16-356
TAX TYPE: INCOME TAX
TAX YEAR: 2012
DATE SIGNED: 01/08/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 16-356 Account No. ##### Tax Type: Income Tax Year: 2012 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:[1]
For Petitioner: REPRESENTATIVE FOR PETITIONER, Attorney
TAXPAYER-1, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT, Attorney
RESPONDENT-1, from Auditing Division
RESPONDENT-2, 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 October 23, 2017.

TAXPAYER ("Petitioner") has appealed Auditing Division's (the "Division") assessment of additional Utah individual income taxes for the 2012 tax year. On February 10, 2016, the Division issued a

1 As will be explained later in this decision, TAXPAYER-1's ex-wife is TAXPAYER-2. TAXPAYER-2 and her attorney, NAME-2, also appeared at the hearing in person. TAXPAYER-1 and TAXPAYER-2 were married throughout the 2012 tax year at issue, but filed for and obtained a divorce in YEAR.

Notice of Deficiency and Estimated Income Tax ("Statutory Notice"), in which it imposed additional tax, penalties, and interest (calculated as of March 11, 2016),[2] as follows:

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

For the 2012 tax year, TAXPAYER-1 filed a Utah *nonresident* individual income tax return with a status of married filing separately (on which he reported his income only and did not allocate any income to Utah). TAXPAYER-2, on the other hand, filed a 2012 Utah *resident* return with a status of married filing separately (on which she reported her income only).[3] Because TAXPAYER-1 and TAXPAYER-2 filed their 2012 federal return with a status of married filing jointly, the Division determined that TAXPAYER-1 and TAXPAYER-2 were both domiciled in Utah for the 2012 tax year and should have filed a 2012 Utah resident return with a status of married filing jointly (on which they would have reported the income that both of them earned in 2012). As a result, the Division's 2012 assessment imposes tax on all income that TAXPAYER-1 and TAXPAYER-2 both earned during the 2012 tax year.

The Internal Revenue Service ("IRS") accepted the 2012 federal return with a status of married filing jointly that TAXPAYER-1 and TAXPAYER-2 originally filed in May 2013. Upon learning about the Division's review of her 2012 Utah return, TAXPAYER-2 spoke with NAME-3, a Division employee, in August 2014. It appears that during this conversation, NAME-3 suggested that TAXPAYER-1 and TAXPAYER-2 could each file a 2012 amended federal return with a status of married filing separately and see whether the IRS would accept the amended returns or not.[4]

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

3 TAXPAYER-2 admitted at the hearing that she was domiciled in Utah throughout the 2012 tax year.

4 It also appears that TAXPAYER-2 and NAME-3 spoke about the Division's review of TAXPAYER-2's 2013 Utah return, which was filed in the same manner as TAXPAYER-2's 2012 Utah return. Any issue concerning TAXPAYER's 2013 tax liability is not at issue in this appeal.

Subsequently, TAXPAYER-1 and TAXPAYER-2 filed amended 2012 federal returns with a status of married filing separately, which were rejected by the IRS.[5] Because TAXPAYER-2 was domiciled in Utah throughout 2012 and because the IRS considers TAXPAYER-1 and TAXPAYER-2 to have claimed a married filing jointly filing status for the 2012 tax year, the Division asks the Commission to find that TAXPAYER-1 and TAXPAYER-2 were both domiciled in Utah during 2012 and to sustain its assessment of additional 2012 tax. The Division also asks the Commission to sustain its assessment of interest, but agrees for the penalties it imposed to be waived.

TAXPAYER-1 and TAXPAYER-2 admit that they originally filed a 2012 federal return with a status of married filing jointly that the IRS accepted. In addition, they admit that they subsequently filed amended 2012 federal returns with a status of married filing separately and the IRS rejected these returns. However, TAXPAYER-1 and TAXPAYER-2 contend that the filing of the amended 2012 federal returns with a status of married filing separately is sufficient for neither of them to be considered to have a spouse under Utah Code Ann. §59-10-136(5)(b) (2012), even if the IRS rejected these returns. Furthermore, if neither TAXPAYER-1 nor TAXPAYER-2 is considered to have a spouse for purposes of Section 59-10-136, TAXPAYER-1 and TAXPAYER-2 contend that they properly filed their 2012 Utah returns with a status of married filing separately. For these reasons, TAXPAYER-1 asks the Commission to reverse the Division's 2012 assessment in its entirety.

TAXPAYER-2 and/or TAXPAYER-1 also contends that not only should the penalties be waived, but that the Commission should also consider abating the tax and interest because TAXPAYER-1 had a meeting at the Tax Commission in January 2011 to talk about *USTC Publication 49*, Special Instructions for Married

5 On December 10, 2014, the IRS sent TAXPAYER-2 a letter in which it notified her that it had "received your 2012 1040X requesting filing status change to married filing separate on August 26th, 2014, after the tax due date." In the letter, the IRS also notified TAXPAYER-2 that "[m]arried individuals may file separate returns on or before the due date of their originally filed joint tax return. Since your request to change your filing status to separate was postmarked after the original due date, it cannot be allowed."

