15-1985
TAX TYPE: INCOME TAX
TAX YEAR: 2010, 2011, 2012 & 2013
DATE SIGNED: 8/22/2017
COMMISSIONERS: J. VALENTINE, R. PERO, R. ROCKWELL
EXCUSED: M. CRAGUN
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. 15-1985 Account No. ##### Tax Type: Income Tax Years: 2010, 2011, 2012 & 2013 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer
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 September 6, 2016.

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessments of additional Utah individual income taxes for the 2010, 2011, 2012, and 2013 tax years. On November 13, 2015, the Division issued Notices of Deficiency and Estimated Income Tax ("Statutory Notices") to the taxpayers for these four years. In the Statutory Notices, the Division imposed

additional tax, 10% failure to timely file penalties, 10% failure to timely pay penalties, and interest (calculated as of December 13, 2015),[1] as follows:

Year	Tax	Penalties	Interest	Total
2010	$$$$$	$$$$$	$$$$$	$$$$$
2011	$$$$$	$$$$$	$$$$$	$$$$$
2012	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$

The taxpayers did not file Utah income tax returns for 2010, 2011, 2012, and 2013 tax years. The Division has determined that both taxpayers were domiciled in Utah and assessed them as Utah resident individuals for these years. The taxpayers admit that TAXPAYER-2 was domiciled in Utah during the four tax years at issue. The taxpayers contend, however, that TAXPAYER-1 changed his Utah domicile to STATE-1 in 2008 and that he remained domiciled in STATE-1 throughout the four years at issue. In addition, the taxpayers explained that during the years at issue, TAXPAYER-2 did not work and that TAXPAYER-1 only worked and earned income in STATE-1. As a result, the taxpayers contend that TAXPAYER-1 should not be considered a Utah resident individual and that the income he earned during these years should not be subject to Utah taxation. For these reasons, the taxpayers ask the Commission to reverse the Division's audit assessments for all four years at issue.

The Division concedes that neither of the taxpayers earned income in Utah during the four years at issue. The Division, however, contends that TAXPAYER-1 remained domiciled in Utah during the 2010 through 2013 tax years and, thus, is a Utah resident individual for these years. The Division further contends that the income earned by a Utah resident individual is subject to Utah taxation, even if the individual earned the income outside of Utah. For these reasons, the Division asks the Commission to sustain its assessments for the four years at issue.

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

APPLICABLE LAW

I. Definitions Involving "Income."

1. For all four years at issue, Utah Code Ann. §59-10-103 defines "adjusted gross income," "federal taxable income," and "'taxable income' or 'state taxable income,'" as follows:

> (1) As used in this chapter:
> (a) "Adjusted gross income":
> (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or
> . . . .
>
> (f) "Federal taxable income":
> (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or
> . . . .
> (w) "Taxable income" or "state taxable income":
> (i) . . . for a resident individual, means the resident individual's adjusted gross income after making the:
> (A) additions and subtractions required by Section 59-10-114; and
> (B) adjustments required by Section 59-10-115;
> . . . .

II. Taxation of a Resident Individual.

2. For all four tax 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[.]"

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

> (i) "Resident individual" means:
> (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of 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) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what constitutes spending a day of the taxable year in the state.[2]

III. Domicile Law in Effect for the 2010 and 2011 Tax Years.

4. 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:[3]

> 1. Domicile.
>
> (a) 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.
>
> (b) 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.
>
> (i) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.
>
> (ii) Domicile applies equally to a permanent home within and without the United States.
>
> (c) 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.
>
> (d) 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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2 For purposes of Subsection 59-10-103(1)(q)(ii), Utah Admin. Rule R865-9I-2 ("Rule 2") provides that "[f]or purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a 'day' means a day in which the individual spends more time in this state than in any other state." For the 2010 and 2011 tax years, this provision was found in Subsection (2) of Rule 2. For the 2012 and 2013 tax years, this provision was found in Subsection (1) of Rule 2.

3 Rule 2 was also renumbered when it was amended on August 12, 2010 (as previously discussed). The version of the Rule 2 that is cited for the 2010 and 2011 tax years is the renumbered version. Effective for tax year 2012, however, 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. As a result, the Rule 2 definition of domicile in effect for 2010 and 2011 will be used to determine TAXPAYER-1 domicile during 2010 and 2011, but Section 59-10-136 will be used to determine his domicile during 2012 and 2013.

