15-1582
TAX TYPE: INCOME TAX
TAX YEAR: 2012, 2013
DATE SIGNED: 8/26/2016
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
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. 15-1582 Account No. ##### Tax Type: Income Tax Years: 2012 & 2013 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Attorney
REPRESENTATIVE-2 FOR TAXPAYER, Attorney
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 July 12, 2016.

TAXPAYER-1 & TAXPAYER-2 ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessments of additional individual income tax for the 2012 and 2013 tax years. On September 9, 2015, the Division issued Notices of Deficiency and Estimated Income Tax to the taxpayers, in which it imposed additional tax, penalties, and interest (calculated as of October 9, 2015)[1] for these years, as follows:

1 Interest continues to accrue until any tax liability is paid.

Year	Tax	Penalties	Interest	Total
2012	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$

For the 2012 and 2013 tax years, the taxpayers filed joint federal income tax returns. In addition, they filed 2012 and 2013 joint STATE-1 income tax returns on which they asserted that TAXPAYER-1 was an *STATE-1* resident and that TAXPAYER-2 was a *Utah* resident. For Utah, however, TAXPAYER-2 filed a separate Utah resident return for 2012 and 2013, while TAXPAYER-1 filed a separate Utah nonresident return for these years (on which he reported his Utah source income).

The Division determined that both taxpayers were Utah resident individuals for the 2012 and 2013 tax years and, as a result, that they could not file separate Utah returns on which TAXPAYER-1 claimed to be a Utah nonresident. Specifically, the Division determined that both taxpayers were Utah resident individuals because they are considered to be domiciled in Utah during 2012 and 2013 under Utah Code Ann. §59-10-136 (2012), the new domicile law that became effective for tax year 2012. First, the Division determined that TAXPAYER-2 is considered to be domiciled in Utah because she claimed a 2012 and 2013 residential exemption on a home located in Utah, because she was registered to vote in Utah during these years, and because she filed 2012 and 2013 Utah resident returns. Second, the Division determined that TAXPAYER-1 is considered to be domiciled in Utah because he is considered to be TAXPAYER-2 spouse under Section 59-10-136 and because TAXPAYER-2 is considered to be domiciled in Utah. Based on these determinations (which will be explained in more detail later in the decision), the Division assessed the taxpayers as though they were both full-year Utah resident individuals for 2012 and 2013.

The taxpayers claim that TAXPAYER-2 claimed a 2012 and 2013 residential exemption on the home located in Utah in error, that she was registered to vote in Utah in error, and that she filed Utah resident returns for these years in error. As a result, in 2015 and 2016, the taxpayers have taken steps to "correct"

TAXPAYER-2 prior actions by having the residential exemption removed from the home located in Utah, by paying the additional property taxes associated with removing the residential exemption for 2012 and 2013, and by filing amended 2012 and 2013 joint STATE-1 resident returns and joint Utah nonresident returns. In addition, TAXPAYER-2 has terminated her Utah voter registration and is now registered to vote in STATE-1. Based on these actions and because of the taxpayers' relatively fewer ties with Utah than with STATE-1 (which will also be explained in more detail later in the decision), the taxpayers believe that neither of them should be considered to have domicile in Utah or be deemed Utah resident individuals for the 2012 and 2013 tax years. As a result, the taxpayers ask the Commission to abate the Division's assessments and accept the amended joint Utah nonresident returns that they have filed for the 2012 and 2013 tax years.[2]

The Division, however, asks the Commission to determine the taxpayers' 2012 and 2013 domicile based on their prior actions and not on the corrective actions they have undertaken in 2015 and 2016. As a result, the Division reiterates its position that both taxpayers are considered to be domiciled in Utah for the 2012 and 2013 tax years and, thus, are Utah resident individuals for these years.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2012)[3], "a tax is imposed on the state taxable income of a resident individual[.]"

2. For purposes of Utah income taxation, a "resident individual" is defined in UCA §59-10-103(1)(q), as follows in pertinent part:

> (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 the period during which the individual is domiciled in this state; or

2 The taxpayers expressly stated that for purposes of the Initial Hearing, they are not challenging the constitutionality of any applicable Utah law (even though they had raised such concerns in their pre-hearing brief).

3 All citations are to the 2012 version of the Utah Code and the Utah Administrative Code, unless otherwise indicated. The substantive law remained the same during 2012 and 2013.

(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.

. . . .

3. Effective for tax year 2012, UCA §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.

4. UCA §59-2-103.5 provides for a property owner to take certain steps if he or she no longer qualifies to receive a property tax residential exemption, as follows in pertinent part:[4]

. . . .

(5) Except as provided in Subsection (6), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, the property owner shall:

(a) file a written statement with the county board of equalization of the county in which the property is located:

(i) on a form provided by the county board of equalization; and

(ii) notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence; and

(b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence.