Couples ("Publication 49")[6] and to "declare" COUNTRY as his domicile. TAXPAYER-1 arranged for this meeting around the time that he decided to move away from Utah even though TAXPAYER-2 had decided to remain in Utah. TAXPAYER-1 does not recall the name of the Tax Commission employee with whom he spoke at the January 2011 meeting, but indicated that the employee told him that he and TAXPAYER-2 could each file a Utah return with a status of married filing separately under the special instructions found in Publication 49. Because TAXPAYER-1 followed this Tax Commission employee's advice when he completed his and TAXPAYER-2's 2012 Utah returns in 2013,[7] TAXPAYER-1 and/or TAXPAYER-2 contends that the tax and interest should also be abated because of erroneous Tax Commission advice.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2012)[8], "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)(i), 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
> (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 for the determination of "domicile," as follows:

> (1) (a) An individual is considered to have domicile in this state if:

6 Publication 49 was in effect when this meeting took place in January 2011. It subsequently expired because of the new domicile law (Section 59-10-136) that became effective for the 2012 tax year.

7 TAXPAYER prepared all 2012 returns that he and TAXPAYER-2 filed. TAXPAYER explained that he prepared these returns using TurboTax.

8 All substantive law citations are to the 2012 version of Utah law, unless otherwise indicated.

(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 §59-1-401(14) (2017) 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."

5. Utah Admin. Rule R861-1A-42 ("Rule 42") (2017) 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.

6. For the instant matter, UCA §59-1-1417 (2017) provides guidance concerning burden of proof and statutory construction, 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.
> (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
> (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
> (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), TAXPAYER-1 has the burden of proof in this matter. TAXPAYER-2 admits that she was a Utah resident individual during the 2012 tax year. To determine whether TAXPAYER-1 properly filed a 2012 Utah nonresident return with a status of married filing separately or whether he and TAXPAYER-2 should have filed a 2012 Utah resident return with a status of married filing jointly, the Commission must determine whether TAXPAYER-1 was also a Utah resident individual during 2012. For 2012, 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 assert that TAXPAYER-1 is a 2012 Utah resident individual under the 183 day test. Instead, the Division contends that TAXPAYER-1 is a 2012 Utah resident individual under the domicile

test. As a result, the Commission must apply the facts to the Utah domicile law in effect for the 2012 tax year to determine whether TAXPAYER-1 is considered to be domiciled in Utah during 2012.

I. Facts.

TAXPAYER-1 and TAXPAYER-2 were married in 1970 and lived together in Utah until sometime in 2010, when TAXPAYER-1 decided to move from Utah to a home that he and TAXPAYER-2 had purchased together in COUNTRY in 2006 (the "COUNTRY home"). TAXPAYER-2 declined to move from Utah to COUNTRY and continued to live in the home in Utah that she and TAXPAYER had purchased together in 1985 (the "Utah home"). TAXPAYER-2 still lives in the Utah home. In December 2011, TAXPAYER moved from the COUNTRY home to a new home in STATE that he and TAXPAYER-2 purchased together in 2011 (the "STATE home"). TAXPAYER-2 also declined to move to the STATE home. TAXPAYER-1 and TAXPAYER-2 have lived apart since 2010. As of the hearing date, TAXPAYER-2 continues to live in the Utah home, while TAXPAYER-1 continues to live in the STATE home. In 2014 or 2015, TAXPAYER-1 and TAXPAYER-2 sold the COUNTRY home.

The Utah home has about ##### square feet of total living space on its main floor and in its basement, while the STATE home has about ##### square feet of total living space on its main and second floors (it does not have a basement). Both of these homes were owned by TAXPAYER-1 and TAXPAYER-2 together until they filed for and obtained a divorce in 2015. In the divorce, TAXPAYER-2 received sole ownership of the Utah home, and TAXPAYER-1 received sole ownership of the STATE home. Between 1970 and 2015 (including the 2012 tax year at issue), TAXPAYER-1 and TAXPAYER-2 were not legally separated or divorced.

For the 2012 tax year, the Utah home that TAXPAYER-1 and TAXPAYER-2 owned together received the residential exemption from property taxation.[9] Neither TAXPAYER-1 nor TAXPAYER-2

9 For the 2012 tax year, UCA §59-2-103(2) provided that ". . . the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption[,]" while

declared that the Utah home did not qualify to receive the residential exemption for the 2012 tax year by: 1) filing a written statement to notify the county board of equalization of the county in which the Utah home is located that the property no longer qualified to receive the residential exemption; and 2) declaring on a 2012 Utah income tax return that the Utah home no longer qualified to receive the residential exemption.[10] During 2012, TAXPAYER-1 paid the property taxes on the STATE home from a bank account in his name only, while TAXPAYER-2 paid the property taxes on the Utah home from a bank account in her name only.