. . . .

5. 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:[4]

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

4 Rule 52 is referenced in the version of Rule 2 that was in effect for 2010 and 2011 and, thus, is applicable for purposes of determining TAXPAYER-1 domicile during 2010 and 2011.

IV. Domicile Law in Effect for the 2012 and 2013 Tax Years.

6. Effective for tax year 2012 (and thus applicable to the 2012 and 2013 tax years 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.

V. Waivers of Penalties and Interest and Burden of Proof.

7. UCA §59-1-401(14) (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."

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

> . . . .
>
> (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.
>
> (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
>
> (a) Timely Mailing…
> (b) Wrong Filing Place…
> (c) Death or Serious Illness…
> (d) Unavoidable Absence…
> (e) Disaster Relief…
> (f) Reliance on Erroneous Tax Commission Information…
> (g) Tax Commission Office Visit…
> (h) Unobtainable Records…
> (i) Reliance on Competent Tax Advisor…
> (j) First Time Filer…
> (k) Bank Error…
> (l) Compliance History. . . .
> (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.

9. 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 TAXPAYER-1 is a Utah resident individual for the 2010, 2011, 2012, and 2013 tax years. For all of 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").

The Division does not contend that TAXPAYER-1 qualifies as a Utah resident individual for any of the years at issue under the 183 day test.[5] The Division, however, does contend that TAXPAYER-1 qualifies as a Utah resident individual for all four years under the domicile test. As a result, the Commission must apply the laws in effect for each year at issue to the facts and determine whether TAXPAYER-1 was domiciled in Utah for these years or not. If the Commission determines that TAXPAYER-1 was domiciled in Utah, he is considered a Utah resident individual, and all of his income is subject to Utah taxation (regardless of whether it was earned while he was working and living in another state). Accordingly, for any period for which the Commission determines that TAXPAYER-1 was 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 TAXPAYER-1 was *not* domiciled in Utah, it should reverse the Division's assessment for that period.[6]

I. Facts.

The taxpayers have been married for 23 years. Since their marriage, the taxpayers have not been legally separated or divorced. The taxpayers have jointly owned a home in CITY-1, Utah ("Utah home") for most of their marriage, including the 2010 through 2013 years at issue. While TAXPAYER-2 has lived at the Utah home and raised the taxpayers' three children, TAXPAYER-1 has worked in the mining industry, oftentimes in states other than Utah. TAXPAYER-1 stated that since 2003, he has worked in STATE-1,

5 At the hearing, TAXPAYER-1 explained that during the four years at issue, he had a "four-day on / four-day off" work schedule where he would work for four straight days in STATE-1 and have the next four days off. He also stated that he would return to Utah for the four-day periods that he was off. Given this information, it is possible that TAXPAYER-1 was present in Utah for 183 or more days each calendar year at issue, pursuant to Subsection 59-10-103(1)(q)(ii) (for all four years at issue), Rule 2(2) (for the 2010 and 2011 tax years) and Rule 2(1) (for the 2012 and 2013 tax years). TAXPAYER-1 has maintained a place of abode in Utah for more than 20 years. As result, if TAXPAYER-1 was present in Utah for 183 or more days during a calendar year, he would be considered a Utah resident individual for that year under the 183 day test (even if he did not meet the domicile test). However, because the Division has not used the 183 day test to determine TAXPAYER-1 residency status and because this decision finds that TAXPAYER-1 meets the domicile test for all years at issue, the Commission will not address the 183 day test any further in this decision.

6 The Division did not assert that any of the income it assessed would be subject to Utah taxation if TAXPAYER-1 is deemed to be a Utah nonresident individual.

STATE-2, and Utah. Since 2009 and including all four tax years at issue, TAXPAYER-1 has worked at various gold mines in STATE-1 owned by COMPANY-1 ("COMPANY-1"). The last time TAXPAYER-1 worked in Utah was during 2007 and 2008, when he worked at the COMPANY-2. The taxpayers admit that TAXPAYER-1 was domiciled in Utah in 2007 and 2008, but contend that he abandoned his Utah domicile and established a new domicile in STATE-1 for the 2009 and subsequent tax years.

