

14-34
TAX TYPE: INCOME TAX
TAX YEAR: 2009
DATE SIGNED: 12-11-2014
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: D. DIXON
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 14-34 Account No. ##### Tax Type: Income Tax Tax Year: 2009 Judge: Nielson-Larios
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Presiding:
Aimee Nielson-Larios, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA, Petitioner's representative and brother, in person
For Respondent: RESPONDENT, Auditing Division, in person
REPRESENTATIVE FOR RESPONDENT, Utah Assistant Attorney General, in person

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 9, 2014 for an Initial Hearing in accordance with Utah Code § 59-1-502.5. On November 27, 2013 Respondent ("Division") issued a Notice of Deficiency and Estimated Income Tax for the 2009 tax year because Petitioner ("Taxpayer") did not file a Utah income tax return for that year. The Notice reflects the following amounts owing:

<u>Tax Year</u>	<u>Audit Tax</u>	<u>Interest</u>	<u>Penalties</u>	<u>Audit Total Due</u>
2009	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

Interest was calculated through December 27, 2013 and continues to accrue on any unpaid balance. In its estimate, the Division treated the Taxpayer as a full-year Utah resident individual. However, the Taxpayer contends he was not a resident of Utah from March 28, 2009 through May 6, 2011, when he was in FOREIGN COUNTRY, employed to teach English.

APPLICABLE LAW

The applicable statutes specifically provide that the taxpayer bears the burden of proof in proceedings before the Tax Commission. Utah Code § 59-1-1417(1) states, “In a proceeding before the commission, the burden of proof is on the petitioner [taxpayer] . . .”

Through Utah Code § 59-10-104(1) (2009), Utah imposes income tax on individuals who are residents of Utah; with the statute stating the following:

. . . a tax is imposed on the state taxable income a resident individual as provided in this section. . . .

Resident individual is defined in Utah Code § 59-10-103(1)(q) (2009) 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 such 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 this 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,” the Commission has defined "domicile" in Utah Administrative Code R865-9I-2 (2009)¹ as follows:

- 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.

¹The Commission amended R865-9I-2 on December 22, 2011 to remove the rule’s definition of domicile because the statutory definition of domicile currently found in Utah Code. § 59-10-136 was effective starting on January 1, 2012.

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.

Utah Administrative Code R865-9I-18 also imposes a recordkeeping requirement on taxpayers and states the following:

- (1) Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.
- (2) Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All records shall be made available to an authorized agent of the commission when requested, for review or audit.

The Commission has been granted the discretion to waive penalties and interest. Utah Code § 59-1-401(13) provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

The Commission has promulgated Utah Administrative Code R861-1A-42 to provide additional guidance on the waiver of penalties and interest; that administrative rule states the following in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.
- (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
 - (a) Timely Mailing...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor...
 - (j) First Time Filer...
 - (k) Bank Error...
 - (l) Compliance History:
 - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
 - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

- (m) Employee Embezzlement...
- (n) Recent Tax Law Change...

DISCUSSION

The Taxpayer's representative is both a tax professional and the Taxpayer's brother. The representative explained that the Taxpayer was unavailable to attend the hearing because he was working in CITY-1, STATE, as a teacher. Through his representative, the Taxpayer both challenges the Utah domicile used for the Utah audit assessment and seeks a waiver of the penalties and interest assessed. In response, the Division asserts the Utah domicile used for the audit assessment is correct. Furthermore, the Division does not disagree with a waiver of penalties based on the Taxpayer's reliance on his tax preparer, but the Division does disagree with a waiver of interest, asserting no reasonable cause has been shown.

A. The Taxpayer Did Not Change his Domicile from Utah to FOREIGN COUNTRY in 2009.

The main issue for this appeal is whether the Taxpayer was a domiciled in Utah for all of 2009 or whether he changed his domicile to FOREIGN COUNTRY on March 28, 2009. If the Taxpayer was domiciled in Utah for all of 2009, then, under § 59-10-103(q)(i)(A), he was a "resident individual" for all of 2009 and the auditing assessment would be correct. If instead the Taxpayer changed his domicile to FOREIGN COUNTRY on March 28, 2009, then the Taxpayer was a resident individual of Utah only from January 1, 2009 to March 27, 2009, and the audit assessment would be incorrect.