. . . .

5. 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. Utah Admin. Rule R861-1A-42(2) ("Rule 42") (2016) provides guidance concerning the waiver of penalties and interest, as follows:

. . . .

4 Subsequent to the 2012 and 2013 years at issue, Section 59-2-103.5 was amended and renumbered. The amendments made to Subsection 59-2-103.5(5) (2012) were not substantive.

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

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;
(ii) if the error is caught and corrected by the taxpayer;
(iii) the length of time between the event cited and the filing date;
(iv) typographical or other written errors; and
(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

7. For the instant matter, UCA §59-1-1417(1) (2016) provides guidance concerning which party has the burden of proof, 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;

> (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.
> . . . .

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. At issue is whether either or both of the taxpayers were Utah resident individuals for the 2012 and 2013 tax years. For these years, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); 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 "183 day test").

Neither taxpayer was present in Utah for 183 or more days during 2012 or 2013. As a result, the Division has not determined that either taxpayer is a Utah resident individual for these years under the 183 day test. The Division contends that both taxpayers are Utah resident individuals under the domicile test.

I. Facts.

The taxpayers are a married couple who, currently, are residing primarily in their STATE-1 home. As of the date of the Initial Hearing, TAXPAYER-1 is 81 years old, and TAXPAYER-2 is 72 years old. The taxpayers have remained married during the 48 years they have owned their STATE-1 home. The taxpayers have adult children, none of whom live in Utah. TAXPAYER-1 is a businessman who operates a publicly-traded STATE-1 corporation with offices in STATE-1 and no business operations in Utah. TAXPAYER-1 has claimed STATE-1 as his tax home and filed STATE-1 resident returns for 48 years. At one time,

TAXPAYER-1 was a shareholder in another STATE-1 corporation that owned RESTAURANT located in Utah, which were sold to RESTAURANT International about 15 years ago. After this sale, the taxpayers were left with some commercial real property interests in Utah that generate Utah source income.[5] TAXPAYER-1 has always reported his portion of this Utah source income as a Utah nonresident.

In 1994, TAXPAYER-2 purchased a home in CITY-1, Utah ("CITY-1 home"), which is owned by a trust of which TAXPAYER-2 is the trustee (i.e., TAXPAYER-1 is one of the beneficiaries of the trust, but will not have any interest in the CITY-1 home unless he outlives TAXPAYER-2). Currently, the CITY-1 home has a value of approximately $$$$$. After acquiring the CITY-1 home, TAXPAYER-2 elected to become a Utah resident. She registered to vote in Utah, but only voted in Utah once, specifically in 2001. Consistent with her election to become a Utah resident, TAXPAYER-2 also began to claim the property tax residential exemption on the CITY-1 home and started filing separate Utah resident returns.

TAXPAYER-2, however, never obtained a Utah driver's license. She has always retained her STATE-1 driver's license. In 1998, TAXPAYER-2 registered a vehicle in Utah that she still keeps at the CITY-1 home.[6] For a number of years after electing to become a Utah resident, TAXPAYER-2 spent many days in Utah each year.[7] In recent years, however, TAXPAYER-2 has developed health issues and an anxiety about flying that has restricted her ability to travel. As a result, she has spent fewer days at the CITY-1 home in recent years. She only spent five days at the CITY-1 home in 2012 and one day at the home in 2013. For

5 The Utah assets are now owned by an STATE-1 partnership in which both of the taxpayers are partners. The taxpayers have recently submitted amended 2012 and 2013 joint Utah nonresident returns on which they show the amounts of income these Utah assets generated in comparison to their total income. The taxpayers reported that the Utah assets generated $$$$$ of their total 2012 federal adjusted gross income ("FAGI") of $$$$$ and $$$$$ of their total 2013 FAGI of $$$$$.

6 Information as to whether this vehicle was re-registered during 2012 and 2013 was not proffered at the hearing.

7 The taxpayers, however, did not claim that TAXPAYER-2 ever spent 183 or more days of any calendar year in Utah.

each of the 2012 and 2013 tax years, the taxpayers contend that TAXPAYER-2 spent more than 300 days in STATE-1.

In 2010, TAXPAYER-1 built a home on some land he owned in CITY-2, Utah ("CITY-2 home"), which is titled in his name only. Currently, the CITY-2 home has a value of approximately $$$$$. TAXPAYER-1 has never claimed the residential exemption on the CITY-2 home. The taxpayers claim that TAXPAYER-1 only vacations in Utah and that he has never spent more than 60 days of any calendar year in Utah. TAXPAYER-1 has always had an STATE-1 driver's license and always been registered to vote in STATE-1. Most of TAXPAYER-1 professional contacts and his business are located in STATE-1.