TAXPAYER-1 and TAXPAYER-2 have one son and one daughter, both of whom turned 30 prior to the 2012 tax year. TAXPAYER-1 and TAXPAYER-2 did not claim any dependents on a 2012 return. During 2012, TAXPAYER-1 and TAXPAYER-2's son and the son's four children lived in STATE, while their daughter and the daughter's one child lived in Utah. Neither TAXPAYER-1 nor TAXPAYER-2 was a resident student enrolled in a Utah institution of higher education during the 2012 tax year.

During the 2012 tax year, TAXPAYER-2 had a Utah driver's license and was registered to vote in Utah. TAXPAYER-2 voted in Utah elections on two occasions during 2012. TAXPAYER-1 obtained a STATE driver's license on January 3, 2012, and he registered to vote in STATE in December 2011. TAXPAYER-1 voted in one or more STATE elections during 2012. TAXPAYER-1 changed the registration of his vehicle from Utah to STATE on January 3, 2012, while TAXPAYER-2 registered her vehicle in Utah during 2012.

"residential property" was defined in Utah Code Ann. §59-2-102(31) to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that is used as a person's primary residence is only taxed on 55% of its fair market value, while a home that is not a person's primary residence (such as a vacation home) is taxed on 100% of its fair market value.

10 *See* Utah Code Ann §59-2-103.5(5). *See also* Part 7 of the 2012 TC-40 (p. 3), where a taxpayer may complete a "Property Owner's Residential Exemption Termination Declaration" if he or she is a Utah residential property owner who wants to declare that he or she no longer qualifies to receive a residential exemption for a primary residence. . . ." Neither TAXPAYER-1 nor TAXPAYER-2 completed the "Property Owner's Residential Exemption Termination Declaration" on their separate 2012 Utah returns.

TAXPAYER-1 changed his mailing address to the address of the STATE home in December 2011 and has received his mail there ever since. TAXPAYER-2 received her mail at the address of the Utah home during 2012 and still continues to receive her mail there. TAXPAYER-1 used the address of the STATE home on the separate Utah return and the separate amended federal return that he filed for 2012, while TAXPAYER-2 used the address of the Utah home on the separate Utah return and the separate amended federal return that she filed for 2012. TAXPAYER-1 and TAXPAYER-2 used the address of the STATE home on the joint federal return that they originally filed for 2012.

During 2012, TAXPAYER-1 attended church in STATE, while TAXPAYER-2 attended church in Utah. TAXPAYER-1 explained that his church would not initially transfer his records from the Utah unit of the church that he had once attended to the STATE unit he started attending in 2011 because the church did not like to "separate" the records of a married couple. TAXPAYER-2 proffered that TAXPAYER's church records were transferred to the STATE unit of his church "years ago," but could not remember the exact year in which the transfer occurred. During 2012, TAXPAYER-1 was not a member of a club or similar organization in either Utah or STATE.

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

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 the 2012 tax year, 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)).[11]

11 Prior to tax year 2012, an individual's income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) ("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 Utah Admin. Rule R884-24P-52 (2011) ("Rule 52") (which is a property tax rule). After the Legislature enacted new criteria in

Subsection 59-10-136(5)(b). For a married individual, it is often necessary, as in this case, to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is considered to have a spouse for purposes of Section 59-10-136 unless the individual satisfies at least one of the following two criteria: 1) if the individual is legally separated or divorced from the individual's spouse (under Subsection 59-10-136(5)(b)(i)); or 2) if "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" (under Subsection 59-10-136(5)(b)(ii)). All parties agree that during the 2012 tax year, TAXPAYER-1 and TAXPAYER-2 were not legally separated or divorced. The parties, however, disagree on whether TAXPAYER-1 and TAXPAYER-2 claimed married filing separately filing status for purposes of filing a 2012 federal individual income tax return.

TAXPAYER-1 and TAXPAYER-2 admit that they originally filed a 2012 federal return with a status of married filing jointly. TAXPAYER-1 and TAXPAYER-2 also admit that the IRS rejected the amended 2012 federal returns with a status of married filing separately that they filed in 2014 or 2015 (after the Division began its review of TAXPAYER-2's separate 2012 Utah return). However, because TAXPAYER-1 and TAXPAYER-2 eventually submitted amended 2012 federal returns with a status of married filing separately, they contend that they have satisfied the Subsection 59-10-136(5)(b)(ii) criterion, regardless of whether the IRS rejected the amended federal returns. TAXPAYER-1 and TAXPAYER-2 contend that Subsection 59-10-136(5)(b)(ii) only requires them to claim a status of married filing separately for federal income taxes and does not expressly require the IRS to accept the claim. Furthermore, if Subsection 59-10-136(5)(b)(ii) is ambiguous, they note that it is a taxing statute and must be construed strictly in their favor. For these reasons, TAXPAYER-1 and TAXPAYER-2 contend that for the 2012 tax year, neither of them is considered to have a spouse for purposes of Section 59-10-136.