The question of whether the Taxpayer was a domiciled in Utah for all of 2009 is a question of fact. The Commission has considered this issue in numerous appeals, and whether someone is a "resident individual" for state tax purposes has been addressed by the appellate courts in Utah. As discussed by the Utah Supreme Court, a factfinder may determine intent as follows:

Intent will be determined based on the "totality of the facts and circumstances surrounding the situation," and the taxpayer's statement of intent is only one factor of many to be considered. "In determining whether a party has established a Utah domicile, the factfinder may accord the party's activities greater weight than his or her declaration of intent."

Benjamin v Utah State Tax Comm'n, 250 P.3d 39, 44 (Utah 2011), 2011 UT 14, ¶20 (internal citations omitted).

Once domicile has been established, three things must be shown to establish a new domicile:

1. A specific intent to abandon the former domicile
2. The actual physical presence in a new domicile
3. The intent to remain in the new domicile permanently

See Utah Administrative Code R865-9I-2 A.3. The parties agree Utah was the Taxpayer's domicile before March 28, 2009 and the Taxpayer was physically in FOREIGN COUNTRY on March 28, 2009.

The Taxpayer has met the second requirement of R865-9I-2 A.3. However, the parties disagree on whether the first and third requirements of R865-9I-2 A.3. were met.

The Taxpayer's representative presented a number of facts and circumstances and applied both the law in effect for the 2009 tax year and the law currently in effect. More specifically for the current law, the Taxpayer's representative relied on the webpage found at <http://incometax.utah.gov/filing/residency#domicile> (last updated on November 18, 2013), which explains the current law. The Judge notes that the law in effect for the 2009 tax year is not the same as the current law. The Utah Legislature revised the statutes concerning domicile effective January 1, 2012, so the information available at <http://incometax.utah.gov/filing/residency#domicile> does not apply for the 2009 tax year. The analysis contained in this order applies only the law in effect for the 2009 tax year and not the current law. If the Taxpayer had moved to FOREIGN COUNTRY on or after January 1, 2012 instead of on March 28, 2009, different conclusions might have been reached using the current law.

The Taxpayer's representative argued that on March 28, 2009 the Taxpayer abandoned Utah as his domicile and intended to remain in FOREIGN COUNTRY permanently. For the intent to remain permanently, the Taxpayer's representative explained that the Taxpayer intended to remain in FOREIGN COUNTRY for an indefinite period of time. In response, the Division asserted that the facts and circumstances do not show the Taxpayer abandoned his Utah domicile or intended to remain in FOREIGN COUNTRY permanently; the Division contended that the Taxpayer was in FOREIGN COUNTRY only for the purpose of work.

The facts and circumstances are as follows. The Taxpayer was single. He had no church affiliation. For several years before and including 2009, the Taxpayer lived on his own in apartments, not at his parents' house. Although the Taxpayer was not living at his parents' house, he did use their address in CITY-2, Utah, for his correspondence during 2009 and 2010 and through at least May of 2011. The Taxpayer's representative stated the Taxpayer used his parents' address out of convenience because the Taxpayer was concerned about receiving mail at his FOREIGN COUNTRY address. The Division questioned why the Taxpayer would have considered the FOREIGN COUNTRY mail system unreliable.

In 2008, the Taxpayer lived and worked in Utah. For tax years 2008 and before, the Taxpayer filed Utah income tax returns, indicating he was a Utah resident. There is no evidence showing the Taxpayer lived in any other state or country before March 28, 2009.

From January 1, 2009 to March 27, 2009, the Taxpayer lived in a CITY-3 apartment, which he rented with two roommates. When the Taxpayer left for FOREIGN COUNTRY, the Taxpayer ended his Utah lease, a few months before it would have otherwise expired. The Taxpayer did not have a home or apartment in Utah while he lived in FOREIGN COUNTRY.