For many years, the taxpayers have had their tax returns prepared in the CITY-2, STATE-1 office of a national accounting firm known as ACCOUNTING FIRM. For many years, including the 2012 and 2013 tax years, ACCOUNTING FIRM prepared joint federal returns and separate Utah returns for the taxpayers to file.[8] Prior to tax year 2012, Utah law permitted married spouses who were residents of different states to file separate Utah returns under "Special Instructions," even if they had filed a joint federal return. Beginning with tax year 2012, Utah's new domicile law has impacted the ability of married spouses who file a joint federal return to file separate Utah returns. ACCOUNTING FIRM, however, was unaware of the changes in Utah law until September 2015, when the Division issued its 2012 and 2013 assessments.

After ACCOUNTING FIRM became aware of the changes in Utah law in 2015, ACCOUNTING FIRM reviewed the taxpayers' actual circumstances in 2012 and 2013. Because of the minimal amount of time TAXPAYER-2 spent in Utah during these years and because she spent 183 or more days in STATE-1 during these years, ACCOUNTING FIRM determined that TAXPAYER-2 was a STATE-1 resident for the 2012 and

8 It is noted TAXPAYER-2 income in 2012 and 2013 was significantly less than TAXPAYER-1 income for these years. On the original, separate Utah returns the taxpayers filed, TAXPAYER-2 reported her total 2012 FAGI to be $$$$$ (compared to TAXPAYER-1 total 2012 FAGI of $$$$$) and her total 2013 FAGI to be $$$$$ (compared to TAXPAYER-1 total 2013 FAGI of $$$$$$).

2013 tax years. As a result, ACCOUNTING FIRM determined that TAXPAYER-2 should have filed an STATE-1 resident return and a Utah nonresident return for these years.[9]

Within the last several months, the taxpayers have filed amended joint Utah nonresident returns for the 2012 and 2013 tax years.[10] The taxpayers signed the amended 2012 Utah return on April 9, 2016 and the amended 2013 Utah return on May 18, 2016. On each of these amended returns, the taxpayers reported that they were filing the amended return because TAXPAYER-2 was a full-year STATE-1 resident and had incorrectly filed a Utah resident return. On these returns, the taxpayers also declared (pursuant to Subsection 59-2-103.5(5)) that they were no longer qualified to receive the property tax residential exemption on the CITY-1 home. No evidence was proffered to suggest that prior to April 9, 2016, the taxpayers had ever declared on a Utah return that they did not qualify to receive a residential exemption on the CITY-1 home.

In addition, the taxpayers proffer that within the past year, TAXPAYER-2 has contacted COUNTY-1 to have the county remove the residential exemption from the CITY-1 home. Moreover, the taxpayers proffer that TAXPAYER-2 has paid COUNTY-1 the additional property taxes associated with removing the residential exemption from the CITY-1 home for the 2012 and 2013 tax years at issue.[11] Within the past year, TAXPAYER-2 has also terminated her Utah voter registration and registered to vote in STATE-1.

---

9 It appears that ACCOUNTING FIRM may have determined that both taxpayers were STATE-1 resident individuals for 2012 and 2013 based on a 183 day test found in STATE-1 law. However, it is noted an individual may be a resident of more than one state for income tax purposes. For example, a person may meet the 183 day test of one state, but may also meet the domicile test of another state. Most states, including Utah, provide a credit for income taxes paid to other states to ameliorate the state tax burden of such individuals.

10 The taxpayers listed a STATE-1 address on all original and amended returns they submitted for the 2012 and 2013 tax years.

11 The Division proffered information it obtained from COUNTY-1 showing that TAXPAYER-2 paid the additional taxes associated with removing the residential exemption for the 2012 tax year and that the county changed the CITY-1 home to a "non-primary" property for the 2012 tax year. However, no evidence was submitted to show that TAXPAYER-2 paid the additional taxes associated with removing the residential exemption for the 2013 tax year. In addition, in an email dated June 29, 2016, the COUNTY-1 Assessor's Office indicates that the CITY-1 home has received the primary residential exemption for the 2013 and 2014

II. Applying the Facts to the Domicile Law in Effect for 2012 and 2013.

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "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[.]" For 2012 and 2013, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which 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)).

Division's Position. The Division contends that TAXPAYER-2 is considered to be domiciled in Utah for the 2012 and 2013 tax years under any one of three different rebuttable presumptions found in Subsection 59-10-136(2).[12] First, the Division claims that TAXPAYER-2 is considered to be domiciled in Utah under Subsection 59-10-136(2)(a) because she claimed the residential exemption on the CITY-1 home for both years. Second, the Division claims that TAXPAYER-2 is considered to be domiciled in Utah under Subsection 59-10-136(2)(b) because she was registered to vote in Utah during these years. Third, the Division claims that TAXPAYER-2 is considered to be domiciled in Utah under Subsection 59-10-136(2)(c) because she filed Utah resident returns for these years.

