15-720
TAX TYPE: INCOME TAX
TAX YEAR: 2010, 2011, 2013
DATE SIGNED: 5-6-2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
EXCUSED: R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 15-720 Account No. ##### Tax Type: Income Tax Years: 2010, 2011 & 2013 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
REPRESENTATIVE FOR TAXPAYER 1 & 2, Accountant
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, from 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 February 17, 2016.

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessments of additional income tax for the 2010, 2011, and 2013 tax years. On April 1, 2015, the Division issued Notices of Deficiency and Audit Change ("Statutory Notices") to the taxpayers for the three years at issue. In the Statutory Notices, the Division imposed additional tax and interest (calculated as of May 1, 2015),[1] as follows:

1 Interest continues to accrue until any tax liability is paid. No penalties were imposed.

Year	Tax	Penalties	Interest	Total
2010	$$$$$	$$$$$	$$$$$	$$$$$
2011	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$

For the three years at issue, the taxpayers filed Utah nonresident returns. The taxpayers assert that they were Utah nonresidents for these years because they lived in STATE-1, where TAXPAYER-1 was working from the first of 2010 through early 2014.[2] For the years at issue, the taxpayers sourced most, if not all, of their income to Utah, with the exception of the wages income that TAXPAYER-1 earned while working in STATE-1. The taxpayers contend that they correctly sourced TAXPAYER-1's wages to STATE-1 because they changed their domicile to STATE-1 for the four-plus years they lived there. As a result, they ask the Commission to reverse the Division's assessments for all years at issue.

The Division has determined that the taxpayers remained domiciled in Utah while they were living in STATE-1 for TAXPAYER-1's work. As a result, the Division contends that the taxpayers were Utah resident individuals for the 2010, 2011, and 2013 years at issue.[3] For these reasons, the Division asks the Commission to sustain its assessments for these three years.

APPLICABLE LAW

I. Taxation of a Resident Individual.

1. For all years at issue, Utah Code Ann. §59-10-104(1) provides that "a tax is imposed on the state taxable income of a resident individual[.]"

2 It does not appear that TAXPAYER-1 worked during the years at issue.

3 The Division stated that although the 2012 tax year is not at issue in this appeal, it also believes that the taxpayers were domiciled in Utah during 2012. The Division stated that it has not issued an assessment for the 2012 tax year because enough Utah income taxes were withheld and remitted for this year to satisfy any Utah income tax liability the taxpayers would have for 2012. The Commission will not be addressing the taxpayers' tax liability for the 2012 tax year.

2. For all years at issue, a "resident individual" is defined in UCA §59-10-103(1)(q)(i), as follows:

> (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.

II. Domicile Law in Effect for 2010 and 2011.

3. For the 2010 and 2011 tax years, Utah Admin. Rule R865-9I-2 ("Rule 2") provides guidance concerning the determination of "domicile," as follows in pertinent part:[4]

> 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.

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4 Effective for tax year 2012, Utah law concerning "domicile" was substantively amended. The Rule 2 definition of "domicile" in effect for 2010 and 2011 was repealed beginning with tax year 2012, and new criteria concerning "domicile" were enacted in UCA §59-10-136 (which will be discussed later in this decision). As a result, the Rule 2 definition of domicile in effect for 2010 and 2011 will be used to determine the taxpayers' domicile during 2010 and 2011, but Section 59-10-136 will be used to determine their domicile during 2013.

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4. For the 2010 and 2011 tax years, Utah Admin. Rule R884-24P-52 ("Rule 52") sets forth a non-exhaustive list of factors or objective evidence that may be determinative of domicile, as follows in pertinent part:[5]

. . . .
(5) Factors or objective evidence determinative of domicile include:
(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;

5 Rule 52 is referenced in the version of Rule 2 that was in effect for 2010 and 2011. As a result, Rule 52 is applicable when determining the taxpayers' 2010 and 2011 domicile, but not their 2013 domicile.

(q) the acquisition of a new residence in a different location.

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III. Domicile Law in Effect for 2013.

5. Effective for tax year 2012 (and thus applicable to the 2013 tax year at issue), Utah Code Ann. §59-10-136 provides guidance concerning the determination of "domicile," as follows:

> (1) (a) An individual is considered to have domicile in this state if:
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
> (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
> (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
> (i) is the noncustodial parent of a dependent:
> (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
> (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
> (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).
> (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
> (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
> (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
> (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
> (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
> (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled

in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:
(A) the individual leaves this state; or
(B) the individual's spouse leaves this state; and
(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

(b) For purposes of this section, an individual is not considered to have a spouse if:
(i) the individual is legally separated or divorced from the spouse; or

> (ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
>
> (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
>
> (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

IV. Waiver of Interest and Burden of Proof.

6. UCA §59-1-401(13) (2016) provides that "[u]pon 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."[6]

7. Utah Admin. Rule R861-1A-42(2) ("Rule 42") (2016) provides guidance concerning the waiver of interest that is authorized under Section 59-1-401(13), as follows:

> (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.