As the Taxpayer's representative explained, before leaving for FOREIGN COUNTRY the Taxpayer had intended to go to FOREIGN COUNTRY to live and work teaching school for at least two years before returning to the United States to attend graduate school outside of Utah. The representative explained that, even in 2009, a graduate school in CITY-1, STATE, was the Taxpayer's first choice because his sister lived there. The Taxpayer had no other ties to CITY-1 in 2009. The Judge notes that, ultimately, the Taxpayer accomplished what he had intended; he spent a little over two years in FOREIGN COUNTRY before returning to the United States to attend graduate school in CITY-1.

Before moving to FOREIGN COUNTRY, the Taxpayer sold some of his possessions, like a stereo, and he stored a few other possessions, like a TV, pictures, and books, at his brother's house. The Taxpayer's representative asserted these possessions were not necessary to the Taxpayer. Additionally, the Taxpayer left at his parents' house his VEHICLE, which he had registered and insured in Utah. The Taxpayer's representative recalls another of the Taxpayer's brothers driving the vehicle while the Taxpayer was in FOREIGN COUNTRY. At some time before the Taxpayer returned to the United States in May 2011, the Taxpayer sold the vehicle to either his parents or brother and cancelled his vehicle insurance. The Division noted that, for the vehicle, the Taxpayer had provided the following written answer: "I owned [the vehicle], registered in Utah, but winterized and stored at a family's residence while I was living in FOREIGN COUNTRY. . . ." The Division asserts the Taxpayer's written answer is inconsistent with the testimony of the Taxpayer's representative at the hearing.

Before his move, the Taxpayer had a BANK account, which he retained until August 2011. A 2009 Form 1099-INT issued by BANK to the Taxpayer used his parents' address for the Taxpayer's address. The Judge infers that the Taxpayer used his parents' address as his address for the BANK account during all of the time he lived in FOREIGN COUNTRY. It is unknown whether the Taxpayer had a credit card attached to the BANK account and whether such a card was used while the Taxpayer was living in FOREIGN COUNTRY.

On March 24, 2009, days before moving to FOREIGN COUNTRY, the Taxpayer signed his 2008 Utah income tax return, on which he used his parents' address as his address.

At the time the Taxpayer moved to FOREIGN COUNTRY, it is unknown whether the Taxpayer was registered to vote in Utah. The Taxpayer's representative thinks the Taxpayer was not registered. However, the Taxpayer's representative asserts that if the Taxpayer were registered, an ordinary person would not know to stop such a registration when he or she moved.

In 2009, the Taxpayer had a Utah driver's license, which he renewed in Utah on December 28, 2009. On his driver's license application, the Taxpayer used his parents' address as his "Utah residence address" and "mailing address." The Taxpayer also requested to register to vote in Utah if he was not already registered. When asked on the driver's license application about other licenses, the Taxpayer

indicated he had never been issued a driver license by another state, country, or province. The Division noted the Taxpayer signed his driver's license application, affirming that "the information entered therein is true and correct to the best of [his] knowledge." The Division asserts the Taxpayer signed under penalty of perjury that his parents' address was his Utah residence. The Taxpayer's representative responded that the Taxpayer is not sophisticated; he would not have known having a Utah driver's license could cause him to have domicile. The Taxpayer claimed he was not using his Utah driver's license in FOREIGN COUNTRY. The Taxpayer's representative asserted the Taxpayer did not know to cancel his Utah driver's license when he left for FOREIGN COUNTRY. While in FOREIGN COUNTRY, the Taxpayer took a driver's education class and received a FOREIGN COUNTRY driver's license, a copy of which was provided. The date of issuance on the FOREIGN COUNTRY driver's license is in FOREIGN COUNTRY, so conversion is needed to know when the license was issued. Using FOREIGN COUNTRY conversion information found online, the FOREIGN COUNTRY years convert to western years as follows:²

<u>FOREIGN COUNTRY</u>	<u>Western</u>
YEAR	2009
YEAR	2010
YEAR	2011
YEAR	2012
YEAR	2013

Comparing the copy of the FOREIGN COUNTRY driver's license to the table above, the Judge finds the Taxpayer received his FOREIGN COUNTRY driver's license after December 28, 2009, possibly on May 19, 2010 based on the date on the FOREIGN COUNTRY driver's license. After the Taxpayer returned to the United States, he moved to CITY-1 and acquired a STATE driver's license in 2011.