Section 59-10-136 to determine income tax domicile for the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

The Division, on the other hand, contends that where the IRS rejects a federal return that a taxpayer has filed with a status of married filing separately, the individual has not satisfied the Subsection 59-10-136(5)(b)(ii) criterion. Because the IRS rejected the amended 2012 federal returns with a status of married filing separately that TAXPAYER-1 and TAXPAYER-2 both filed and because federal records show that the IRS considers both TAXPAYER-1 and TAXPAYER-2 to have a joint filing status for 2012 income tax purposes, the Division contends that neither TAXPAYER-2 nor TAXPAYER-1 has satisfied the Subsection 59-10-136(5)(b)(ii) criterion. The Division contends that because neither of the two criteria of Subsection 59-10-136(5)(b) has been satisfied for the 2012 tax year, TAXPAYER-1 and TAXPAYER-2 are both considered to have a spouse for purposes of Section 59-10-136 for this year.

The Commission finds the Division's interpretation of Subsection 59-10-136(5)(b) to be more persuasive. TAXPAYER-1 and TAXPAYER-2 are correct in stating that Utah law provides specific requirements for the interpretation of tax statutes. Subsection 59-1-1417(2)(a) provides that statutes imposing a tax are to be construed strictly in favor of a taxpayer, while Subsection 59-1-1417(2)(b) provides that statutes providing tax exemptions or credits are to be construed strictly against a taxpayer. This policy is aligned with established case law from Utah courts.[12]

Subsection 59-10-136(5)(b) is a taxing statute that is to be construed strictly in favor of a taxpayer. However, there are limits to rules of strict statutory construction. When reviewing statutes for legislative intent, courts are to "read the plain language of the statute as a whole and interpret its provisions in harmony with other statutes in the same chapter and related chapters." *Miller v. Weaver*, 2003 UT 12, 66 P.3d 592 (Utah 2003). Courts are also to be mindful that "'[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole.'" *State v. Maestas*, 2003 UT

12 *See, e.g., MacFarlane v. Utah State Tax Comm'n*, 2006 UT 18, 134 P.3d 1116 (Utah 2006); and *Hercules Inc. v. Utah State Tax Comm'n*, 2000 UT App. 372, 21 P. 3d 231 (Utah Ct. App. 2000).

123, 63 P.3d 621 (Utah 2003) (quoting Norman J. Singer, 2A Sutherland, *Statutory Construction*, §96:05 (4th ed. 1984)). For this reason, courts should follow "the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object." *Faux v. Mickelsen*, 725 P.2d 1372, 1375 (Utah 1986) (citing Sutherland, *supra*, §46.05).

Moreover, in *Parson Asphalt Prods., Inc. v. Utah State Tax Comm'n*, 617 P.2d 397 (Utah 1980), the Utah Supreme Court indicated that "taxing statutes should generally be construed favorable to the taxpayer and strictly against the taxing authority[,]" but subsequently stated that "[n]otwithstanding the foregoing, there is also to be considered the over-arching principle, applicable to all statutes, that they should be construed and applied in accordance with the intent of the Legislature and the purpose sought to be accomplished." The interpretation of Subsection 59-10-136(5)(b)(ii) that TAXPAYER-1 and TAXPAYER-2 propose would not only negate the intent of the Legislature and the purpose sought to be accomplished by Section 59-10-136, but it would also fail to produce a harmonious whole when this subsection is construed in connection with every other provision of Section 59-10-136.

In Section 59-10-136, the Legislature has used the words "claim" and "claims" on nine separate occasions to distinguish between individuals who claim and do not claim a personal exemption on a federal tax return, individuals who claim and do not claim a property tax residential exemption, and individuals who claim or do not claim married filing separately filing status on a federal return.[13] TAXPAYER-1 and TAXPAYER-2 would have the Commission interpret the words "claim" and "claims" to mean that an accepted claim and a rejected claim would both constitute a "claim" under Section 59-10-136. The Commission finds that such an interpretation would lead to results not intended by the Legislature.

For example, an individual who "claims" a personal exemption for a dependent enrolled in a Utah public kindergarten, elementary, or secondary school is considered to be domiciled in Utah under Subsection

13 *See* Subsections 59-10-136(1)(a)(i), (1)(b)(i)(A), (2)(a), (3)(b)(ii), (3)(b)(iv), (4)(a)(ii)(B), (4)(a)(ii)(D), (5)(b)(ii), and (6).