Because the Division considers TAXPAYER-2 to be domiciled in Utah under any one of these three subsections, it contends that her husband, TAXPAYER-1, is also considered to be domiciled in Utah under Subsection 59-10-136(5) unless the taxpayers meet either of two exceptions provided in Subsection 59-10-135(5)(b). Because the taxpayers were not divorced or legally separated in 2012 and 2013 and did not file separate 2012 and 2013 federal returns, the Division contends that the taxpayers do not meet either of the two

---

tax years, but "was taxed as non-primary for 2012, 2015 and going forward." As a result, a discrepancy exists as to whether TAXPAYER-2 has paid the additional taxes associated with removing the residential exemption for the 2013 tax year. Nevertheless, as will become apparent later in the decision, this discrepancy has no impact on the Commission's determination concerning the taxpayers' domicile for either of the years at issue.

12 The Division did not assert that either taxpayer is considered to be domiciled in Utah under Subsection

exceptions provided in Subsection 59-10-136(5)(b). As a result, the Division contends that TAXPAYER-1 is also considered to be domiciled in Utah for income tax purposes.

Taxpayers' Position. The taxpayers, however, contend they are able to rebut the three Subsection 59-10-136(2) presumptions as they individually apply to each of them.[13] For TAXPAYER-2, the taxpayers contend that she can rebut all three of the presumptions because of the actions she has recently taken to "correct" her prior actions that gave rise to the presumptions. Specifically, the taxpayers ask the Commission to consider that TAXPAYER-2 has had the primary residential exemption removed from the CITY-1 home and paid the additional property taxes for 2012 and 2013, that she has terminated her Utah voter registration and did not vote in Utah in 2012 and 2013, and that she has recently filed 2012 and 2013 amended Utah nonresident returns jointly with her husband.

However, should the Commission find that these corrective actions are insufficient to rebut each of the presumptions, the taxpayers proffer an alternative approach for TAXPAYER-2 to rebut the presumptions as they individually apply to her. The taxpayers note that because Utah statutes and rules do not provide the criteria with which the Subsection 59-10-136(2) presumptions can be rebutted, the Commission must determine how they are to be rebutted. When determining whether a Subsection 59-10-136(2) presumption may be rebutted, the taxpayers encourage the Commission to rely on the domicile factors found in the "old" law used to determine income tax domicile prior to tax year 2012 (i.e., the criteria and factors found in Utah Admin. Rule R865-9I-2 (2011) ("Rule 2") and Utah Admin. Rule R884-24P-52 (2011) ("Rule 52")).[14]

59-10-136(1) or Subsection 59-10-136(3), which from the information proffered, would appear to be correct.

13 The taxpayers do not contend that either of them qualifies *not* to be considered to be domiciled in Utah under Subsection 59-10-136(4), which from the information provided, appears to be correct.

14 Prior to tax year 2012, an individual's income tax domicile was determined under Rule 2, which provided, in part, criteria to be used when determining an individual's income tax domicile and which referred to a non-exhaustive list of domicile factors in Rule 52 (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile for the 2012 and subsequent tax years, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors. As a result, the version of Rule 2 in effect for the 2012 and 2013 tax years at issue is not controlling when determining a

Specifically, the taxpayers contend that if an individual would not be considered to have domicile in Utah under the Rule 2 and Rule 52 criteria and factors found in the "old" domicile law, the Commission should find that the individual has effectively rebutted any or all of the Subsection 59-10-136(2) presumptions found in the "new" domicile law. The taxpayers contend that because TAXPAYER-2 satisfies relatively few of the criteria and factors found in the old domicile law, this should be sufficient to rebut all of the Subsection 59-10-136(2) presumptions. As a result, the taxpayers contend that TAXPAYER-2 has effectively rebutted all of the Subsection 59-10-136(2) presumptions as they apply to her, whether the Commission considers the corrective actions that TAXPAYER-2 has taken or whether it applies the criteria and factors found in the old domicile law. For these reasons, the taxpayers ask the Commission to find that TAXPAYER-2 is not considered to be domiciled in Utah for the 2012 and 2013 tax years.

The taxpayers further contend that if TAXPAYER-2 is not considered to be domiciled in Utah for 2012 and 2013, it follows that TAXPAYER-1 would not be considered to be domiciled in Utah under Subsection 59-10-136(5)(a). In the alternative, if the Commission finds that TAXPAYER-2 is considered to be domiciled in Utah under any or all of the three rebuttable presumptions of Subsection 59-10-136(2), the taxpayers contend that TAXPAYER-1 should be allowed to individually rebut the three presumptions as they apply to his own actions and circumstances. The taxpayers contend that this would be appropriate because the new domicile law was intended to "reduce tax traps for the unwary" and was not intended to impose Utah domicile on a person such as TAXPAYER-1 who has no "recognized indicia of residency in Utah."