On March 28, 2009, the Taxpayer arrived in FOREIGN COUNTRY. The Taxpayer lived there until May 6, 2011, when he traveled to Utah for a couple weeks before moving to CITY-1. During the years in FOREIGN COUNTRY, the Taxpayer was employed as a full-time English teacher. Minimal evidence about the Taxpayer's employment was presented. The details of his employment contract were not presented. It is unknown whether the Taxpayer received a cost of living stipend while in FOREIGN COUNTRY.

The Taxpayer's representative argued that the Taxpayer's FOREIGN COUNTRY employment was for an unlimited duration, even when he began his employment in 2009. The Taxpayer's representative also testified the Taxpayer received in 2011 either a written or verbal offer to extend his employment, which the Taxpayer had contemplated accepting.

² For an example of a converter, see http://www.FOREIGN_COUNTRY-guide.com/e/e2272.html.

While in FOREIGN COUNTRY, the Taxpayer lived in an apartment provided by or arranged by his employer. He had a roommate who was another teacher. The Judge notes the Taxpayer did not list this apartment as his rental during the audit period of the 2009 tax year (Division's Ex. Aud. ##### - Aud. #####), but the Taxpayer did list an address for a place he lived in FOREIGN COUNTRY (Division's Ex. Aud. #####).

On March 24, 2009, the Taxpayer was issued a FOREIGN COUNTRY work visa for a 1-year stay. The visa was stamped with a "date of permit" of March 28, 2009 "until" March 28, 2010 and with a "duration" of one year. The Division asserted the work visa was effective in 1-year increments. No evidence was presented that specifically addressed the work visa being extended or the length of those extensions. It is unknown how frequently the Taxpayer was required to register with the FOREIGN COUNTRY government and whether the work visa was contingent on having employment.

On or about March 28, 2009, the Taxpayer was issued a FOREIGN COUNTRY Alien registration card (X-card). That card shows a "landing" of March 28, 2009, a "period of stay" of March 28, 2010, and a "renew within 30 days starting from" March 24, 2014.

The Taxpayer paid compulsory healthcare taxes in FOREIGN COUNTRY and FOREIGN COUNTRY federal taxes. The Taxpayer had FOREIGN COUNTRY Universal Healthcare insurance. The dates on the card are in FOREIGN COUNTRY. Based on the dates on the card and the conversion table included previously in this order, the Judge thinks the Taxpayer had coverage from April 2009 to April 2011. The Taxpayer received medical services in FOREIGN COUNTRY, but evidence about the timing and extent of those services were not presented.

The Taxpayer had a FOREIGN COUNTRY cell phone and paid FOREIGN COUNTRY utilities. No copies of the bills or payments for the phone or utilities were submitted.

When in FOREIGN COUNTRY, the Taxpayer had a FOREIGN COUNTRY bank account, for which he submitted an account register showing seven monthly deposits and ten withdrawals between April 20, 2009 and December 31, 2009. It is unknown if there were transfers from this FOREIGN COUNTRY bank account to another account elsewhere. The Taxpayer submitted a copy of a card labeled by the Taxpayer as "FOREIGN COUNTRY bank—Electronic book." The evidence submitted does not show how the Taxpayer used either a FOREIGN COUNTRY bank account or his BANK account to pay his everyday living expenses while in FOREIGN COUNTRY. The Taxpayer's representative stated the Taxpayer was not supported by anyone in Utah while he worked in FOREIGN COUNTRY.

At the end of December 2009, the Taxpayer returned to Utah for a 6-day visit. During which time, the Taxpayer's representative said, the Taxpayer stayed with a high school friend, not at his parents'

house. It was during that vacation the Taxpayer renewed his Utah driver's license, as discussed previously in this order.

During 2010, the Taxpayer did not return to Utah.

