

99-0314
INCOME TAX- DOMICILE
TAX YEAR: 1995, 1996, 1997
SIGNED: 08-19-1999
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 & PETITIONER 2,)	
)	ORDER
Petitioners,)	
)	Appeal No. 99-0314
v.)	Account No. #####
)	
AUDITING DIVISION OF)	Tax Type: Income Tax
THE UTAH STATE TAX)	
COMMISSION,)	Judge: Phan
)	
Respondent.)	

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioners: PETITIONER 1
 PETITIONER 2
For Respondent: RESPONDENT REP. 1, Assistant Attorney General
 RESPONDENT REP. 2, Assistant Director, Auditing Division
 RESPONDENT REP. 3, Manager, Income Tax, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on July 12, 1999.

Petitioner is appealing the assessment of Utah individual income tax and interest for the years 1995 through 1997. Respondent issued the assessment based on the assertion that Petitioner was a resident of Utah during this period. Petitioner had not filed Utah resident

individual income tax returns for the years in question and maintains that he was a resident of STATE 1.

The issue in this appeal is whether Petitioner was a "resident individual" in the State of Utah for the purposes of Utah Code Ann. §59-10-103(1)(j) for the years 1995 through 1997. From the information presented Petitioner did not spend in the aggregate more than 183 days per year in the State of Utah during the period in question. A resident individual, in the alternative, is one who is "domiciled" in the State of Utah. Petitioner was clearly a resident and domiciled in the State of Utah prior to 1994. In order to show that he was no longer domiciled in Utah during the period in question Petitioner must show: 1) that he abandoned his Utah domicile; and 2) that he intended to and did in fact establish a new domicile in STATE 1.

The information presented by the parties indicated that PETITIONER 1 intended to and did in fact, establish a new domicile in STATE 1. He purchased land and a mobile home. He made substantial improvements to the land including a six foot fence, cement walkway and porch and the mobile home was placed on a cinder block foundation. He worked full time in STATE 1. Within a few months of moving to STATE 1 he surrendered his Utah Drivers License, obtained a STATE 1 drivers license and registered the car that he drove in STATE 1. At the same time he was registered to vote in STATE 1. He served jury duty in STATE 1. Mail, including the property tax notice for his Utah property was mailed to Petitioner's STATE 1 address.

The more difficult question in this appeal is whether or not PETITIONER 1 abandoned his Utah domicile. Petitioners were long time residents of Utah prior to the period at issue, where PETITIONER 1 worked in a (X) in CITY 1. In 1993 the (X) was closed and PETITIONER 1 was offered a position with the same company in STATE 1.

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PETITIONER 1 had worked for the company for over twenty years and he did not want to lose benefits and wages so he and PETITIONER 2 decided to move to STATE 1. However, PETITIONER 2's mother, who was bedridden and lived with them at that time, refused to leave Utah. In the end PETITIONER 1 moved to STATE 1 and established a domicile there but PETITIONER 2 remained at their home in CITY 2 taking care of her mother. PETITIONER 1 returns to Utah when he can and PETITIONER 2, visits in STATE 1 when she is able find someone to look after her mother. PETITIONER 1 explained that he intended to stay in STATE 1 until he retired and if at that time the situation with his mother-in-law is the same then he will have to retire to Utah, but he says if the situation is different, he and PETITIONER 2 have talked about retiring in STATE 2.

One significant factor in determining domicile is that Petitioner filed and paid STATE 1 resident income tax returns for the years in question.

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).

Resident individual is defined in Utah Code Ann. §59-10-103(1)(j) as follows:

A "resident individual" is either:

- (I) an individual who is domiciled in this state for any period of time during the taxable year; or
- (ii) 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.

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For purposes of determining whether an individual is domiciled in this state the Commission has defined "domicile" in Utah Administrative Rule R865-9I-2(D) as follows:

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 or herself 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 or her domicile, a new domicile must be shown.

The Utah Legislature has specifically provided that the taxpayer bear the burden of proof in proceedings before the Tax Commission. Utah Code Ann. §59-10-543 provides the following:

In any proceeding before the commission under this chapter, the burden of proof shall be upon the petitioner except for the following issues, as to which the burden of proof shall be upon the commission:

(1) whether the petitioner has been guilty of fraud with intent to evade tax;

(2) whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax; and

(3) whether the petitioner is liable for any increase in a deficiency where such increase is asserted initially after a notice of deficiency was mailed . . .

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The Tax Commission is granted the authority to waive, reduce, or compromise penalties and interest upon a showing of reasonable cause. (Utah Code Ann. §59-1-401(10).)

DECISION AND ORDER

Clearly PETITIONER 1 has established domicile in STATE 1. In weighing the factors on whether PETITIONER 1 abandoned his Utah domicile, one factor weighs fairly heavily in indicating Petitioner's intent, in that he filed and paid tax as a resident of STATE 1.

Based upon the information presented at the hearing, and the records of the Tax Commission, the Commission finds that Petitioner was not a resident of Utah for the period beginning of 1995 through 1997. The Commission orders that Respondent abate the assessment of additional income tax and interest.

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 _____, 1999.

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Jane Phan
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 _____, 1999.

Richard B. McKeown
Chairman

Pam Hendrickson
Commissioner

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

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