As a result, in regards to TAXPAYER-1, the taxpayers claim that he can rebut all of the Subsection 59-10-136(2) presumptions because he has never claimed a residential exemption on his CITY-2 home, because he has never been registered to vote in Utah, and because he has never filed a Utah resident return. In

---

person's income tax domicile for these years. Rule 52 is still used to determine a person's domicile for *property tax purposes* (i.e., specifically to determine whether a person qualifies to claim the property tax residential exemption). However, Rule 52 is also not controlling for purposes of determining *income tax*

addition, the taxpayers claim that TAXPAYER-1 can rebut the Subsection 59-10-136(2) presumptions because he also would not be considered to be domiciled in Utah under the Rule 2 and Rule 52 criteria and factors found in the old domicile law.

The taxpayers further contend that because TAXPAYER-1 can rebut the Subsection 59-10-136(2) presumptions as they pertain to him individually, the Commission cannot find him to be domiciled in Utah under Subsection 59-10-136(5)(a) merely on the basis of his wife's domicile. The taxpayers contend that to do so would result in the Commission disregarding Subsection 59-10-136(2) as it applies to TAXPAYER-1. For these reasons, the taxpayers also ask the Commission to find that TAXPAYER-1 is not considered to be domiciled in Utah under Section 59-10-136.

Analysis. The Commission is not convinced that either party has properly construed the provisions of Subsection 59-10-136(2) and how they interact with the provisions of Subsection 59-10-136(5). In regards to the Division's position, the Division has only analyzed whether TAXPAYER-2 is considered to be domiciled in Utah under the Subsection 59-10-136(2) presumptions. It has not analyzed whether TAXPAYER-1 is also considered to be domiciled in Utah under these presumptions. However, an analysis for both taxpayers is necessary. First, Subsection 59-10-136(2) provides that there is a presumption that an *individual* is considered to have domicile in Utah if *the individual or the individual's spouse* claims a residential exemption in Utah, is registered to vote in Utah, or files a Utah resident return. Second, TAXPAYER-1 is considered to have a spouse for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that an individual is not considered to have a spouse under Section 59-10-136 if the individual is legally separated or divorced from the spouse or if the couple file separate federal returns. Because neither of these exceptions applies in this case,

---

domicile for the 2012 and 2013 tax years.

TAXPAYER-1 is not shielded from having a spouse for purposes of any provision of Section 59-10-136, including Subsection 59-10-136(2).[15]

In regards to the taxpayers' position, the taxpayers suggest that the Subsection 59-10-136(2) presumptions should be analyzed separately for the taxpayers so that TAXPAYER-2 can rebut the presumptions as they apply to her actions and/or circumstances and TAXPAYER-1 can rebut the presumptions as they apply to his actions and/or circumstances.[16] Such an interpretation would be appropriate if each of the taxpayers was shielded from having a spouse in accordance with Subsection 59-10-136(5)(b). However, as previously explained, each of the taxpayers *is* considered to have a spouse for purposes of all subsections of Section 59-10-136. The taxpayers' interpretation of Subsection 59-10-136(2) might also be appropriate if the phrase "or an individual's spouse" did not appear in each of the three rebuttable presumption provisions. However, where Subsection 59-10-136(2) expressly provides that "an individual" is presumed to be domiciled in Utah based on the actions of either "the individual or the individual's spouse" and where the individual *is* considered to have a spouse for purposes of the statute, the taxpayers' position is in conflict with the plain language of the statute. Accordingly, for any individual who is considered to have a spouse under Subsection 59-10-136(5)(b), Subsection 59-10-136(2) clearly provides that there is a rebuttable presumption that the individual is considered to have domicile in Utah if the individual *or* the individual's spouse claims a residential exemption in Utah, is registered to vote in Utah, or files a Utah resident return.[17]

---

15 Because neither of the Subsection 59-10-136(5)(b) exceptions applies in this case, TAXPAYER-2 is also not shielded from having a spouse for purposes of any provision of Section 59-10-136.

16 The taxpayers would have the Commission interpret Subsection 59-10-136(2) to mean that: 1) there is a rebuttable presumption that an individual is considered to have domicile in Utah if *only* that individual claims a residential exemption in Utah, is registered to vote in Utah, or files a Utah resident return; and 2) there is separate and distinct rebuttable presumption that an individual's spouse is considered to have domicile in Utah if *only* that individual's spouse claims a residential exemption in Utah, is registered to vote in Utah, or files a Utah resident return.