On April 10, 2010, while in FOREIGN COUNTRY, the Taxpayer signed his 2009 Utah income tax return. On that return, for his address he used his parents' address but also added the country, "FOREIGN COUNTRY." On the 2009 Utah income tax return, the Taxpayer indicated that he was a part-year resident from January 1, 2009 through March 31, 2009, and he included only \$\$\$\$ of interest income as taxable for Utah income tax purposes. The Taxpayer's representative asserted that the Taxpayer filed as a part-year resident because he did not plan to return to Utah after living in FOREIGN COUNTRY. Although signed in 2010, the 2009 income tax return was received by the Tax Commission on December 6, 2013, along with the Taxpayer's Petition for Redetermination. The Taxpayer filed a 2009 federal income tax return, on which the Taxpayer used his parents' address as his address, he reported his earnings from FOREIGN COUNTRY, and he claimed a federal foreign tax credit of \$\$\$\$\$. Two 2009 Form W-2's were issued to the Taxpayer at Utah addresses different from his parents' address: a 2009 W-2 for \$\$\$\$ and a 2009 W-2 for \$\$\$\$\$. The Judge notes these two W-2's, totaling \$\$\$\$\$, do not appear to have been included on the Taxpayer's federal or state tax returns for the 2009 tax year. The Taxpayer's representative explained that the representative did not think the Taxpayer earned income in Utah in 2009, but the Taxpayer might have done a little substitute teaching before leaving for FOREIGN COUNTRY.

On March 29, 2011, while in FOREIGN COUNTRY, the Taxpayer signed his 2010 Utah income tax return. On that return, he used his parents' address as his own and reported only \$\$\$\$ of interest income as taxable income for Utah.

Sometime before leaving FOREIGN COUNTRY, the Taxpayer completed his graduate school applications. It is unknown whether the Taxpayer applied to any graduate school located in Utah. It is also unknown what address the Taxpayer used as his address on those applications.

On May 6, 2011, the Taxpayer returned to the United States from FOREIGN COUNTRY, arriving first in Utah before moving to CITY-1, STATE, for graduate school. The Taxpayer visited Utah for about two weeks before moving to CITY-1. The Taxpayer's representative thinks the Taxpayer stayed with a friend, not with his parents, during that time. When the Taxpayer moved to CITY-1, he first stayed in his sister's home and then moved into his own apartment. The Taxpayer continues to live at and maintain his own residence in CITY-1. The Taxpayer attended graduate school in CITY-1 as a "resident" for tuition purposes. He remained in CITY-1 after he graduated, and he is currently teaching English at the University of STATE. After moving to CITY-1, the Taxpayer had temporary, summer employment in Utah in 2012.

Overall, the Taxpayer's representative argued that while the Taxpayer was in FOREIGN COUNTRY, he had no ties to Utah and received no benefits from Utah. The Taxpayer's representative explained the many connections the Taxpayer did not have in Utah, such as having a Utah home, family, or using the Utah public education system. The Taxpayer's representative also emphasized how the Taxpayer did not intend to return to Utah when he left for FOREIGN COUNTRY and how he, indeed, did not return to Utah to live after leaving FOREIGN COUNTRY, instead moving to CITY-1 for schooling then employment. The Taxpayer's representative minimized the connections the Taxpayer had with Utah. The representative explained the Taxpayer used his parents' address for correspondence out of convenience; the Taxpayer sold his VEHICLE while in FOREIGN COUNTRY; the Taxpayer left only minimal, unnecessary possessions in Utah while in FOREIGN COUNTRY; and the Taxpayer visited Utah for only 6 days in 2009 while he was living in FOREIGN COUNTRY. The representative also explained the Taxpayer retained and renewed his Utah driver's license because he was not sophisticated enough to know that keeping a Utah driver's license could cause him to have a Utah domicile; the Taxpayer did not use his Utah driver's license in FOREIGN COUNTRY; and the Taxpayer took classes and obtained a FOREIGN COUNTRY driver's license for driving in FOREIGN COUNTRY.

The Taxpayer's representative asserted the Taxpayer had more connection to FOREIGN COUNTRY than Utah while living in FOREIGN COUNTRY. In FOREIGN COUNTRY, the Taxpayer had employment, an apartment, a FOREIGN COUNTRY bank account, a FOREIGN COUNTRY driver's license, FOREIGN COUNTRY health insurance, and a FOREIGN COUNTRY Alien registration that did not expire until March 24, 2014. In FOREIGN COUNTRY, the Taxpayer also paid for FOREIGN COUNTRY healthcare taxes, FOREIGN COUNTRY federal taxes, his own cell phone, utilities, and other living expenses.