59-10-136(1)(a). If an individual erroneously submitted a federal return on which he or she claimed a personal exemption for such a dependent and the IRS rejected the claim, that individual would be considered to be domiciled in Utah under the argument set forth by TAXPAYER-1 and TAXPAYER-2, even though that individual did not benefit from receiving a personal exemption for a dependent enrolled in a Utah public kindergarten, elementary, or secondary school. TAXPAYER-1 and TAXPAYER-2 have not submitted any evidence to suggest that the Legislature intended an individual who did not receive a personal exemption for a dependent enrolled in a Utah public kindergarten, elementary, or secondary school and who did not meet the domicile criterion of any other subsection of Section 59-10-136 to be considered to be domiciled in Utah. It is evident that the Legislature intended an individual who received the tax benefit associated with claiming a personal exemption for a dependent enrolled in a Utah public kindergarten, elementary, or secondary school to be considered to be domiciled in Utah, not an individual whose claim of a personal exemption for such a dependent was denied by the IRS.

Similarly, an individual who "claims" a Utah property tax residential exemption for his or her primary residence is presumed to be domiciled in Utah under Subsection 59-10-136(2)(a), unless the presumption is rebutted. If an individual submitted an application to receive the property tax residential exemption on a home that he or she owned in Utah and the exemption was denied, that individual would be presumed to be domiciled in Utah under the argument set forth by TAXPAYER-1 and TAXPAYER-2, even though that individual did not receive the residential exemption and did not benefit from a lower property tax liability. It is also evident that the Legislature intended an individual who actually received the residential exemption to be presumed to be domiciled in Utah, not an individual whose application or claim for the exemption was denied and who did not benefit from the exemption.

For these reasons, it is also clear that under Subsection 59-10-136(5)(b)(ii), an individual is not considered to have claimed married filing separately filing status for purposes of filing a federal return if the

IRS rejects that claim. When read in light of the overall purpose of Section 59-10-136 as determined by the plain language of the statute's various provisions, it is clear that TAXPAYER-2's and TAXPAYER's proposed interpretation of Subsection 59-10-136(5)(b)(ii) is inconsistent with the overall purpose of Section 59-10-136 and fails to produce a harmonious whole when this subsection is construed in connection with all other subsections of Section 59-10-136. Subsection 59-10-136(5)(b)(ii) is not ambiguous. Accordingly, the strict construction provisions found in Subsection 59-1-1417(2) and Utah case law play no role in interpreting Subsection 59-10-136(5)(b)(ii).

The IRS rejected the amended 2012 federal returns with a status of married filing separately that TAXPAYER-1 and TAXPAYER-2 each submitted and considers TAXPAYER-1 and TAXPAYER-2 to both have a status of married filing jointly for the 2012 tax year, as reflected on the 2012 joint federal return they originally filed. Under these circumstances, the Commission finds that neither TAXPAYER-2 nor TAXPAYER-1 satisfied the criterion of Subsection 59-10-136(5)(b)(ii). Because neither TAXPAYER-2 nor TAXPAYER-1 has satisfied the criteria of Subsection 59-10-136(5)(b)(i) or Subsection 59-10-136(5)(b)(ii), both of them are considered to have a spouse when determining whether they are domiciled in Utah under Section 59-10-136 for the 2012 tax year.

Remaining Subsections of Section 59-10-136. Because TAXPAYER-2 admits that she was domiciled in Utah during the 2012 tax year and because TAXPAYER-1 is considered to be TAXPAYER-2's spouse for purposes of Section 59-10-136, it would appear, at first glance, that TAXPAYER-1 would also be considered to have domicile in Utah pursuant to Subsection 59-10-136(5)(a). However, Subsection 59-10-136(5)(a) only applies to TAXPAYER-1 if TAXPAYER-2 is considered to have domicile in Utah "in accordance with this section" (i.e., in accordance with one of the remaining subsections of Section 59-10-136). As a result, it is necessary to see if both TAXPAYER-1 and TAXPAYER-2 are considered to be domiciled in Utah for the 2012 tax year under the remaining subsections of Section 59-10-136.

TAXPAYER-1 and TAXPAYER-2 do not argue that either of them is *not* considered to be a Utah domiciliary for the 2012 tax year under Subsection 59-10-136(4).[14] In addition, the Division concedes that neither TAXPAYER-2 nor TAXPAYER-1 is considered to be domiciled in Utah for the 2012 tax year under Subsection 59-10-136(1).[15] As a result, the Commission must analyze whether TAXPAYER-1 and TAXPAYER-2 are considered to have domicile in Utah for the 2012 tax year under the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found in *any one* of these subsections, that individual is considered to be domiciled in Utah, even if the individual does not meet the criteria found in any of the other subsections.

Subsection 59-10-136(2)(a). This subsection provides that there is a rebuttable presumption that an individual is considered to be domiciled in Utah if the individual *or* the individual's spouse claims the Utah residential exemption from property taxation on either the individual's or individual's spouse's primary residence. For the 2012 tax year, the Utah home that TAXPAYER-1 and TAXPAYER-2 owned received the 45% residential exemption from property taxation. As a result, TAXPAYER-1 and TAXPAYER-2 are both presumed to be domiciled in Utah for 2012, unless they are able rebut the presumption.

