

FINAL PRIVATE LETTER RULING

REQUEST LETTER

10-008

STATE Utah Tax Commission
C/O Commissioner Marc Johnson
210 North 1950 West
Salt Lake City, UT 84134

DATE

Dear Mr. Johnson,

One of my clients has moved from STATE to another state. He has acquired a very substantial home in this other state as his permanent residence, and is selling his home in STATE. I am in the process of counseling my client regarding his domicile for tax year 2010, or 2011, and IRC Sec 121 (b) (2) (A) regarding the proceeds of the sale of his STATE home.

I have counseled him that there are many tests for domicile under Tax Commission Rule R865-9I-2. I would like your opinion on but one of those tests. Specifically, whether he will be deemed as having abandoned his STATE residence regarding the domicile question. I fully understand that the overall domicile question is based on many other issues as well.

The STATE home is valued by appraisal at NUMBER. It is not likely to be sold to a third party in the current market without a significant discount. The home is owned with no debt. Consequently, the sale proceeds, under Internal Revenue Code Sec 121, (a) will largely be tax free to my client.

Given that the client is moving out of state, is abandoning his STATE domicile, and that he is reluctant to sell the home at the moment given the poor real estate market, I have been working with an attorney to create an irrevocable trust. My client would sell the house to the trust for a note for NUMBER at 6% interest.

The instructions to the trustee would provide that the trustee may sell the home to my client's son, who is currently a law student, provided the trust is cashed out of the home at the time of sale or within YEARS. My client probably would have to co-sign with the son. If the son cannot cash my client out of the house at NUMBER, then the trust will provide that the trustee shall be instructed to sell the home to any third party and make a good faith effort over the next NUMBER months to get the highest and best price for the home. Under no condition will the home revert back to my client or his wife.

In advising my client, my objectives are:

1. Utilize the NUMBER gain exclusion provided under IRC Sec. 121 (b) (2) (A) and thus sell the home income tax free for NUMBER.

2. Satisfy the requirement of Tax Commission Rule R865-9I-2 in abandoning his home in STATE.
3. Not be forced to liquidate the home in a weak market.
4. If permitted, sell the home to his son, who at the present time does not qualify for the loan without a co-signer, or
5. Sell to a third party without a “forced sale” in a down market.

My client is willing to have the deed of conveyance to his home contain the restriction that title may not be held by himself or his wife by fee title or by equitable title, by lease, rent or any form of occupancy.

Thank you for considering my request for an opinion letter regarding the disposition of my client’s home in the present circumstances.

Respectfully,

NAME

TITLE

SCE/je

RESPONSE LETTER

September 29, 2010

NAME
ADDRESS
ADDRESS
CITY STATE ZIP

RE: Private Letter Ruling Request–Determination Based on the Facts Provided of Whether Taxpayer Abandoned His STATE Residence for Domicile and Income Tax Purposes

Dear NAME:

You have asked for an opinion on “whether [your client] will be deemed as having abandoned his STATE residence regarding the domicile question” based on applying STATE Admin. Rule R865-9I-2 to the facts provided. You emphasized that there are many tests for domicile under STATE Admin. Code R865-9I-2 and that you want a ruling on but one of those tests. During a subsequent telephone conversation, you said you believe your client has met the other requirements for establishing a new domicile in another state.

You explained that your client has moved to another state and acquired a substantial home in that other state as his permanent residence. He still owns his STATE residence, but he plans to sell it and claim the NUMBER gain exclusion available under federal income tax law. You explained that because of the poor real estate market right now, your client does not want to sell the STATE residence immediately to a third party because he would need to do so at a price significantly discounted from the NUMBER appraised value. Instead, he wants to create an irrevocable trust and sell the residence to that trust. In return, the trust would give him a note for the appraised value of the residence at six percent interest. Your client would instruct the trustee to allow the client’s son to purchase the residence for the appraised value if the son can pay the purchase price within YEARS. Otherwise, the trustee is to make a good faith effort to sell the house over the next YEARS to any third party for the highest and best price. You have provided that the residence will not revert to your client or his wife. You said your client is willing to include in the deed of conveyance of the STATE residence the restriction that the residence may not be owned, leased, rented or otherwise occupied by your client or his wife in the future.

I. Applicable Law

Under STATE Code § 59-10-104(1), “a tax is imposed on the state taxable income of a resident individual as provided in this section.”