The Taxpayer's representative stated the Division provided no court cases as precedent showing that retaining a Utah driver's license alone could cause domicile.

In response to the Taxpayer's arguments, the Division stated the burden of proof was on the Taxpayer in this case. The Division cited to R865-9I-18, which requires taxpayers to keep records. The Division also cited to § 59-10-104, which imposes tax on resident individuals, and to § 59-10-103(1)(q)(i)(A), which defines a resident individual as one who is domiciled in Utah. The Division cited to R865-9I-2 A.3., which provides the three requirements for a person to change from a previously established domicile to a new domicile. The Division agreed that the second element, the actual physical presence in FOREIGN COUNTRY, was met. However, the Division argued the first element, a specific intent to abandon the former domicile, has not been shown based on the Taxpayer's vehicle in Utah, personal property in Utah, Utah mailing address, and Utah driver's license, for which he provided a Utah residence when he renewed in December 2009. The Division argued that the third element, the intent to

remain in the new domicile permanently, has also not been shown because the Taxpayer was in FOREIGN COUNTRY for a temporary purpose—namely, work, as shown by the work visa, effective for a limited, 1-year duration. Additionally, the Division noted that the Taxpayer’s stated intent when leaving for FOREIGN COUNTRY was to return to attend graduate school.

As mentioned previously in this order, the parties agree Utah was the Taxpayer’s domicile before March 28, 2009. Therefore, R865-9I-2 A.3. applies, requiring the Taxpayer to show the following requirements to prevail:

1. His specific intent to abandon Utah, his former domicile
2. The actual physical presence in FOREIGN COUNTRY, a new domicile
3. The intent to remain in FOREIGN COUNTRY, the new domicile, permanently

It is undisputed the Taxpayer has shown the second requirement. However, the Taxpayer has not shown the third and first requirements.

The Taxpayer has not shown “[his] intent to remain in the new domicile [FOREIGN COUNTRY] permanently” as required by R865-9I-2 A.3.c). When the Taxpayer left for FOREIGN COUNTRY, his intent, as stated by his representative, was to go to FOREIGN COUNTRY to live and work teaching school for at least two years before returning to the United States for graduate school. This stated intent strongly suggests that the Taxpayer did not intend to remain in FOREIGN COUNTRY permanently, but instead intended to remain in FOREIGN COUNTRY for a limited time for work before returning to the United States for school. Furthermore, no other facts show the Taxpayer changed his intent during the 2009 tax year. Instead, the other facts suggest he intended his stay in FOREIGN COUNTRY to be for a limited duration. These facts include retaining and actively using a Utah mailing address, retaining and renewing his Utah driver’s license using a Utah residence address, keeping a vehicle and other possessions in Utah in 2009, and retaining his BANK account throughout his stay in FOREIGN COUNTRY. Notably, the Taxpayer did not show he sold the vehicle in 2009, and he did not show the BANK account activity was minimal. The BANK account might have been actively used by the Taxpayer for his living expenses while in FOREIGN COUNTRY. Furthermore in 2009, the Taxpayer’s teaching position was for a limited duration; the position became renewable in 2011 only after his employer offered to extend it. His FOREIGN COUNTRY apartment was connected to his teaching position; it was arranged for and/or provided by his employer, his roommate was another teacher, and the Taxpayer did not list this apartment as his rented property (Division’s Ex. Aud. #####). His work visa was issued for a one-year duration, and no extensions were shown to have been granted. The Taxpayer did not show any reason for remaining in FOREIGN COUNTRY besides his work. The Taxpayer did not show he could legally remain in FOREIGN COUNTRY if he did not retain work. The Taxpayer’s alien registration card, FOREIGN COUNTRY health care taxes, FOREIGN COUNTRY health insurance, FOREIGN COUNTRY federal taxes, and FOREIGN COUNTRY phone and utility payments are