After TAXPAYER-1 started working in STATE-1 in 2009, he lived in a camper attached to the bed of his pick-up truck whenever he was in STATE-1 on his four-day on / four-day off schedule. In May 2010, however, TAXPAYER-1 purchased a "fifth wheel" trailer for $$$$$ in Utah, which he initially parked in a RV park owned by COMPANY-1 near the STATE-1 mine at which he worked (COMPANY-1 allowed its employees to use the RV park for free). TAXPAYER-1 kept the fifth wheel at this RV park until he started working at another COMPANY-1 mine in STATE-1 in 2015, at which time he moved his fifth wheel to an RV park that is not owned by COMPANY-1 and at which he pays $$$$$ a month to lease a "pad" for the fifth wheel. TAXPAYER-1 stated that he has not registered the fifth wheel in any state since he purchased it in 2010.

As explained earlier, TAXPAYER-1 returns to his family's Utah home when he is off from work. TAXPAYER-1 explained that the Utah home has four bedrooms, one-and-one-half bathrooms, and an attached garage. He estimates that the Utah home was worth approximately $$$$$ during the tax years at issue and admits that the Utah home has always received the property tax residential exemption (including receiving the exemption during the four tax years at issue).

The taxpayers have three children who were 4, 5, and 13 years of age in 2010 (the first tax year at issue) and were 7, 8, and 16 years of age in 2013 (the last tax year at issue). In 2010, two of the taxpayers' children attended public schools in the COUNTY-1 School District. In 2011, 2012, and 2013, all three of the taxpayers' children attended public schools in this school district.

TAXPAYER-1 claims that he obtained a STATE-1 driver's license sometime after starting to work in STATE-1 in 2009. He did not provide a copy of the license, but thinks that he obtained it in 2010.[7] TAXPAYER-2, on the other hand, has only had a Utah driver's license. In 2012, TAXPAYER-1 registered to vote in STATE-1 and voted in the 2012 presidential election. Prior to that time, he was registered to vote in Utah, but contends that he had not voted for many years prior to 2012. The taxpayers proffer that TAXPAYER-2 has only been registered to vote in Utah.

In 2011, TAXPAYER-1 registered an SUV in STATE-1 (which is now in disrepair and unregistered but still located in STATE-1).[8] In 2013, TAXPAYER-1 purchased a pick-up truck that he also registered in STATE-1. TAXPAYER-1 owns these two vehicles in his name alone. During all four years at issue, the taxpayers (together) owned another pick-up truck and a fishing boat that were registered in Utah. The vehicles registered in STATE-1 have been insured with a STATE-1 insurance agent, while the vehicles registered in Utah have been insured with a Utah insurance agent. Since 2008, TAXPAYER-1 has only obtained Utah nonresident fishing licenses. TAXPAYER-1 thinks that he may have obtained a STATE-1 resident fishing license in 2013.

During the years at issue, both taxpayers were members of a church located in CITY-1, Utah. Any religious donations the taxpayers made during these years were made to this Utah church. Neither of the taxpayers were members of any clubs or social organizations. During all years at issue, TAXPAYER-1's dentist and doctor were both located in Utah, and he only had a checking account at the CREDIT UNION in CITY-2, Utah (into which his paycheck from COMPANY-1 is directly deposited). TAXPAYER-1, however,

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7 The Division proffered information to show that TAXPAYER-1 last obtained a Utah driver's license in 2007 and that it did not expire until 2013. The Division does not contest TAXPAYER-1 assertion that he obtained a STATE-1 driver's license in 2010. The Division, however, stated that it is possible that TAXPAYER-1 Utah driver's license might still have been in effect through 2013 even if TAXPAYER-1 obtained a STATE-1 driver's license in 2010.

8 Neither party indicated whether the vehicle TAXPAYER-1 used in STATE-1 in 2010 was registered in Utah or in STATE-1.

had two savings accounts during these years, one at the CREDIT UNION in CITY-2, Utah and another at the CREDIT UNION-2 in CITY-3, STATE-1.

Although the taxpayers did not file any state returns for the years at issue, they filed joint federal returns for all four of these years. The taxpayers filed their 2010 and 2011 joint federal returns using a post office box address in CITY-1, Utah. They filed their 2012 and 2013 joint federal returns using an address in CITY-3, STATE-1. The CITY-3, STATE-1 address is a mailing address (i.e., neither of the taxpayers lived at this address). For all years at issue, COMPANY-1 mailed TAXPAYER-1's W-2 forms to the STATE-1 mailing address.