17 As a result, married couples who are considered to have spouses for purposes of Section 59-10-136 and who do not effectively rebut a Subsection 59-10-136(2) presumption will both be considered to have domicile in Utah without consideration of each spouse's individual actions. Such a conclusion is supported by

Before the Commission begins to analyze each of the three Subsection 59-10-136(2) presumptions that have arisen in this appeal, another of the taxpayers' arguments should be addressed. The taxpayers contend that the filing of their amended 2012 and 2013 Utah nonresident returns supersedes the original Utah resident returns that TAXPAYER-2 filed for these years. In addition, the taxpayers indicate that they are frustrated because the Division has not processed their amended Utah returns, and they contend that this case "is over" if their amended Utah returns are accepted (i.e., that the Division's assessments must be overturned if their amended 2012 and 2013 Utah returns are accepted). The taxpayers, however, have misconstrued the effect that an acceptance of their amended Utah returns would have.

First, the amended Utah nonresident returns and the declarations in them only involve two of the three presumptions at issue in this appeal, specifically the Subsection 59-10-136(2)(a) presumption for TAXPAYER-2 claiming the residential exemption for the CITY-1 home and the Subsection 59-10-136(2)(c) presumption for TAXPAYER-2 filing Utah resident returns. The amended returns do not involve the other presumption at issue in this appeal, specifically the Subsection 59-10-136(2)(b) presumption associated with TAXPAYER-2 being registered to vote in Utah in 2012 and 2013. Accordingly, even if the Commission were to find that the Subsection 59-10-136(2)(a) and (2)(c) presumptions were effectively rebutted by the filing of the amended Utah nonresident returns, the taxpayers could still be found to be domiciled in Utah under Subsection 59-10-136(2)(b), unless they were also able to rebut this latter presumption. If the taxpayers are suggesting that the successful rebuttal of one of the Subsection 59-10-136(2) presumptions is automatically considered a successful rebuttal of any other Subsection 59-10-136(2) presumption, the taxpayers are incorrect. In Subsection 59-10-136(2), the three presumptions are connected by the disjunctive "or." As a result, each presumption should be considered independently, and if one of the presumptions is not effectively rebutted, an

---

Subsection 59-10-136(5)(a), which provides that if an individual is considered to have domicile in Utah under Section 59-10-136, the individual's spouse is also considered to have domicile in Utah.

individual is considered domiciled in Utah even if the individual has effectively rebutted the other two presumptions.

Second, the taxpayers may be suggesting that the filing of the amended Utah nonresident returns in which they declare that they no longer qualify for the residential exemption on the CITY-1 home and the paying of the additional property taxes nullifies or voids the actions that TAXPAYER-2 initially took for the years at issue (i.e., contending that, legally, TAXPAYER-2 would not be considered to have claimed the residential exemption on the Utah home or to have filed 2012 and 2013 Utah resident returns). If so, the taxpayers would be claiming that the actions that initially gave rise to the Subsection 59-10-136(2)(a) and Subsection 59-10-136(2)(c) presumptions legally did not happen and, thus, do not even need to be rebutted. The taxpayers, however, have not proffered any statute or court precedent to show that the taxpayers' corrective actions have the legal effect of nullifying or voiding the actions that gave rise to the Subsection 59-10-136(2)(a) and Subsection 59-10-136(2)(c) presumptions. For this reason and because TAXPAYER-2 *did* claim the residential exemption for 2012 and 2013 and *did* file 2012 and 2013 Utah resident returns, the Commission considers the Subsection 59-10-136(2)(a) and Subsection 59-10-136(2)(c) presumptions to be at issue and that both taxpayers will be considered to be domiciled in Utah unless they are able to rebut them. Accordingly, the Commission will consider whether the taxpayers are considered to be domiciled in Utah under one or more of the Subsection 59-10-136(2) presumptions.

Subsection 59-10-136(2)(a). The Commission will first address the Subsection 59-10-136(2)(a) presumption that has arisen because TAXPAYER-2 claimed the residential exemption on the CITY-1 home for the 2012 and 2013 tax years and, thereby, declared it to be her primary residence for these years.[18] Unless the

18 In Utah Code Ann. §59-2-103(2) (2012), a "residential property" is entitled to the property tax residential exemption. For purposes of this exemption, Utah Code Ann. §59-2-102(31) (2012) defines "residential property" to mean "any property used for residential purposes as a primary residence."

taxpayers effectively rebut this presumption, both of them will be considered to be domiciled in Utah (regardless of whether they are able to rebut the other two presumptions at issue).

