

15-803  
TAX TYPE: INCOME TAX  
TAX YEAR: 2011, 2012 & 2013  
DATE SIGNED: 11/08/2016  
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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TAXPAYERS,

Petitioners,

v.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 15-803

Account No. #####

Tax Type: Income Tax

Tax Year: 2011, 2012 and 2013

Judge: Phan

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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1  
TAXPAYER-2

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on August 22, 2016 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) are appealing Utah individual income tax audit deficiencies for tax years 2011, 2012 and 2013. The Notices of Deficiency and Audit Change were issued on April 13, 2015. For each of these tax years the Taxpayers had filed married filing joint part-year Utah resident returns. After auditing the returns, Respondent (“Division”) concluded that the Taxpayers were full year Utah residents for individual income tax purposes for all of 2011, 2012 and 2013. The Division did allow a credit for taxes paid to another state. No penalties were assessed in the audits. The additional tax and interest as of the date of the notices were as follows:

Year	Tax	Interest	Total as of Notice Date <sup>1</sup>
2011	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2012	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

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<sup>1</sup> Interest continues to accrue on any unpaid balance.

2013                    \$\$\$\$\$                    \$\$\$\$\$                    \$\$\$\$\$

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state in Utah Code Subsection 59-10-104(1)<sup>2</sup> as follows:

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

Resident individual is defined in Utah Code Subsection 59-10-103(1)(q)(2011) as follows:

(q)(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.

There was a significant change in the law on what constituted being "domiciled" in Utah effective for the 2012 tax year. Up through 2011, for purposes of determining whether an individual is domiciled in this state the Commission had defined "domicile" at Utah Administrative Rule R865-9I-2(2011)<sup>3</sup> which was effective for tax year 2011 as follows:

(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:

- (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.

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<sup>2</sup> For tax years 2011 through 2013 this provision was substantially the same.

<sup>3</sup> Effective for tax year 2012 and following years, the Utah Legislature substantially revised the provisions of the Utah Code regarding domicile, adopting Utah Code 59-10-136. These revisions are significant. The Commission applies the 2010 provisions for the 2011 tax year and the new provision for the 2012 & 2013 tax years.

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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For the 2011 tax year, 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:

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E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;
2. the length of any continuous residency in the location claimed as domicile;
3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
4. the presence of family members in a given location;
5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
6. the physical location of the individual's place of business or sources of income;
7. the use of local bank facilities or foreign bank institutions;
8. the location of registration of vehicles, boats, and RVs;
9. membership in clubs, churches, and other social organizations;
10. the addresses used by the individual on such things as:
  - a) telephone listings;
  - b) mail;
  - c) state and federal tax returns;
  - d) listings in official government publications or other correspondence;
  - e) driver's license;
  - f) voter registration; and
  - g) tax rolls.
11. location of public schools attended by the individual or the individual's dependents;
12. the nature and payment of taxes in other states;
13. declarations of the individual:
  - a) communicated to third parties;
  - b) contained in deeds;
  - c) contained in insurance policies;
  - d) contained in wills;
  - e) contained in letters;
  - f) contained in registers;
  - g) contained in mortgages; and
  - h) contained in leases.
14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;
16. the purchase of a burial plot in a particular location;
17. the acquisition of a new residence in a different location.

....

Beginning with the 2012 tax year, the new law, Utah Code §59-10-136, was adopted and it set forth the factors to be considered for 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.

The applicable statutes specifically provide that the taxpayers bear the burden of proof in proceedings before the Tax Commission. Utah Code Sec. 59-1-1417 provides:

In a proceeding before the commission, the burden of proof is on the petitioner. . .

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on 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.

#### DISCUSSION

The Taxpayers explained that they had immigrated to the United States in 1999. They lived full time in Utah in 2000 and 2001 and eventually purchased a residence in Utah. TAXPAYER-1 found employment in Utah. In 2002, TAXPAYER-2 found employment in STATE with the DEPARTMENT where she has worked for the past 14 years. She explained this was a good job with both health insurance and retirement benefits. The Taxpayers stated that as it was difficult to find good employment, they continued to work in the separate states.

TAXPAYER-1 resides at the Utah residence which the Taxpayers own on a full time basis. TAXPAYER-2 rents a shared accommodation in STATE with a roommate. She also indicated she is not charged rent for this space for the times that she is in Utah, although she is able to leave personal items at this accommodation. She explained that she returns to Utah for her vacations, holidays and about 1 weekend per month, for not more than 70 days total per year.