8. For all years at issue, UCA §59-1-1417 (2016) provides that the burden of proof is upon the petitioner in proceedings before the Commission, with limited exceptions as follows:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
>
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;

6 Effective for tax year 2012, Section 59-10-136(4) has specific provisions addressing interest and penalties imposed in domicile cases, including the waiver of penalties under certain circumstances. However, for prior years, including the 2010 and 2011 tax years at issue, the only applicable law concerning the waiver of penalties and interest is found in Section 59-1-401(13) and Utah Admin. Rule R861-1A-42. Because there were no penalties imposed in this case, only those provisions concerning the waiver of interest will be discussed.

> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
> (i) required to be reported; and
> (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

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DISCUSSION

At issue is whether the taxpayers were Utah resident individuals for the 2010, 2011, and 2013 tax years. For all of these years, Subsection 59-10-103(1)(q) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah; or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah. The Division does not argue that the taxpayers qualify as Utah resident individuals for any of the years at issue under the second scenario, which involves, in part, spending 183 or more days of a taxable year in Utah.

The Division, instead, contends that the taxpayers were Utah resident individuals for all three years under the first scenario. Specifically, the Division contends that the taxpayers were domiciled in Utah for these years. As a result, the Commission must apply the facts to the laws in effect for each year at issue and determine whether or not the taxpayers were domiciled in Utah for each year. If the Commission determines that the taxpayers were domiciled in Utah for a specific period, all of their income for that period is subject to Utah taxation (regardless of whether it was earned while they were living and working in another state). Accordingly, for any period for which the Commission determines that the taxpayers were domiciled in Utah, it should sustain the Division's assessment for that period. On the other hand, for any period for which the Commission determines that the taxpayers were *not* domiciled in Utah, it should reverse the Division's assessment for that period.

I. Facts.

TAXPAYER-1 explained that he first moved to Utah in 1975 and that he and his wife lived here until 1995, when they sold their Utah home and moved to STATE-2 for two years. He explained that he was transferred back to Utah in 1998, at which time he and his wife purchased a home in CITY-1 Utah (the "Utah home"), which they still own. The taxpayers admit that they were domiciled in Utah from 1998 through 2009 (i.e., until they moved to STATE-1 for TAXPAYER-1's job in January 2010). For many years, TAXPAYER-1 has worked for COMPANY-1 ("COMPANY-1"), and he is one of approximately 80 shareholders in the company. TAXPAYER-1 explained that he has worked on construction projects for COMPANY-1 all over the United States. He explained that COMPANY-1 will allow its employees to travel back and forth between their homes and project sites for smaller projects, but expects its employees to relocate for larger projects. TAXPAYER-1 stated that he remained domiciled in Utah when working outside of Utah on smaller projects from 1998 through 2009. In 2009, however, he committed to relocate to CITY-2, STATE-1 in January 2010 for a large hospital project that was expected to last for several years.

Because the taxpayers committed to go to STATE-1 for several years, they decided to sell their Utah home. They listed it for sale with a realtor in September 2009 for $$$$$.[7] The taxpayers stated that no offers were made on their home, in part, because of the recession that occurred in the late 2000's. The listing expired around March 2010, and the taxpayers decided that their Utah home would not sell in the market that existed at that time. As a result, they decided to keep their Utah home and use it for the four or five days each month that they typically returned to Utah. The Utah home has four bedrooms, three and one-half baths, and a three-car garage.

7 Information from the Multiple Listing Service shows that the taxpayers listed their Utah home for $$$$$, several months after the Salt Lake County Assessor assessed the 2009 "fair market value" of the home at $$$$$.

TAXPAYER-1 moved to STATE-1 in January 2010, and TAXPAYER-2 moved there in March 2010. In STATE-1, the taxpayers rented an unfurnished, two-bedroom apartment for $$$$$ per month. They lived in this apartment until they returned to Utah sometime in early 2014. TAXPAYER-1 stated that they could have paid the apartment complex extra to rent a garage, but chose not to. TAXPAYER-1's employer, COMPANY-1, paid for the apartment the entire time they lived in STATE-1. The taxpayers did not bring any of their furniture from the Utah home to their STATE-1 apartment, in part, because COMPANY-1 paid to furnish the STATE-1 apartment.[8] COMPANY-1 also provided the taxpayers with a monthly allotment to pay for utilities and other expenses related to the STATE-1 apartment.

During the four years that TAXPAYER-1 worked in STATE-1, no one lived in their Utah home other than the taxpayers when they returned four or five days a month. TAXPAYER-1 explained that his and his wife's four children were at least 26 years of age in 2010 and that the children were all living on their own. The taxpayers had no dependents during the 2010, 2011, and 2013 tax years at issue. During these years, most of the taxpayers' children lived in Utah.[9] TAXPAYER-1 explained that he and his wife used their vacation time to come back to Utah and "check" on the Utah home on a regular basis. For this reason and because TAXPAYER-1 needed to attend periodic business meetings at COMPANY-1's CITY-3 offices, TAXPAYER-1 estimated that he and his wife stayed at their Utah home four to five nights a month.