At the hearing, TAXPAYER-1 and TAXPAYER-2 indicated that TAXPAYER-2, not TAXPAYER-1, paid the property taxes on the Utah home for the 2012 tax year. This, however, does not mean that the Subsection 59-10-136(2)(a) presumption only applies to TAXPAYER-2. Subsection 59-10-136(2)(a) provides that there is a rebuttable presumption that an *individual* is considered to be domiciled in Utah if *the individual or the individual's spouse* claims the exemption. As a result, regardless of whether TAXPAYER-2 alone or

14 Subsection 59-10-136(4) applies to an individual who is "absent from the state" for at least 761 consecutive days, if a number of requirements are satisfied. One of the requirements is that the individual and the individual's spouse not return to Utah for more than 30 days in a calendar year. Because TAXPAYER-2, who lives in Utah, was present in Utah for more than 30 days per year for any 761-day period, this requirement is not satisfied for either TAXPAYER-2 or TAXPAYER-1.

15 Neither TAXPAYER-2 nor TAXPAYER-1 is considered to be domiciled in Utah for 2012 under Subsection 59-10-136(1) because neither of them had a dependent enrolled in a Utah public kindergarten, elementary, or secondary school and because neither of them was enrolled in a Utah institution of higher

TAXPAYER-1 and TAXPAYER-2 together owned the Utah home and/or claimed the residential exemption for a primary residence for 2012, the rebuttable presumption of Subsection 59-10-136(2)(a) applies to both TAXPAYER-1 and TAXPAYER-2.[16] Accordingly, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the 2012 tax year under this subsection, unless they are able to rebut the presumption.

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.[17] 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.[18] As a result, it is left to the Commission to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption that has arisen for both of them.

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

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education.

16 This conclusion is supported by the previously-mentioned Subsection 59-10-136(5)(a), which provides that "[i]f 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."

17 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, claims a personal exemption for a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

18 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 with which it can be rebutted.

rebutted if an individual received the residential exemption for a vacant home that was listed for sale and which would qualify for the exemption upon being sold.[19] Neither of these circumstances exists in the instant case.

On the other hand, the Commission has found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an 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 found that an individual has not rebutted the presumption because he or she would not be considered to be domiciled in Utah under Rule 52, the property tax rule used to determine income tax domicile for tax years prior to 2012. It is arguable that using the "old" income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in 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.[20]

Similarly, the Commission has found that an individual cannot 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., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[21]

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19 *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 between those circumstances that are sufficient and those that are not sufficient to rebut a Subsection 59-10-136(2) presumption.

20 Again, the Commission is not precluded from considering certain facts that might be described in Rule 52 when determining whether a Subsection 59-10-136(2) presumption has been effectively rebutted. However, the Commission will not determine an individual's income tax domicile for 2012 and subsequent years solely from the factors found in Rule 52.

21 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 Subsection 59-10-136(1) or one of the presumptions of Subsection 59-10-136(2) does not apply.

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. However, the Commission does not believe that the circumstances of TAXPAYER-1 and TAXPAYER-2 are sufficient to rebut the Subsection 59-10-136(2)(a) presumption for the 2012 tax year. TAXPAYER-2 has lived in the Utah home since she and TAXPAYER-1 purchased it in 1985, and no evidence was proffered to suggest that the Utah home has not received the residential exemption for every tax year since the 1985 purchase. In addition, TAXPAYER-2 purposefully maintained her Utah domicile for income tax purposes even though TAXPAYER-1 took steps to change his domicile in 2010 (under the old income tax domicile law in effect prior to tax year 2012). Moreover, as married individuals who owned the Utah home in 2012, TAXPAYER-1 and TAXPAYER-2 both benefitted from the Utah home receiving the residential exemption and incurring lower property taxes, regardless of who may have paid the lower property taxes. The specific circumstances of this case do not warrant a finding that TAXPAYER-1 and TAXPAYER-2 have rebutted the Subsection 59-10-136(2)(a) presumption that is applicable to both of them. Accordingly, under Subsection 59-10-136(2)(a), TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the 2012 tax year.

Other Subsections of Section 59-10-136. Because TAXPAYER-1 and TAXPAYER-2 have both been found to be domiciled in Utah under Subsection 59-10-136(2)(a), they are 2012 Utah domiciliaries regardless of whether they are also considered to be domiciled in Utah under another subsection of Section 59-10-136. As a result, the Commission need not address the other subsections of Section 59-10-136 to resolve this appeal. Nevertheless, it may be helpful for the Commission to make some cursory observations about these other subsections.