For purposes of STATE income taxation, a “resident individual” is defined in STATE Code § 59-10-103(1)(q)(i) as follows:

"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 place of abode in this state; and
 - (II) spends in the aggregate 183 or more days of the taxable year in this state.

STATE Admin. Rule R865-9I-2 (“Rule 2”) provides guidance on “domicile” and abandoning a former domicile, as follows in pertinent part:

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.
- 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.

(Emphasis added.)

STATE Admin. Rule R884-24P-52 (“Rule 52”), subsection (5) provides the following non-exhaustive list of factors or objective evidence for determining domicile:

- (a) whether or not the individual voted in the place he claims to be domiciled;

- (b) the length of any continuous residency in the location claimed as domicile;
- (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
- (d) the presence of family members in a given location;
- (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
- (f) the physical location of the individual's place of business or sources of income;
- (g) the use of local bank facilities or foreign bank institutions;
- (h) the location of registration of vehicles, boats, and RVs;
- (i) membership in clubs, churches, and other social organizations;
- (j) the addresses used by the individual on such things as:
 - (i) telephone listings;
 - (ii) mail;
 - (iii) state and federal tax returns;
 - (iv) listings in official government publications or other correspondence;
 - (v) driver's license;
 - (vi) voter registration; and
 - (vii) tax rolls;
- (k) location of public schools attended by the individual or the individual's dependents;
- (l) the nature and payment of taxes in other states;
- (m) declarations of the individual:
 - (i) communicated to third parties;
 - (ii) contained in deeds;
 - (iii) contained in insurance policies;
 - (iv) contained in wills;
 - (v) contained in letters;
 - (vi) contained in registers;
 - (vii) contained in mortgages; and
 - (viii) contained in leases.
- (n) the exercise of civil or political rights in a given location;
- (o) any failure to obtain permits and licenses normally required of a resident;
- (p) the purchase of a burial plot in a particular location;
- (q) the acquisition of a new residence in a different location.

II. Analysis

The issue for this ruling is whether, based on the facts presented, your client has abandoned his STATE residence for purposes of showing his specific intent to abandon his former STATE domicile for Rule 2, subsection A.3.

A person's specific intent to abandon a domicile requires an analysis of all relevant facts and circumstances, not just a person's stated intent or the occurrence of any one fact. *See* Rule 2, subsection A.2. The relevant facts and circumstances can be very broad, as seen by the non-exclusive list of factors provided in Rule 52, subsection (5). Under Rule 2, subsection A.4., a

person can have specific intent to abandon his former domicile even if he has not severed all ties with his former place of residence. This ruling addresses whether your client can show his specific intent to abandon the STATE domicile even if he has not severed all ties with his former STATE residence.

Based on your request letter, your client currently owns a STATE residence, which is now for sale and may ultimately be sold to your client's irrevocable trust to avoid selling it for a price significantly discounted from the appraised value because of current market conditions. You have indicated that your client has a son in STATE, who might obtain a loan co-signed by your client to purchase the STATE residence from the trust. Based on your representation of these limited facts and specific circumstances and absent any different or additional relevant facts, your client's ownership of a STATE residence is not an irrefutable factor preventing him from showing his intent to abandon his former STATE domicile. This conclusion is true regardless of whether your client disposes of the STATE residence through an irrevocable trust. Thus, your client can still show his specific intent to abandon his former STATE domicile for Rule 2, subsection A.3.a) based on all other relevant facts and circumstances. However, if additional facts about the STATE residence exist, this ruling will not be binding and a different conclusion may be warranted.

III. Conclusions

Based on the specific situation described and absent any different or additional relevant facts, your client has sufficiently severed his ties to his STATE residence for purposes of showing his intent to abandon his former STATE domicile for Rule 2, subsections A.3. and A.4. We have not ruled on whether your client has met other criteria required to demonstrate specific intent to abandon his former STATE domicile. Determining specific intent to abandon requires analysis of all relevant facts and circumstances, not just those for the STATE residence.

This private letter ruling is based on current law and could be changed by subsequent legislative action or judicial interpretation. If you feel we have misunderstood the facts as you have presented them, you have additional facts that may be relevant, or you have any other questions, you are welcome to contact the Commission.

For the Commission,

Marc B. Johnson
Commissioner

MBJ/aln
10-008