II. 2010 and 2011 Tax Years.

For the 2010 and 2011 tax years, the issue of domicile was primarily addressed in Rule 2. Rule 2(1)(a) 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(1)(c) provides that domicile "is not lost until there is a concurrence of the following three elements: (i) a specific intent to abandon the former domicile; (ii) the actual physical presence in a new domicile; and (iii) the intent to remain in the new domicile permanently."

For the 2010 and 2011 tax years, the issue is whether TAXPAYER-1 has met the elements necessary to show that he had abandoned his Utah domicile and established a new domicile in STATE-1 for these years.[9]

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9 TAXPAYER-1 claims that he abandoned his Utah domicile and established a new domicile in STATE-1 in 2009. In *USTC Appeal No. 12-889* (Findings of Fact, Conclusions of Law, and Final Decision May 30, 2014), however, the Commission determined that TAXPAYER-1 did not abandon his Utah domicile and did not establish a new domicile in STATE-1 during the 2009 tax year. Some of the facts in *Appeal No. 12-889*, however, are different from the facts proffered in the instant case. Specifically, TAXPAYER-1 established more contacts with STATE-1 during 2010 and 2011 than he had established during the 2009 tax year. For example, during 2009, TAXPAYER-1had not obtained a STATE-1 driver's license, had not registered a vehicle in STATE-1, and had not used a STATE-1 mailing address to receive his W-2's.

Based on the facts applicable to the instant appeal, it appears that TAXPAYER-1 meets the second of the three criteria necessary to change his domicile from Utah to another state. Specifically, because TAXPAYER-1 lived and worked in STATE-1 during his four-day on / four-day off work schedule, he had an "actual physical presence in a new domicile" pursuant to Rule 2(1)(c)(ii).

However, for the 2010 and 2011 tax years, it does not appear that TAXPAYER-1 meets the other two criteria that must be present for a person to change domicile. These other two criteria involve a person's intent. For domicile to change, Rule 2(1)(c)(i) and (iii) requires "a specific intent to abandon the former domicile" and "the intent to remain in the new domicile permanently." In addition, Rule 2(1)(a) 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).

TAXPAYER-1 stated that it was his intent to change his domicile from Utah to STATE-1. Utah appellate courts have addressed whether a person is domiciled in Utah for state income tax purposes[10] and have determined that a person's actions may be accorded greater weight in determining his or her domicile than a declaration of intent.[11] The Division argues that TAXPAYER-1's actions do not show that he intended to abandon Utah and establish a new domicile in STATE-1 during the 2010 and 2011 tax years. The Division's position is persuasive.

Accordingly, the Commission must consider the facts that existed during the 2010 and 2011 tax years currently at issue to determine whether or not TAXPAYER-1 abandoned his Utah domicile and established a new domicile in STATE-1 at any point during 2010 or 2011.

10 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).

11 *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).

Admittedly, TAXPAYER-1 took some steps to change his domicile from Utah to STATE-1 during the 2010 and 2011 tax years. During 2010, TAXPAYER-1 obtained a STATE-1 driver's license. In May 2010, he purchased a fifth wheel to live in during the periods he worked in STATE-1 and, thus, somewhat improved his STATE-1 living accommodations (from the camper on the back of his pick-up truck in which he had previously been living while in STATE-1). In addition, sometime in 2010 or 2011, it appears that TAXPAYER-1 started using a STATE-1 mailing address to receive his W-2's from COMPANY-1. He also had a savings account at a STATE-1 credit union during 2010 and 2011 and only purchased Utah nonresident fishing licenses during these years. Lastly, TAXPAYER-1 registered a vehicle in STATE-1 in 2011.