Under Subsection 59-10-136(2)(b), an individual is presumed to be domiciled in Utah if the individual or the individual's spouse is registered to vote in Utah, unless the presumption is rebutted. Because TAXPAYER-2 was registered to vote in Utah during 2012, the Commission would consider both

TAXPAYER-1 and TAXPAYER-2 to be domiciled in Utah under Subsection 59-10-136(2)(b), unless they were able to rebut this presumption. Where TAXPAYER-2 voted in Utah on two occasions during 2012, has a history of voting in Utah most years, and did not register to vote in another state during 2012, the Commission would not find that TAXPAYER-2 and TAXPAYER-1 have rebutted this presumption that has arisen for both of them.

Utah Subsection 59-10-136(2)(c), an individual is presumed to be domiciled in Utah if the individual or the individual's spouse asserts Utah residency on a Utah return. Because TAXPAYER-2 asserted Utah residency on the 2012 Utah return that she separately filed, the Commission would consider both TAXPAYER-1 and TAXPAYER-2 to be domiciled in Utah under Subsection 59-10-136(2)(c), unless they were able to rebut this presumption. TAXPAYER-2 has lived in Utah and has filed a Utah resident return for many years both before and after the 2012 tax year at issue. For these reasons and because there is no evidence to suggest that TAXPAYER-2 erroneously filed a 2012 Utah resident return, the Commission would not find that TAXPAYER-2 and TAXPAYER-1 have rebutted this presumption that has arisen for both of them.

Finally, it appears that both TAXPAYER-1 and TAXPAYER-2 may also be considered to be domiciled in Utah for the 2012 tax year under Subsection 59-10-136(3)(b) because many of the factors found in this subsection are satisfied by one or both of them. Because the Commission has already determined that both TAXPAYER-1 and TAXPAYER-2 are Utah domiciliaries for 2012 under at least one other subsection of Section 59-10-136, the Commission will not discuss Subsection 59-10-136(3)(b) and the individual factors found in it any further.

Domicile – Summary. Based on the foregoing, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah during the 2012 tax year. As a result, TAXPAYER-1 and TAXPAYER-2 are both considered to be Utah resident individuals for the 2012 tax year. Accordingly, all income that TAXPAYER-1 and TAXPAYER-2 earned in 2012 is subject to Utah taxation, regardless of where each of

them lived. For these reasons, the Commission should sustain the additional taxes that the Division has imposed on TAXPAYER-1 for the 2012 tax year.

III. Other Arguments.

Tax Commission Advice/Instructions. TAXPAYER-1 and/or TAXPAYER-2 also indicated that the Division's assessment should be reversed: 1) because TAXPAYER-1 completed his and TAXPAYER-2's separate 2012 Utah returns in accordance with the special instructions for married couples found in Publication 49 and based on advice he received at a meeting with a Tax Commission employee in January 2011; and 2) because TAXPAYER believes that the instructions for the 2012 TC-40 did not alert a taxpayer of the changes in Utah domicile law that became effective for the 2012 tax year.

These arguments to abate the additional 2012 taxes that the Division has properly assessed are not persuasive. First, TAXPAYER-1 visited the Tax Commission in January 2011 to inquire about how to prepare his and TAXPAYER-2's Utah tax returns now that he was living in COUNTRY and TAXPAYER-2 was still living in Utah. This meeting occurred several months before 2010 returns were due and more than two years prior to the April 15, 2013 due date of a 2012 Utah return. The advice that TAXPAYER-1 appears to have received in January 2011 was correct for the 2010 and 2011 tax years (i.e., if he and TAXPAYER-2 were domiciled in different states and/or countries for these years, they could file separate Utah returns under Publication 49). Furthermore, there is no evidence to suggest that at the January 2011 meeting, TAXPAYER-1 and the Tax Commission employee even discussed the 2012 tax year or the new domicile law (Section 59-10-136) that became effective for the 2012 tax year. It is unlikely that Section 59-10-136 would have been discussed at a January 2011 meeting since that new law had not yet been enacted.[22] As a result, no evidence

22 Section 59-10-136 was enacted in Senate Bill 21 (2011), which was signed by the governor on March 30, 2011 (more than two months after TAXPAYER-1's January 2011 meeting).

was proffered to show that TAXPAYER-1 received erroneous or incorrect advice concerning the 2012 tax year at the January 2011 meeting.[23]

Second, TAXPAYER-1's impression that the instructions for the 2012 TC-40 did not discuss any "major changes" to Utah's domicile law for the 2012 tax year is incorrect. Page 2 of the 2012 instructions contains a "What's New" section, which provides as follows:

> **Domicile Definition Changed**. Utah law defining domicile has changed. Consequently, Pub 49, *Special Instructions for Married Couples where one is a full-year resident and the other is a full-year nonresident no longer applies.* See page 3. (Emphasis in original).