TAXPAYER-1 explained that he and his wife had the bills for their STATE-1 apartment sent to their STATE-1 address and the bills for their Utah home sent to their Utah address. TAXPAYER-1 stated that it was easy to go onto the internet and have the mail they had sent to their Utah address "started" whenever they were going to be at the Utah home and "stopped" whenever they were going to be at the STATE-1 apartment.

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8 After the taxpayers returned to Utah in 2014, COMPANY-1 allowed the taxpayers to keep the furniture it had paid to furnish their STATE-1 apartment. The taxpayers rented a small "pod" and had the furniture moved to Utah. The taxpayers gave some of the furniture to charity and the rest to their children.

9 One of the taxpayers' children lived near CITY-4, STATE-1 in 2010 and 2011, but moved back to Utah in 2012.

The taxpayers also had the newspaper they received at the Utah home stopped and started in a similar way. During the years at issue, the taxpayers received triathlete and triathlon magazines at their STATE-1 address and church magazines at their Utah address. TAXPAYER-1's 2010 and 2011 W-2 forms from COMPANY-1 were sent to the taxpayers' Utah address, while his 2013 W-2 form from COMPANY-1 was sent to their STATE-1 address. It is unknown where the taxpayers' K-1 forms and 1099 forms were sent during the years at issue.

During all years at issue, the taxpayers received the 45% residential exemption from property taxation on their Utah home. At the hearing, TAXPAYER-1 explained that he did not know what a residential exemption was and that he did not know whether he and his wife received it on their Utah home.[10] The Division proffered that it checked with the Salt Lake County Assessor's Office and found out that the taxpayers received the residential exemption on their Utah home for all years at issue.

During the years at issue, the taxpayers owned two vehicles. They kept one of the vehicles at their Utah home and the other at their STATE-1 apartment. During all years that they lived in STATE-1, they registered both vehicles in Utah. The taxpayers continued to insure both vehicles through their Utah insurance agent, with whom they also insured their Utah home. The taxpayers used a STATE-1 insurance agent to obtain renter's insurance for their STATE-1 apartment.

For all years at issue, the taxpayers also retained their Utah driver's licenses. Furthermore, the taxpayers used their Utah address when TAXPAYER-1 renewed his Utah driver's license in 2012 and when TAXPAYER-2 renewed her Utah driver's license in 2013. TAXPAYER-1 explained that upon moving to

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10 During the years at issue, Utah Code Ann. §59-2-103(2) (2010) provided that ". . . the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption[.]" For purposes of this exemption, "residential property" was defined in Utah Code Ann. §59-2-102(31) (2010) to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that a person uses as his or her primary residence is only taxed on 55% of the home's fair market value, while a home that is not a person's primary residence (such as a vacation

STATE-1, he contacted the STATE-1 Department of Motor Vehicles, which told him that he and his wife did not need to obtain STATE-1 driver's licenses and that they did not need to register the vehicle they had with them in STATE-1. TAXPAYER-1 stated that he was told that he would need to have the vehicle they kept in STATE-1 inspected in STATE-1 once every two years, but could continue to register it in Utah. TAXPAYER-1 explained that he was given this information after telling the STATE-1 official that he had been transferred to STATE-1 for two to five years and that his and his wife's Utah home was not selling.[11]

The taxpayers never registered to vote in STATE-1. It appears, however, that they were registered to vote in Utah during the years at issue because they voted in the 2012 presidential election in Utah. TAXPAYER-1 explained that he and his wife do not typically vote in elections other than the presidential election.

The taxpayers had a primary care physician in Utah and did not obtain a primary care physician in STATE-1. TAXPAYER-1 stated that they may have had yearly physicals with their Utah physician, but could not recall for sure. TAXPAYER-1 did recall, however, that he went to their Utah primary physician in late 2013 after he was informed in STATE-1 after giving blood that he had a blood condition.[12] TAXPAYER-1 stated that because he knew that he would soon be leaving STATE-1, he decided to see his Utah doctor instead of seeing a STATE-1 doctor about the blood condition. TAXPAYER-1 also stated that he went to see an orthopedic doctor in STATE-1 for a non-work foot injury and that he and his wife would go to an "urgent care" facility in STATE-1 as needed. TAXPAYER-1 stated that he went to a dentist and oral surgeon in STATE-1 and that he and his wife did not have a Utah dentist during the years at issue.

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or secondary home) is taxed on 100% of its fair market value.

11 The Division stated that it is unaware of any state whose laws would not require someone who had changed their domicile and become a permanent resident of the state to obtain a driver's license and register their vehicle in that state. Neither party, however, provided the applicable STATE-1 law to show whether STATE-1 would or would not require someone who had changed their domicile to STATE-1 to obtain a STATE-1 driver's license and to register their vehicle in STATE-1.