Because Subsection 59-10-136(2)(a) involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual who claims a residential exemption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual who claims a residential exemption *is not* considered to have domicile in Utah.[19] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(a) presumption.[20] As a result, it is left to the Commission to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

The Commission has previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual has asked a county to remove the residential exemption, and the county failed to implement the individual's request. In addition, the Commission has indicated that the presumption may be rebutted if an individual received the residential exemption for a vacant home that was listed for sale and that qualified for the exemption upon being sold.[21] Neither of these circumstances exists in this case. On the other hand, the Commission has found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an

19 The Legislature did not provide that claiming a residential exemption is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

20 In Subsection 59-10-136(6), the Legislature has provided that the Subsection 59-10-136(2)(a) presumption does not even arise if an individual claims the residential exemption for a property that is the primary residence of a tenant. However, once the Subsection 59-10-136(2)(a) presumption does arise, the Legislature has not provided the circumstances under which it can be rebutted.

21 *See* Utah Admin. Rule R884-24-52(6)(f), which 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." While Rule 52 is no longer the controlling law for purposes of determining income tax domicile, there may be limited portions of Rule 52 that may be useful when the Commission delineates which circumstances are sufficient or insufficient to rebut a Subsection 59-10-136(2) presumption.

individual had never heard of the residential exemption or did not know that he or she was receiving the residential exemption.

Furthermore, the Commission has also indicated that there may be other circumstances to be raised in future cases that will be sufficient to rebut the presumption. The Commission, however, has yet to address a case where an individual has retroactively had the county remove the exemption for prior years, has paid the additional tax associated with the retroactive removal of the exemption, and has filed amended returns declaring that the property does not qualify for the residential exemption for prior years.

The taxpayers claim that TAXPAYER-2 continued to claim the residential exemption on the CITY-1 home for the 2012 and 2013 tax years in error because she changed her primary residence to the taxpayers' home in STATE-1 prior to 2012. They assert that TAXPAYER-2 recent actions to correct this error should be sufficient to rebut the Subsection 59-10-136(2)(a) error. The Commission disagrees. For nearly two decades prior to and including the 2012 and 2013 tax years, TAXPAYER-2 claimed the CITY-1 home to be her primary residence, even though she and her husband continued to own their STATE-1 home during this period. No evidence was proffered to suggest that TAXPAYER-2 ever spent more days in Utah than in STATE-1 for any year she claimed the residential exemption on the CITY-1 home. As a result, TAXPAYER-2 may have considered herself to be a Utah resident individual for these many years because she considered herself to be domiciled in Utah.[22] Consequently, TAXPAYER-2 may have considered herself to still be domiciled in Utah prior to receiving the Division's assessments in 2015, even though she spent relatively few days in Utah in the several years preceding 2015. TAXPAYER-2 was not present to indicate otherwise.

Furthermore, at the hearing, the taxpayers' counsel even surmised that TAXPAYER-2 probably registered to vote in Utah so that the CITY-1 home could qualify for the residential exemption.[23]

22 For any year in which TAXPAYER-2 did not spend 183 or more days in Utah, she would have been considered a Utah resident individual under Subsection 59-10-103(1)(q)(i) only if she was domiciled in Utah.

23 The Commission takes administrative notice that in a county, like COUNTY-1, that has a significant

TAXPAYER-2 took affirmative steps to ensure that the CITY-1 home would receive the residential exemption. It is also noted that the taxpayers employed tax professionals to advise them on how to report their taxes. Neither the taxpayers' tax professionals nor the taxpayers saw any need for or benefit to be gained from TAXPAYER-2 renouncing her Utah resident status and terminating her claim to the residential exemption until the Division issued its assessments in 2015.[24] The Commission is not persuaded that TAXPAYER-2 claimed the residential exemption for the CITY-1 home in 2012 and 2013 merely because of a mistake that had not arisen until 2012. Based on TAXPAYER-2 actions of nearly two decades, it seems that her claiming the residential exemption for the CITY-1 home for the 2012 and 2013 tax years was purposeful and consistent with her long-time desire to be considered a Utah resident individual, a desire that remained constant until 2015 when the assessments were issued and TAXPAYER-2 decided to change her residency.

For these reasons, the Commission does not consider the taxpayers' corrective actions to "undo" the residential exemption that TAXPAYER-2 claimed for the 2012 and 2013 tax years to be sufficient to rebut the Subsection 59-10-136(2)(a) presumption as it applies to both of them together. In the alternative, the taxpayers ask the Commission to find that they have rebutted this presumption because they meet few of the criteria and factors found in the old domicile law (i.e., the 2011 version of Rule 2 and Rule 52). The taxpayers are essentially asking the Commission to determine the taxpayers' 2012 and 2013 domiciles using the old domicile law that the Legislature purposefully replaced. The presumption, however, cannot be rebutted by showing that the individual or the married couple would not have been considered to be domiciled in Utah under the "old"

---

number of vacation properties, the county will often consider a residence to be a non-primary residence that does not qualify for the residential exemption until the owner applies for the exemption and provides evidence to show that the residence is a primary residence.