In addition, pages 3 and 4 of the 2012 instructions contain the new Section 59-10-136 definition of domicile, and page 4 of the 2012 instructions specifically provides that:

> If an individual is considered to have domicile in Utah, the spouse is also considered to have domicile in Utah. This rule does not apply if the couple are legally separated or divorced, or they file their federal returns as married filing separately.

Accordingly, the instructions for the 2012 TC-40 cautioned taxpayers that Publication 49 no longer applied for the 2012 tax year and that an individual whose spouse was domiciled in Utah would also be considered to be

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23 Even if the evidence showed that the Tax Commission employee had given TAXPAYER-1 erroneous or incorrect advice concerning the 2012 tax year at this meeting, it would not warrant an abatement of the 2012 *taxes* under the doctrine of equitable estoppel, especially where that advice was not given in writing. The Utah Supreme Court has found that a state agency cannot be held responsible for representations of its employees except in rare circumstances. *See Holland v. Career Serv. Review Bd.*, 856 P.2d 678 (Utah Ct. App. 1993), in which the Utah Court of Appeals found that "it is well settled that equitable estoppel is only assertible against the State or its institutions in unusual situations in which it is plainly apparent that failing to apply the rule would result in manifest injustice." In *Holland*, the Court explained that in such cases, "the critical inquiry is whether it appears that the facts may be found with such certainty, and the injustice to be suffered is of sufficient gravity, to invoke the exception." *See also Anderson v. Public Service Comm'n*, 839 P.2d 822 (Utah 1992), in which the Utah Supreme Court stated that "[t]he few cases in which Utah courts have permitted estoppel against the government have involved very specific written representations by authorized government entities." *See also Eldredge v. Utah State Retirement Bd.*, 795 P.2d 671 (Utah Ct. App. 1990); and *Orton v. State Tax Comm'n*, 864 P.2d 904 (Utah Ct. App. 1993).

The Commission has also addressed the principle of equitable estoppel in a number of prior cases. *See, e.g., USTC Appeal No. 11-2658* (Initial Hearing Order, Apr. 14, 2013); and *USTC Appeal No. 15-585* (Initial Hearing Order May 6, 2016). None of these prior cases would support an abatement of the taxes at issue in the instant appeal. These and other selected Commission decisions can be reviewed in a redacted format on the Commission's website at http://tax.utah.gov/commission-office/decisions.

domiciled in Utah, unless they were legally separated or divorced or filed their federal returns as married filing separately. For these reasons, TAXPAYER-1 has not shown that the Tax Commission's actions warrant an abatement of the 2012 taxes that the Division properly imposed.

Tax Policy. TAXPAYER-1 and/or TAXPAYER-2 also contend that the Tax Commission should not uphold an assessment that is based on TAXPAYER-1 being considered a 2012 Utah domiciliary under the new domicile law where he was not considered a Utah domiciliary under the old domicile law, where his circumstances did not change between 2011 and 2012, and where he is considered a 2012 Utah domiciliary primarily or solely because of TAXPAYER-2's circumstances. In effect, TAXPAYER-1 and/or TAXPAYER-2 is asking the Commission to find that the new domicile law (Section 59-10-136) does not always result in good tax policy and should not be upheld under the specific circumstances of this case. The Commission's role, however, is to implement the law. The Commission is not authorized to change the law to effectuate what TAXPAYER-1 and/or TAXPAYER-2 may consider a better tax policy for their specific circumstances. That is the role of the Utah Legislature. Accordingly, TAXPAYER-1 has not shown that the 2012 taxes the Division properly imposed should be abated.

IV. Waiver of Penalties and Interest.

For this case, the applicable law to determine whether the penalties and interest assessed to TAXPAYER-1 may be waived is found in Subsection 59-1-401(14) and Rule 42.[24] 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.

24 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 TAXPAYER may be waived.

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.[25] TAXPAYER-1 and TAXPAYER-2 assert that they failed to pay the 2012 taxes imposed by the Division because of Tax Commission error or erroneous advice. For reasons already addressed, however, neither TAXPAYER-1 nor TAXPAYER-2 has shown that the Tax Commission gave TAXPAYER-1 erroneous advice at the January 2011 meeting or that the instructions for the 2012 TC-40 were erroneous or inadequate. As a result, reasonable cause does not exist to waive any of the interest that the Division has imposed.

Pursuant to Subsection 59-1-401(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 the penalties it imposed. Accordingly, reasonable cause exists to waive all penalties that the Division imposed for the 2012 tax year.

V. Conclusion.

TAXPAYER-1 has not met his burden of proof to show that he does not owe the additional taxes and interest that the Division imposed in its assessment for the 2012 tax year. However, reasonable cause exists to waive all penalties. Accordingly, the Commission should sustain the Division's 2012 assessment, with the exception of waiving all penalties.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2012 assessment of additional taxes and interest, but waives all penalties that were imposed. It is so ordered.

25 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.

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 _____, 2018.

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.