12 TAXPAYER-1 explained that because he was building a hospital in STATE-1, he and the employees

The taxpayers used a Utah tax preparer during the years at issue, specifically REPRESENTATIVE FOR TAXPAYER 1 & 2, who appeared at the hearing. REPRESENTATIVE FOR TAXPAYER 1 & 2 prepared the taxpayers' 2010, 2011, and 2013 federal and Utah nonresident returns, all of which show the taxpayers' address to be their STATE-1 address. The taxpayers' 2010 federal return shows that the taxpayers made a donation that year to BUSINESS-1 in CITY-3, Utah. No evidence was submitted to show that the taxpayers made contributions to STATE-1 charities during the years at issue.

REPRESENTATIVE FOR TAXPAYER 1 & 2 stated that he decided to prepare Utah nonresident returns for the taxpayers to file for the years at issue after speaking with NAME-1 at the Tax Commission. REPRESENTATIVE FOR TAXPAYERS 1 & 2 stated that he asked NAME-1 about a "general question," but admitted that NAME-1 did not give him any advice concerning the taxpayers' residency status. REPRESENTATIVE FOR TAXPAYER 1 & 2 did not indicate what the general question was that he spoke to NAME-1 about, nor did he indicate what specific information about the taxpayers, if any, he provided to NAME-1.

The taxpayers did not have a broker or brokerage account during the years at issue. The taxpayers did not open new bank accounts upon moving to STATE-1. They kept their bank accounts at BANK and with the CREDIT UNION. It was not discussed at the hearing whether the statements for these accounts were sent to the taxpayers' Utah address or to their STATE-1 address.

During the years at issue, the taxpayers attended church when they were in STATE-1, but they never had their church records moved from their Utah church unit to one in STATE-1. TAXPAYER-1 proffered that he participated in several triathlons while living in STATE-1. In addition, while the taxpayers were in STATE-1, TAXPAYER-1 participated in a (X) march and in a mentoring program for minorities involved in construction.

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he managed would typically give blood in STATE-1 every eight weeks.

The taxpayers did not have a will or own a burial plot during the years at issue. In addition to their Utah home, the taxpayers owned other real property in Utah, specifically unimproved land in RURAL COUNTY, Utah. The taxpayers did not attend a Utah institution of higher eductation during the years at issue. TAXPAYER-1 also indicated that he obtained a STATE-1 nonresident fishing license soon after moving to STATE-1, but stated that he was required to obtain a nonresident license because he had not yet lived in STATE-1 long enough to qualify for a resident license. TAXPAYER-1 also indicated that he may have obtained a hunting license in Utah during the years at issue, but he does not remember whether it would have been a resident or nonresident license.

II. Domicile for 2010 and 2011 Tax Years.

For these two tax years, the issue of domicile is addressed in Rule 2. Rule 2(A)(1) provides that "[d]omicile 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." Once domicile is established, Rule 2(A)(3) provides that domicile "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."

At issue is whether the taxpayers have met the three elements necessary to show that they abandoned their Utah domicile when they moved to STATE-1 in 2010 and whether they established a new domicile in STATE-1 for 2010 and 2011. The taxpayers meet the second of the three criteria necessary to have changed their domicile from Utah to STATE-1. Because the taxpayers rented an apartment in STATE-1 and lived in it for most of 2010 and 2011, they established an "actual physical presence in a new domicile" and, thus, meet the criterion found in Rule 2(A)(3)(b).

However, the other two criteria, which involve a person's intent, must also be met. For domicile to change, Rule 2(A)(3)(a) and (c) requires "a specific intent to abandon the former domicile" and "the intent to remain in the new domicile permanently." In addition, Rule 2(A)(1) provides that "[d]omicile 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" (emphasis added).

The taxpayers proffer that once TAXPAYER-1 received his assignment to work in STATE-1, it was their intent to make STATE-1 their permanent home for however many years he would be working there. The taxpayers admit that they did not change a number of their Utah contacts to STATE-1, but contend that it was, nevertheless, their intent to abandon their Utah domicile and establish a new one in STATE-1. Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes [13] and have determined that a person's actions may be accorded greater weight in determining his or her domicile than a declaration of intent.[14]

The Division acknowledges that the taxpayers moved to STATE-1 for TAXPAYER-1's job during the years at issue and that they established a number of STATE-1 contacts during these years. The Division, however, believes that the taxpayers retained their Utah domicile because they decided to keep and use their Utah home once it did not sell, because their STATE-1 apartment appears to be inferior to their Utah home, because they received the residential exemption on their Utah home for all years at issue, because the taxpayers retained and even renewed their Utah driver's licenses during the time they claim to have been domiciled in

13 The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals. *See Lassche v. State Tax Comm'n*, 866 P.2d 618 (Utah Ct. App. 1993); *Clements v. State Tax Comm'n*, 839 P.2d 1078 (Utah Ct. App. 1995); *O'Rourke v. State Tax Comm'n*, 830 P.2d 230 (Utah 1992); *Orton v. State Tax Comm'n*, 864 P.2d 904 (Utah Ct. App. 1993); and *Benjamin v. State Tax Comm'n*, 2011 UT 14 (Utah 2011).

