal presumptions that such a person does not become domiciled in the State in which he or she may be stationed while in the military.

Petitioner also argues that following his discharge from the military, he has remained in Utah because he met and married a woman from Utah and she desires to remain here. Petitioner was domiciled in Utah before he entered the military and the military shipped him back to Utah at his request. Petitioner later established a family in Utah and has neither left the State to establish a domicile in any other location, or returned to the state in which he claims he was domiciled. The Utah rule is that domicile is "the place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home." (Emphasis added).

Petitioner is now clearly domiciled in the State of Utah, and he has voluntarily fixed the habitation of himself and family in Utah. However, there is a substantial question as to whether, in 1993, Petitioner really intended to remain domiciled in Utah, or to establish a domicile in STATE 1. Perhaps, he just intended his domicile to be at the location at which he was stationed by the military. Nevertheless, the Commission concludes that based upon the actions of Petitioner in obtaining an STATE 1 Drivers license, registering to vote in STATE 1, registering his vehicle in STATE 1, banking in STATE 1, and declaring to the Coast Guard that his domicile was STATE 1, he took sufficient actions to have abandoned his Utah domicile by 1993. Petitioner took the actions that are normally looked to by Respondent to determine the domicile of a taxpayer. Petitioner took all necessary legal steps to abandon his domicile and establish a new one. The fact that circumstances completely beyond his control forced him to alter his plans does not alter this fact. Based upon a change in his circumstances, the Commission concludes Petitioner was forced to alter his plans, and then re-establish domicile in Utah. The Commission determines for the year 1993 Petitioner intended his domicile to be either STATE 1 or any location at which he might be stationed by the Coast Guard, but his intention was to not be domiciled in Utah for that year.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission determines that Petitioner's domicile during 1993 and until March 1994 was not Utah, but beginning in April 1994 he was domiciled in Utah.

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The Commission therefore determines that Petitioner was not subject to income tax in Utah for 1993 and until March 1994. The audit assessment of Respondent is hereby reversed for that time period. The Petition for Redetermination is granted to the extent stated. It is so ordered.

DATED this ____ day of _____, 2001.

G. Blaine Davis
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2001.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You

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have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

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