24 Because the taxpayers and their accountants saw no need to change TAXPAYER-2 Utah residency until late 2015, it appears that TAXPAYER-2 may have continued to claim to be a Utah resident for one to two years subsequent to the 2012 and 2013 tax years at issue. Neither party proffered information to show whether TAXPAYER-2 also filed a 2014 Utah resident income tax return. However, the information shows that TAXPAYER-2 did claim the residential exemption on the CITY-1 home for the 2014 tax year.

law that was used to determine income tax domicile for tax years prior to 2012. One could argue that using the old criteria found in the 2011 version of Rule 2 and Rule 52 to determine an individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the new law enacted by the Legislature little or no effect, which the Commission declines to do.[25] Because the taxpayers have not effectively rebutted the Subsection 59-10-136(2)(a) presumption, they are both considered to be domiciled in Utah for the 2012 and 2013 tax years.[26]

Domicile Summary. Based on the foregoing, TAXPAYER-2 and TAXPAYER-1 are considered to be domiciled in Utah under Subsection 59-10-136(2)(a). As a result, they are both considered to be domiciled in Utah even if they do not meet any of the other domicile criteria found in Section 59-10-136 and even though one or both of them may have relatively fewer contacts with Utah than with STATE-1. Furthermore, they are considered to be domiciled in Utah even if they are able to rebut the other two presumptions that have arisen under Subsection 59-10-136(2)(b) and Subsection 59-10-1356(2)(c). As a result, the Commission need not address these other two presumptions.[27] In summary, the taxpayers are both considered to be domiciled in

25 That being said, the Commission is not precluded from considering certain facts that might be described in the pre-2012 income tax domicile law when determining whether a Subsection 59-10-136(2) presumption has been effectively rebutted. The Commission, however, will not determine an individual's income tax domicile for 2012 and subsequent years solely on the pre-2012 law. Regardless, TAXPAYER- 2 actions indicate a purposeful and long-term desire for the CITY-1 home to be considered her primary residence.

26 The Commission also takes this opportunity to address the use of the 12 factors found in Subsection 59-10-136(3)(b) to rebut a Subsection 59-10-136(2) presumption. In Subsection 59-10-136(3)(b), the Legislature provided 12 factors to be used when determining whether a person is considered to be domiciled in Utah under Subsection 59-10-136(3). The Commission also declines to find that an individual can rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., determining domicile as though the Subsection 59-10-136(2) presumptions did not exist). This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of the presumptions of Subsection 59-10-136(2) applies.

27 Nevertheless, it is possible that the Commission would also find that the taxpayers have not rebutted

Utah during 2012 and 2013 and, thus, are both Utah resident individuals for these years pursuant to Subsection 59-10-103(1)(q)(i)(A). The taxpayers have not met their burden of proof to show that the Division's assessments of additional tax for the 2012 and 2013 tax years are incorrect.

III. Penalties and Interest.

For this case, the applicable law to determine whether the penalties and interest assessed to the taxpayers may be waived is found in Subsection 59-1-403(13) and Rule 42.[28] In Subsection 59-1-401(13), the Commission is authorized to waive penalties and interest upon a showing of reasonable cause. The Commission has adopted Rule 42 to provide guidance as to when reasonable cause exists to waive penalties and interest. 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.[29] The taxpayers have not asserted that they failed to pay Utah income taxes for 2012 and 2013 because of Tax Commission error or erroneous advice. As a result, reasonable cause does not exist to waive any of the interest that has been imposed. Pursuant to Subsection 59-10-401(13) and Rule 42, the Commission generally waives penalties in domicile cases because of the complexity of the issues. In addition, the Division stated at the hearing that it would not object to the Commission waiving the penalties it imposed. Accordingly, reasonable cause exists to waive all penalties imposed for the 2012 and 2013 tax years.

---

these other two presumptions that arose because of TAXPAYER-2 actions that were purposeful and consistent with her long-time desire until 2015 to be considered a Utah resident individual.

28 Different criteria concerning the imposition and/or waiver of penalties and interest are provided in Subsections 59-10-136(4)(d) and (4)(e), which apply if an individual did not file a Utah return based on a belief that he or she was not considered to be domiciled in Utah under Subsection 59-10-136(4)(a). Because the limited circumstances described in Subsections 59-10-136(4)(d) and (4)(e) are not present in this case, these specific provisions are not applicable in determining whether the penalties and interest assessed to the taxpayers may be waived.

29 The Rule 42 criteria to waive interest are more stringent than the rule's criteria to waive penalties 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.

IV. Conclusion.

The taxpayers have not met their burden of proof to show that the Division's assessments are incorrect. As a result, the Commission should sustain the Division's 2012 and 2013 assessments, except that the Commission should waive all penalties that have been imposed.

_____

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2012 and 2013 assessments, except that it waives all penalties that have been imposed. 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.