14 *See Clements v. Utah State Tax Comm'n*, 893 P.2d 1078 (Ct. App. 1995); and *Allen v. Greyhound Lines, Inc.*, 583 P.2d 613, 614 (Utah 1978).

STATE-1, because they voted in Utah and not STATE-1 during the time they claim to have been domiciled in STATE-1, because they registered all of their vehicles in Utah and insured them through a Utah agent, and because they did not move their church records to STATE-1.

In Rule 52, the Commission has designated a number of factors to be considered when determining a person's domicile. Rule 52's list of factors, however, is not an exhaustive list because of the rule's use of the word "include." Accordingly, other factors that are illustrative of a person's intent may also be considered. Many of the factors listed in Rule 52 are not applicable to the taxpayers and, as a result, are not helpful in determining whether they remained domiciled in Utah or changed their domicile to STATE-1. In addition, a number of the Rule 52 factors support the taxpayers' claim that they changed their domicile. For example, they moved to STATE-1 for TAXPAYER-1's job and lived there for more than four years, which is a relatively long period of time. In addition, TAXPAYER-2 moved with her husband to STATE-1 instead of remaining in Utah. The taxpayers received some of their mail and magazines in STATE-1 and used their STATE-1 address on their 2010 and 2011 federal and Utah tax returns. In addition, TAXPAYER-1 participated in blood drives, charity walks, mentoring programs, and triathlons in STATE-1.

However, more of the Rule 52 factors support a finding that the taxpayers did not change their Utah domicile to STATE-1 in either 2010 or 2011. The taxpayers did not vote in STATE-1 in 2010 or 2011. It also appears that they were registered to vote in Utah because they did vote in Utah in 2012. In addition, the nature and quality of the taxpayer's Utah home appears superior to their STATE-1 apartment. Admittedly, the taxpayers listed the Utah home for sale for six months in 2009 and 2010, and they correctly point out that the market was depressed in 2009 and 2010 for the six months it was listed for sale. However, once the taxpayers determined that their Utah home was not going to sell, they did not elect to rent it out and/or purchase another home in STATE-1. They decided, instead, to use their Utah home on their frequent visits to Utah. In addition,

they kept their furniture at the Utah home instead of moving any of it to STATE-1. Furthermore, TAXPAYER-1's employer paid the monthly rent and expenses on their STATE-1 apartment, and his employer also paid to furnish it. It seems unusual that an employer would pay for an employee's apartment and living expenses in a location that the employee had decided to make his or her permanent home. No employment contract or other information was provided to show that COMPANY-1 pays such housing and living expenses for employees who work at a place they have made their permanent home.

In addition, while TAXPAYER-1's place of employment was in STATE-1 during the years at issue, he was a partial owner of COMPANY-1, a Utah company, and attended periodic business meetings at COMPANY-1's CITY-3, Utah offices. During the years the taxpayers lived in STATE-1, they kept bank accounts at the CREDIT UNION and did not open any bank accounts at a similar institution in STATE-1. In addition, much of the mail the taxpayers received in 2010 and 2011 was sent to their Utah address, including TAXPAYER-1's W-2 forms. The taxpayers also kept their church records at a Utah unit of their church. Furthermore, the tax rolls of the Salt Lake County Assessor's Office show that the taxpayers received the primary residential exemption from property taxes on their Utah home, an exemption that is generally allowed only for a home that is a person's "primary residence."[15]

The taxpayers also kept their Utah driver's licenses and even renewed them using their Utah address during the period they claim to have been domiciled in STATE-1. During 2010 and 2011, the taxpayers also registered in Utah all of their vehicles, including the one they had with them in STATE-1. As a result, the

15 Rule 52(6)(f) provides that "[i]f the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied." Under this rule, a home that is unoccupied while it is listed for sale can receive the residential exemption, even though the owner may also be receiving a residential exemption on another home in which he or she is living. One or both of the TAXPAYERS' continued to reside in the Utah home for the six months or so it was listed for sale. The listing ended in March 2010, the same month TAXPAYER-1 moved to STATE-1, and the taxpayers then kept and continued to use the Utah home for four or five days a month for the remaining time they were in STATE-1. Because the taxpayers' Utah home was *not* unoccupied, Rule 52(6)(f) does not apply, and the taxpayers are entitled to receive the residential exemption on the Utah