The Taxpayers explained that they had read the instructions published by the State Tax Commission and based on the TC-40 Forms & Instructions, they had concluded that they were part year residents of Utah for each year and that was how they had filed their Utah returns. They also argued that they should be able to rely on the instructions. In explaining their position, it was clear that when they were filing returns for the years 2011 through 2013, they did not understand that domicile was an alternative to residency separate from the 183 day requirement. The Taxpayers provided TC-40 Forms & Instructions for each of the tax years 2010, 2011, 2012 and 2013.<sup>4</sup> The 2011<sup>5</sup> TC-40 Forms & Instructions, pg. 3, define part-year resident as follows:

**Part-Year Resident Defined**

A part-year resident is an individual who is a Utah resident for part of the year and a nonresident for part of the year. All income received during the period of Utah residency is taxable in Utah, regardless of where that income is earned, unless specifically exempted. Income from Utah sources is taxable in Utah during the period of nonresidency.

On that same page, the definitions of resident and nonresident are also provided as follows:

**Resident Defined**

A Utah resident is an individual who:

1. Is domiciled<sup>6</sup> in Utah for the entire year, even if temporarily outside of Utah for an extended period of time;
2. Is domiciled in Utah for any period of time during the taxable year, but only for the duration of that period;
3. Even though domiciled outside Utah, maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah. In determining whether an

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<sup>4</sup> The instructions for the current year and prior years are available at [tax@utah.gov](mailto:tax@utah.gov).

<sup>5</sup> The definitions of Part-Year Resident, Resident and Nonresident were similar in the 2012 and 2013 TC-40 Forms & Instructions. However the definition of “Domicile” was substantially revised to reflect the change of law that was effective beginning tax year 2012.

<sup>6</sup> It is important to understand “domicile” to determine if one is a resident of Utah. “Domicile” is also defined in TC-40 Forms & Instructions, pg. 3, as, “Domicile is the place where an individual has a permanent home and where he or she intends to return after being absent. Is the place where an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home. A domicile, once established, is not lost until all of the following three conditions are met: (1) a specific intent to abandon the former domicile; (2) the actual physical presence in a new domicile; and (3) the intent to remain in the new domicile permanently. See Tax Commission Rule R865-9I-2 at [tax.utah.gov/commission/rules](http://tax.utah.gov/commission/rules) for more information.”

individual spends 183 or more days in Utah, a day means a day in which the individual spends more time in Utah than in any other state.

These rules do not apply to military personnel or their spouses who are in Utah on military assignment, unless they are Utah residents.

All income received during the period of Utah residency is taxable in Utah, regardless of where that income is earned, unless specifically exempted.

#### Nonresident Defined

A nonresident individual is one who was not domiciled in Utah or was in Utah for temporary purposes for less than 183 days during the taxable year or does not maintain a place of abode in Utah. Income received by a nonresident from Utah sources is taxable in Utah. In determining whether an individual spends 183 or more days in Utah, a day means a day in which the individual spends more time in Utah than in any other state.

The issue in this appeal is whether the Taxpayers were “resident individuals” in the state of Utah for the purposes of Utah Code Sec. 59-10-104, in 2011, 2012 and 2013. Under Utah Code Sec. 59-10-103, a resident individual is one who maintains a place of abode in this state and spends in the aggregate 183 days or more per year in Utah; or, in the alternative, a resident individual is one who is “domiciled” in Utah. The Division argues that both Taxpayers were domiciled in Utah throughout the audit years and were not part-year Utah and part-year STATE residents. There were substantial revisions to the law defining domicile that became effective for the 2012 tax year. Therefore, in resolving this issue the Commission must look at 2011 independently from 2012 and 2013, and apply the law in effect for each year.

TAXPAYER-1 was clearly a Utah resident for individual income tax purposes for all three tax years at issue. It was the Division’s position that TAXPAYER-2 was also a full year Utah resident during all of these tax years because she was domiciled in Utah. The Division did not dispute that TAXPAYER-2’s full time employment was in STATE during these tax years. However, it was the Division’s argument that she was in STATE for a special purpose—that being for employment and that her domicile was Utah. The Division’s representative points out that TAXPAYER-2 had a Utah Driver License. The Taxpayers had used their Utah address on their federal returns, which they had filed with the status “married filing jointly.” The Taxpayers used their Utah address on the returns they filed in STATE, which were STATE Nonresident or Part-Year Resident returns. On Schedule 540NR, line 1a) of the STATE returns they listed that their domicile was Utah. They did indicate on the STATE returns that TAXPAYER-2 spent about 301 days in STATE and TAXPAYER-1 zero days in STATE. TAXPAYER-2 tax documents including her W-2 from her STATE employment were mailed to their residence in Utah. On their Utah returns, the Taxpayers had filled out TC-40B-Non and Part-year Resident Schedule. On that

schedule, although they listed for each of the tax years at issue that they were part-year residents for the few months from June to August, they had filled out the schedule listing all TAXPAYER-1's income in Column A as Utah Income and TAXPAYER-2 income was listed, along with TAXPAYER-1's, in Column B as total income. The Division pointed out that the Taxpayers did receive the primary residential exemption on their Utah residence for all of the years at issue.