However, during both 2010 and 2011, TAXPAYER-1's contacts with Utah were significantly greater than his contacts with STATE-1. TAXPAYER-1's wife and three children lived in Utah, where his children attended public school. TAXPAYER-1 owned real property in Utah (specifically the Utah home), but did not own any real property in STATE-1. The nature and quality of TAXPAYER-1's living accommodation in Utah were vastly superior to his living accommodations afforded by the fifth wheel he kept in STATE-1. While TAXPAYER-1 may not have voted in 2010 or 2011, he was registered to vote in Utah, not STATE-1, during these years. In addition, TAXPAYER-1 owned a vehicle and boat that were registered in Utah during these years, and the checking account into which his paycheck was directly deposited was located at a Utah credit union. On the taxpayers' 2010 and 2011 federal income tax returns, they used a Utah mailing address, not a STATE-1 mailing address. During 2010 and 2011, TAXPAYER-1 was a member of a church in Utah, and his doctor and dentist were located in Utah. Finally, whenever TAXPAYER-1 was off work, he did not remain in STATE-1, but would return to his Utah home to be with his family.[12]

12 For the 2010 and 2011 tax years, Rule 52(5) provides a list of factors that are determinative of domicile. Some of the factors that have been discussed are specifically listed in Rule 52(5). The Rule 52(5) list of factors, however, is a non-exclusive list because of the subsection's use of the word "include." Accordingly, other factors indicative of domicile have also been considered. Whether the Commission considers only the Rule 52(5) factors or whether the Commission considers all of the factors that have been

Based on the foregoing, it is evident that TAXPAYER-1's presence in STATE-1 during 2010 and 2011 was for a special purpose (i.e., work) and that he did not have the requisite intent to make a permanent home in STATE-1 to which he would return when absent. The facts do not show that TAXPAYER-1 either abandoned his Utah domicile or established a new domicile in STATE-1 for these two years. TAXPAYER-1 does not meet either of the two criteria found in Rule 2(1)(c)(i) and (iii) that are necessary for him to have changed his domicile from Utah to STATE-1 for either 2010 or 2011. Accordingly, the Commission should find that TAXPAYER-1 was domiciled in Utah for both the 2010 and 2011 tax years and, thus, was a Utah resident individual for both of these years. Furthermore, the Commission should sustain the Division's assessments of tax for the 2010 and 2011 tax years.

III. 2012 and 2013 Tax Years.

For the 2012 and 2013 tax years, the Division asks the Commission to find that TAXPAYER-1 was domiciled in Utah under Section 59-10-136, the "new" domicile law that became effective in 2012. If an individual meets the requirements found in Subsection 59-10-136(4), he or she is *not* considered to be domiciled in Utah. For both 2012 and 2013, however, TAXPAYER-1 does not meet the Subsection 59-10-136(4) requirements because he returned to Utah more than 30 days during each of these years, because the taxpayers had dependents enrolled in a Utah public kindergarten, elementary school, and/or secondary school, because the taxpayers claimed a property tax residential exemption on their Utah home, and because TAXPAYER-2 was not absent from the state. Accordingly, TAXPAYER-1 does not qualify as *not* being a Utah domiciliary under Subsection 59-10-136(4).

However, before TAXPAYER-1 is deemed to be domiciled in Utah for the 2012 or 2013 tax year, he must meet the requirements of another subsection of Section 59-10-136 for that year. TAXPAYER-1 is considered to be domiciled in Utah under Subsection 59-10-136(1)(a) for both 2012 and 2013 because he and

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discussed, a clear preponderance of the factors indicate that TAXPAYER-1 was domiciled in Utah, not

his wife claimed their children as dependents on their 2012 and 2013 joint federal income tax returns and because their children attended a Utah public kindergarten, elementary school, and/or secondary school.[13] There is no need for the Commission to determine TAXPAYER-1's intent to find that he is domiciled in Utah for both 2012 and 2013 under Subsection 59-10-136(1)(a). If an individual meets the criteria found in Subsection 59-10-136(1)(a), he or she is considered to be domiciled in Utah, even if the individual's actions would not otherwise demonstrate an intent to be domiciled in Utah.[14]

Because the Commission has found that TAXPAYER-1 is considered to be domiciled in Utah under Subsection 59-10-136(1)(a) for the 2012 and 2013 tax years, he is considered to be domiciled in Utah for these years even if he does not meet any of the other criteria found in the remaining subsections of Section 59-10-136. Accordingly, the Commission need not further address these other subsections to resolve this case. Nevertheless, it may prove useful to the parties to know that under Subsection 59-10-136(2)(a), there is a rebuttable presumption that TAXPAYER-1 is considered to be domiciled in Utah for 2012 and 2013 because he and his wife claimed a property tax residential exemption on their Utah home for these years. In addition, under Subsection 59-10-136(2)(b), there is a rebuttable presumption that TAXPAYER-1 is considered to be domiciled in Utah because TAXPAYER-2, his spouse, was registered to vote in Utah during 2012 and 2013.[15]

STATE-1, during the 2010 and 2011 tax years.