taxpayers paid an annual Utah uniform fee on the vehicle they kept in STATE-1 instead of any equivalent fee or property tax that STATE-1 might have imposed had this vehicle been registered there. TAXPAYER-1 explained that he had telephoned someone at the STATE-1 Department of Motor Vehicles and was told that he and his wife could keep their Utah driver's licenses and register in Utah the vehicle they had with them in STATE-1. The Commission, however, is wary that STATE-1 law would *not* require someone who had changed his or her domicile to STATE-1 to obtain a STATE-1 driver's license or to register his or her vehicle in STATE-1. Regardless of what STATE-1 law actually provides, the fact that the taxpayers retained their Utah driver's licenses and continued to register all of their vehicles in Utah does not suggest that they were abandoning their Utah domicile and establishing a permanent home in STATE-1. Finally, the taxpayers did not exercise their civil or political rights by voting in STATE-1. The only state in which they voted during the years they claim to have been domiciled in STATE-1 is Utah. Moreover, other factors not listed in Rule 52 are also useful in determining a person's intent concerning his or her domicile. These other factors suggest that the taxpayers' move to STATE-1 was temporary in nature and not permanent. Besides their Utah home, the taxpayers owned other real property in Utah, but they did not acquire any real property in STATE-1. The taxpayers had a primary care physician in Utah, but never obtained one in STATE-1. The taxpayers used a Utah accountant for all years they were in STATE-1. Finally, TAXPAYER-1 obtained a STATE-1 nonresident fishing license in 2010 and may have obtained a Utah resident hunting license during the years the taxpayers claim to have been domiciled in STATE-1. When these additional factors are considered in concert with the applicable factors that are listed in Rule 52, more of the factors suggest that the taxpayers retained their Utah domicile instead of establishing a new domicile in STATE-1 for 2010 and 2011. For these reasons, the taxpayers were domiciled in Utah for all of 2010 and 2011 and, thus, were full-year Utah resident

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home only if it is their "primary residence."

individuals for both years. Accordingly, the Commission should sustain the Division's assessments of additional tax for 2010 and 2011.

III. Domicile for 2013 Tax Year.

For 2013, the Division asks the Commission to find that the taxpayers were domiciled in Utah under Section 59-10-136, the relatively new domicile law that became effective in 2012. Section 59-10-136 contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)). For 2013, the taxpayers do not meet the requirements of Subsection (4) because during the time they lived and worked in STATE-1, they returned to Utah more than 30 days during a calendar year and because they received a residential exemption on their Utah home.[16] Accordingly, the taxpayers do not qualify as *not* being Utah domiciliaries under Subsection (4).

However, before the taxpayers are deemed to be domiciled in Utah for 2013, they must meet the requirements of either Subsection (1), (2), (3), or (5). The taxpayers are not considered to be domiciled in Utah under Subsection (1) because neither taxpayer was a resident student enrolled in a Utah institution of higher education and because they did not have a dependent enrolled in a Utah public kindergarten, elementary, or secondary school.

The Division, however, contends that the taxpayers are domiciled in Utah for 2013 pursuant to Subsection (2), which provides that there is a rebuttable presumption that a person is considered to be domiciled in Utah if any one of three different circumstances exists. The Division contends that the taxpayers are considered to be domiciled in Utah because they have not rebutted the presumption that arises under either of two of these circumstances, specifically the circumstances described in: 1) Subsection 59-10-136(2)(a),

16 *See* Subsections 59-10-136(4)(a)(ii)(A) and (D).

which concerns whether the taxpayers received a property tax residential exemption; and 2) Subsection 59-10-136(2)(b), which concerns whether the taxpayers were registered to vote in Utah.

Subsection 59-10-136(2)(a). The rebuttable presumption found in Subsection 59-10-136(2)(a) will be addressed first. The Division claims that the taxpayers received the residential exemption on their Utah home for 2013, and the taxpayers have not shown this claim to be incorrect. As a result, a rebuttable presumption exists that the taxpayers are Utah domiciliaries for this year. The taxpayers attempted to rebut this presumption by indicating that they wanted to sell their Utah home but were unable to do so and that they did not know what a residential exemption was.

There is no statute or rule that provides guidance on how a Subsection 59-10-136(2) presumption can be rebutted. However, the Division stated that the Commission has established in a prior decision that a taxpayer must meet a "high standard" to rebut this presumption. The Division was referring to the Commission's decision in *USTC Appeal No. 14-30* (Findings of Fact, Conclusions of Law, and Final Decision Sept. 21, 2015),[17] in which the Commission provided some guidance on how the presumption concerning the residential exemption can be rebutted. In that decision, the Commission indicated that to rebut this presumption, a taxpayer has to do something more than to show "a preponderance of the domicile factors" listed in Subsection 59-10-136(3). As examples, the Commission stated that a taxpayer could rebut this presumption by either showing:

> that the taxpayer had taken the proper steps to notify the County that they no longer qualified for the exemption and the County then in error continued to leave the property in that status, or that there was a tenant in the property and the tenant used it as his or her primary residence, which would allow the property to qualify based on the tenant's use.