Under the law in effect for the 2011 tax year<sup>7</sup> Domicile is the place where an individual has a permanent home and to which he or she 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 had been established in Utah, three things must be shown to establish a new domicile: 1) a specific intent to abandon the former domicile; 2) the actual physical presence in a new domicile; and 3) the intent to remain in the new domicile permanently. See Utah Admin. Rule R865-9I-2. TAXPAYER-2 did have the actual physical presence in STATE but the evidence did not establish that she had a specific intent to abandon her Utah domicile or remain in the new domicile permanently. She kept many ties to Utah. She was joint owner of the residence in Utah, retained her Utah Driver License, used the Utah address on tax returns and W-2's and returned to Utah when she was not working. She also did not show that she had the intent to remain permanently in STATE. She did not purchase a home in STATE or rent permanent accommodations; she did not obtain a STATE Driver License or file STATE resident returns. She was in STATE because of her employment.

Utah Admin. Rule R884-24P-52 ("Rule 52") sets forth a list of factors to consider as evidence determinative of domicile and under this list, TAXPAYER-2 has more ties to Utah. She had claimed to be domiciled in Utah on her STATE return. While in Utah, she lived at the home she owned jointly with TAXPAYER-1, she rented a shared space with a roommate in STATE, for which she only paid rent for the time that she was actually staying there. Her spouse and adult son resided in Utah. She used the Utah address for mailings and on tax returns. She had a Utah Driver License. All these things support the Division's position in this matter.

For tax years 2012 and 2013, Utah Code Section 59-10-136 substantially rewrote what constituted "domicile" from the definitions established under the prior Administrative Rule and prior case law. Utah Code §59-10-136(5) provides, "If an individual is considered to have

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<sup>7</sup> Under the law in effect up through 2011, whether someone is a "resident individual" for state tax purposes has been addressed by the appellate courts in Utah. As discussed by the courts, the fact finder may determine intent "based on the 'totality of the facts and circumstances surrounding the situation,' and the taxpayer's statement of intent is only one factor of many to be considered. 'In determining whether a party has established a Utah domicile, the fact finder may accord the party's activities greater weight than his or her declaration of intent.'" *Benjamin v. Utah State Tax Comm'n*, 250 P.3d 39, 2011 UT 14, ¶ 22 (Utah 2011) (Citations Omitted).

domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state." The only exceptions, listed at Utah Code §59-10-136(5)(b) are if they were legally separated or divorced, or if they had filed their federal return with the status of married filing separately. It is clear from the information presented that TAXPAYER-1 was a Utah resident at all times during the audit period. He resided in Utah at the residence the Taxpayers owned jointly in Utah. He had employment in Utah, a Utah Driver License, and he did not travel to STATE with TAXPAYER-2 when she was working in STATE. The Taxpayers had filed their federal returns as married filing jointly. The Taxpayers were not legally separated or divorced. Under Utah Code §59-10-136(5), for tax years 2012 and 2013, TAXPAYER-2 was domiciled and a full year Utah resident because TAXPAYER-1 was a full year Utah resident. The Division also points out that the Taxpayers had received the primary residential exemption on their Utah residence which creates a rebuttable presumption that the Taxpayers were domiciled and were, therefore, full year Utah residents in 2012 and 2013 under Utah Code §59-10-136(2)(a).

As a Utah resident individual for income tax purposes, all income TAXPAYER-2 earned from any state is taxable to Utah under Utah Code Sec. 59-10-103 and Utah Code Subsection 59-10-104(1), although she is allowed a credit for individual income taxes paid to another state. The Division has allowed this credit on the individual income taxes which she paid to STATE.

The Division's representatives explained that the Division did not see any bad intent on the part of the Taxpayers; they thought the Taxpayers were being truthful and just misunderstood the law. No penalties were assessed with the audit. Interest was assessed based on the statute. Under Utah Code §59-1-401(14) and Utah Administrative Rule R861-1A-42, for interest to be waived the taxpayer must prove "that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." The Taxpayers have argued that the Instructions were unclear. However, the correct information is provided and it appears that the Taxpayers misunderstood that there were two separate alternatives to being a Utah resident, one being the domicile provisions and one being the 183 day plus place of abode provisions. This does not rise to the level sufficient for waiver of interest.

Jane Phan  
Administrative Law Judge

**DECISION AND ORDER**

Based on the foregoing, the Commission sustains the Utah individual income tax audit deficiency against the Taxpayers for the tax years 2011, 2012 and 2013. 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 of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**