connections the Taxpayer had with FOREIGN COUNTRY, but no explanation was provided to explain how these items show the Taxpayer had intended to remain in FOREIGN COUNTRY permanently instead of for the limited duration of his teaching position only. The Taxpayer did not show he acquired the FOREIGN COUNTRY driver's license in 2009. The account register for his FOREIGN COUNTRY bank account has limited activity: seven monthly deposits and only ten withdrawals from April through December 2009. This account register does not show the Taxpayer actively used this FOREIGN COUNTRY bank account to pay his living expenses while in FOREIGN COUNTRY. After considering the facts presented, the Taxpayer has not shown he intended to remain in FOREIGN COUNTRY permanently, the third requirement of R865-9I-2 A.3. Therefore, he has also not shown he changed his domicile from Utah to FOREIGN COUNTRY, regardless of whether he has met the first requirement of R865-9I-2 A.3., which is analyzed below.

For the first requirement of R865-9I-2 A.3., the Taxpayer has not shown his specific intent to abandon Utah as his former domicile. The Taxpayer's representative explained that the Taxpayer did not intend to return to Utah; however, while in FOREIGN COUNTRY the Taxpayer retained his Utah driver's license, his BANK account, and some personal property located in Utah. He also actively used a Utah mailing address and not a FOREIGN COUNTRY address while in FOREIGN COUNTRY. He intended to return to the United States for graduate school. Before and during his stay in FOREIGN COUNTRY, Utah was the state with which he had the most connections. The state of STATE was discussed at the Initial Hearing, but his only connection to that state in 2009 was his sister living there. When the Taxpayer returned from FOREIGN COUNTRY in 2011, he went first to Utah for about two weeks before moving to CITY-1, STATE. It was not until he moved to CITY-1 that he ended some of the Utah connections he had retained while in FOREIGN COUNTRY; he closed his BANK account and obtained a STATE driver's license. Although the Taxpayer had fewer connections to Utah than other taxpayers who were found to have retained their Utah domicile, the Taxpayer still has not shown his specific intent to abandon Utah, based on the facts presented.

In summary, the Taxpayer has not shown he has met the first and third requirements of R865-9I-2A.3; namely, he has failed to show his specific intent to abandon Utah and his intent to remain in FOREIGN COUNTRY permanently. Therefore, the Taxpayer likewise has not shown he changed domicile to FOREIGN COUNTRY. The Division's assessment correctly treated the Taxpayer as being domiciled in Utah for all of 2009 and as being a resident individual of Utah for all of 2009. In conclusion, the Division's audit tax of \$\$\$\$\$ should be sustained.

B. The Taxpayer Has Shown Reasonable Cause for a Waiver of Penalties but not Interest.

As mentioned in this order previously, the Taxpayer's representative also requested a waiver of penalties and interest. The Taxpayer's representative explained that the Taxpayer acted in good faith and

relied on the Taxpayer's representative, who is a tax professional, to assist him in preparing his tax returns. The Division does not dispute the Taxpayer has shown reasonable cause for a waiver of penalties in this case. However, the Division does contend that interest should not be waived because the Tax Commission did not give the Taxpayer incorrect information or take inappropriate action causing the Taxpayer to mistakenly believe he changed his domicile to FOREIGN COUNTRY on March 28, 2009. Based on the facts presented, the Taxpayer has shown reasonable cause for the Commission to waive of penalties under § 59-1-401(13); the Taxpayer relied on his brother who was a tax professional to help him prepare his Utah income tax return. There is no evidence suggesting the Taxpayer was simply careless, forgetful, or that he intentionally disregarded the Utah tax laws. However, the Taxpayer has not shown reasonable cause to waive interest. A waiver of interest requires the Taxpayer to prove the Tax Commission gave the Taxpayer erroneous information or took inappropriate action to cause his error of incorrectly thinking he had changed his domicile to FOREIGN COUNTRY. No evidence presented shows the Tax Commission inappropriately acted and caused the Taxpayer to incorrectly believe he was a part-year Utah resident. Thus, interest should not be waived.

C. Conclusion

In conclusion, the audit tax due of \$\$\$\$ and the related audit interest should be sustained, but the audit penalties of \$\$\$\$ should be waived.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, for the 2009 tax year the Commission sustains the audit tax due and the related audit interest due, but the Commission waives the audit penalties of \$\$. 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

Appeal No. 14-34

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2014.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.