In this case, the taxpayers have not rebutted the presumption of Subsection 59-10-136(2)(a) by showing that either of the two circumstances described in *Appeal No. 14-30* exist. First, the taxpayers did not ask Salt Lake

17 Redacted versions of this and other selected Commission decisions may be reviewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

County to remove the exemption for the 2013 tax year. Second, the taxpayers did not have a tenant who used the Utah home as his or her primary residence in 2013.[18]

There may be circumstances other than the two identified in *Appeal No. 14-30* that could rebut this particular presumption, but the taxpayers have not proffered any that are sufficient to do so. The taxpayers noted that they were unaware of the laws concerning the residential exemption. In *Appeal No. 14-30*, the petitioners in that case also claimed that they were unaware of the laws concerning the residential exemption, yet the Commission did not find this sufficient to rebut the Subsection 59-10-136(2)(a) presumption.

The taxpayers also ask the Commission to consider that they attempted to sell their Utah home, but were unsuccessful in doing so. The taxpayers tried to sell the home for approximately six months in 2009 and 2010, and one or both taxpayers lived in the home while it was listed for sale. In addition, they did not attempt to lease the home when they determined it would not sell. Instead, they decided to use the home themselves for the four or five days a month they were in Utah. Rule 52(6)(f) provides that "[i]f the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied." Pursuant to this rule, an unoccupied home may be entitled to the residential exemption even if the owner of that property has established his or her primary residence at a different location. Accordingly, if a home that a taxpayer is trying to sell is unoccupied and still qualifies for the residential exemption pursuant to Rule 52(6)(f), these circumstances may be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. In the instant case, however, the taxpayers were not trying to sell their Utah home in 2013, nor has it ever been unoccupied since the taxpayers purchased it in the late 1990's. The taxpayers kept their furnishings in and continued to use the Utah home all the time they were in STATE-1.

18 Had the taxpayers' Utah home been the primary residence of a tenant, Subsection 59-10-136(6) provides that receiving the primary residential exemption on the home could not have been considered in determining the taxpayers' domicile. Because there was no such tenant, Subsection 59-10-136(6) does not apply.

As a result, the taxpayers' unsuccessful attempt to sell the Utah home in 2009 and 2010 is insufficient to rebut the Subsection 59-10-136(2)(a) presumption that applies for the 2013 tax year.

In conclusion, the taxpayers have not rebutted the residential exemption presumption found in Subsection 59-10-136(2)(a). Accordingly, the taxpayers are considered to be domiciled in Utah for the 2013 tax year.

Subsection 59-10-136(2)(b). Because the taxpayers have been found to be domiciled in Utah under Subsection 59-10-136(2)(a), they are 2013 Utah domiciliaries regardless of whether they are also considered to be domiciled in Utah under any other subsection of Section 59-10-136. As a result, the Commission need not address the Division's other argument concerning Subsection 59-10-136(2)(b) to resolve this appeal. Nevertheless, the Division did raise Subsection 59-10-136(2)(b) at the hearing. As a result, it may be helpful for the Commission to address this rebuttable presumption as well.

Under Subsection 59-10-136(2)(b), a taxpayer is presumed to be domiciled in Utah if the taxpayer or the taxpayer's spouse is registered to vote in Utah, unless the taxpayer is able to rebut the presumption. The evidence indicates that both taxpayers were registered to vote in Utah in 2013 because they voted in Utah in 2012 and because they did not indicate that they cancelled their Utah voter registration after voting in 2012. As a result, the taxpayers are presumed to be domiciled in Utah for 2013 under Subsection 59-10-136(2)(b), unless they are able to rebut this presumption.

Again, there is no statute or rule that provides guidance on how a Subsection 59-10-136(2) presumption can be rebutted. In addition, the Commission is not aware of a prior case in which it has addressed what circumstances are and/or are not sufficient to rebut this particular presumption. The only defense to this presumption the taxpayers asserted is that they did not actually vote in Utah in 2013. Had the Legislature intended actual voting in Utah to be the event that triggered domicile in Utah, it could have easily stated so, but it did not. As a result, the Commission is not inclined to find that the Subsection 59-10-

136(2)(b) presumption is rebutted by a taxpayer showing that he or she did not vote in Utah despite being registered to do so. More is needed to rebut this presumption. Accordingly, the taxpayers are also considered to be domiciled in Utah for the 2013 tax year under Subsection 59-10-136(2)(b).[19]

Domicile – Summary. Because the taxpayers are considered to be domiciled in Utah for 2013, they are also considered to be Utah resident individuals for 2013. Accordingly, the Commission should sustain the Division's assessment of additional tax for this year.