13 It is noted that Subsection 59-10-136(1)(a) does not apply to an individual who is a non-custodial parent and is divorced from the custodial parent. Because the taxpayers are not divorced, this exception does not apply, even if TAXPAYER-1 had been a non-custodial parent. Accordingly, both taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(1)(a).

14 At the hearing, the Division indicated that TAXPAYER-1 actions would demonstrate his intent to remain domiciled in Utah not only during 2010 and 2011, but also during 2012 and 2013.

15 Even though TAXPAYER-1 was registered to vote in STATE-1 during 2012 and 2013, Subsection 59-10-136(2)(b) provides that a rebuttable presumption of domicile exists for an individual if either the individual *or* the individual's spouse is registered to vote in Utah. As a result, unless a married individual is not considered to have a spouse pursuant to Subsection 59-10-136(5)(b), that individual will be considered to be domiciled in Utah if his or her spouse is registered to vote in Utah and if the married couple is unable to rebut the presumption. This interpretation of Subsection 59-10-136(2)(b) is supported by Subsection 59-10-136(5)(a), which provides that if an individual is considered to be domiciled in Utah under Section 59-10-136, his or her spouse is also considered to be domiciled in Utah. It is noted that the taxpayers are considered to

Lastly, it is possible that TAXPAYER-1 would also be considered to be domiciled in Utah under Subsection 59-10-136(3)(b) because his and his wife's actions satisfy many of the factors listed in that subsection.[16]

Based on the foregoing, the Commission should find that TAXPAYER-1 was domiciled in Utah for both 2012 and 2013 and, thus, was a Utah resident individual for both of these years. Accordingly, the Commission should sustain the Division's assessments of tax for the 2012 and 2013 tax years.

IV. Taxpayers' Argument Concerning Income Earned Outside of Utah.

The taxpayers contend that the income that TAXPAYER-1 earned outside of Utah should not be subject to Utah taxation. The taxpayers' position, however, does not apply in this case because TAXPAYER-1 has been found to be a Utah resident individual for all four years at issue because he was domiciled in Utah during these years. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that "a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]" In accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because TAXPAYER-1 is a Utah resident individual for all four years at issue, Subsection 59-10-117(2)(c) does not apply. Accordingly, all of TAXPAYER-1's income is subject to Utah taxation, even if it was earned outside of Utah.

V. Waiver of Penalties and Interest.

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have spouses for purposes of Section 59-10-136 because they do not meet either of the exceptions found in Subsection 59-10-136(5)(b).

16 Because TAXPAYER-1 has already been found to be domiciled in Utah for 2012 and 2013 under Subsection 59-10-136(1)(b) and because neither party specifically addressed the 12 factors of Subsection 59-10-136(3)(b) at the hearing, the Commission will not address this subsection and the factors contained in it any further.

For this case, the applicable law to determine whether the penalties and interest assessed to the taxpayers may be waived is found in Subsection 59-1-401(14) and Rule 42.[17] In Subsection 59-1-401(14), 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.[18] The taxpayers have not asserted that they failed to pay Utah income taxes for any of the years at issue 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(14) 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 any of the penalties it imposed. Accordingly, reasonable cause exists to waive all penalties imposed for the four years at issue.

VI. Conclusion.

Based on the foregoing, the Commission should sustain all four of the Division's assessments, except that the Commission should waive all penalties that have been imposed.

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Kerry R. Chapman
Administrative Law Judge

17 Effective for tax year 2012, Subsections 59-10-136(4)(d) and (4)(e) address the imposition and/or waiver of interest and penalties in domicile cases under certain circumstances. Those circumstances, however, are not present in this case, and Subsections 59-10-136(4)(d) and (4)(e) are not applicable to the 2012 and 2013 tax years. Accordingly, the only applicable law concerning the waiver of penalties and interest for the four years at issue is found in Section 59-1-401(14) and Rule 42.

18 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.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments for the 2010, 2011, 2012, and 2013 tax years, except that the Commission 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.