IV. Waiver of Interest.

The Division did not impose any penalties in this case, but it did impose interest. Prior to 2012, the only laws applicable to the waiver of penalties and interest in domicile cases were Subsection 59-1-401(13) (which authorized the Commission to waive penalties and interest upon a showing of "reasonable cause") and Rule 42 (which provides guidance in determining what constitutes "reasonable cause" for waiver). As previously mentioned, the Legislature has enacted Section 59-10-136 for application to 2012 and subsequent tax years, which in Subsections (4)(d) and (e) addresses interest and penalties in certain circumstances involving domicile cases. As a result, for tax years *prior* to 2012, the Commission will only consider Subsection 59-1-401(13) and Rule 42 when determining whether penalties and interest can be waived. For 2012 and subsequent tax years, the Commission will not only consider Subsection 59-10-136(4)(d) and (e), but it will also consider, to the extent applicable, Subsection 59-1-401(13) and Rule 42.[20]

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19 Even if the taxpayers had not been found to be Utah domiciliaries for 2013 under Subsections 59-10-136(2)(a) and 59-10-136(2)(b), it appears that they might also be considered Utah domiciliaries under Subsection 59-10-136(3) because a slight preponderance of the factors listed in Subsection 59-10-136(3)(b) suggests a Utah domicile instead of a STATE-1 domicile. It is noted that in determining domicile under Subsection 59-10-136(3), the factors that are listed are an exhaustive list. Accordingly, only the factors that are listed would be considered when determining domicile under this subsection.

20 Subsections 59-10-136(4)(d) and (e) are applicable if the limited circumstances described in those provisions exist. For all other circumstances, it is appropriate to consider Subsection 59-1-401(13) and Rule 42 when deciding whether penalties and interest can be waived. The Commission also notes that the taxpayers are not considered to *not* be Utah domiciliaries under Subsection 59-10-136(4)(a) because they were present in Utah for more than 30 days in a calendar year and because they received the primary residential exemption.

2010 and 2011 Tax Years. Generally, the Commission has relied on Subsection 59-1-401(13) and Rule 42 to waive penalties in domicile cases because of the complexity of the issue. In this case, however, no penalties were imposed. The criteria to waive interest are more stringent because a taxpayer has had use of money that should have been paid to the state and because of the time value of this money. Rule 42(2) provides that interest is waived only if a taxpayer shows that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the taxpayer's error. The taxpayers have not asserted that they failed to pay Utah income taxes on TAXPAYER-1's 2010 and 2011 wages because of Tax Commission error or erroneous advice. REPRESENTATIVE FOR TAXPAYER 1 & 2 clearly indicated that his conversation with a Tax Commission employee did not lead to any erroneous advice in regards to the taxpayers' residency status. As a result, the Commission should sustain the interest the Division imposed for both 2010 and 2011.

2013 Tax Year. Again, no penalties were imposed for 2013. Subsection 59-10-136(4)(d) provides that an individual shall file the appropriate Utah return and pay any applicable interest if the individual did not file because he or she mistakenly believed that they had met the qualifications of Subsection 59-10-136(4)(a). This specific interest provision is not applicable, however, because the taxpayers did not fail to file a 2013 Utah resident return on the basis that they mistakenly believed that they met the qualifications of Subsection 59-10-136(4)(a). The taxpayers indicated that they did not even know about the qualifications of Subsection 59-10-136(4)(a). Accordingly, it is appropriate to consider Subsection 59-1-401(13) and Rule 42(2) when deciding whether to waive interest imposed for 2013. Again, the taxpayers have not shown that the Tax Commission made an error or gave erroneous advice. Accordingly, the Commission should also sustain the interest imposed for 2013.

IV. Taxpayers' Policy Concern and Conclusion.

In the event that the Commission found that the taxpayers owed Utah income tax on the wages TAXPAYER-1 earned in STATE-1, the taxpayers expressed concern with a tax policy where a person who earned wages in one state would have to pay income taxes to a second state where he or she did not earn those wages. TAXPAYER-1 proffered that a wage earner would be subject to whatever tax structure was in place in the state where he or she earned those wages, which for a state like STATE-1 may be a tax structure with higher sales and property taxes to compensate for not having an income tax. He is concerned that Utah wants to tax the wages he earned in STATE-1 without allowing a credit for the other taxes he paid under STATE-1's tax structure.

The Commission however, does not have authority to change Utah law. Its role is to implement the laws enacted by the Legislature. For someone who is a Utah resident individual, all of his or her "state taxable income" is subject to taxation pursuant to Subsection 59-10-104(1).[21] As the taxpayers are aware, Utah Code Ann. §59-10-1003 does allow a credit against a Utah resident individual's state income tax liability for *income taxes* imposed by other states. This credit, however, does not extend to other taxes that a person may have paid in the state where the income was earned.

In conclusion, the Division properly imposed additional tax and interest upon the taxpayers for the 2010, 2011, and 2013 tax years. Accordingly, the Commission should sustain the Division's assessments in their entireties.

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Kerry R. Chapman
Administrative Law Judge

21 For a Utah resident individual, "state taxable income" is defined in Section 59-10-102(1)(w) to mean that person's adjusted gross income after making specific additions, subtractions, and adjustments, none of which relate to the income a person earns in another state.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments in their entireties for all three years at issue. 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, or emailed, 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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2016.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.