

16-1376
TAX TYPE: INCOME TAX
TAX YEAR: 2013
DATE SIGNED: 5/1/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: R. ROCKWELL

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2,

Petitioner,

v.

AUDITING DIVISION OF THE
UTAH STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 16-1376

Account No. #####

Tax Type: Income Tax

Tax Year: 2013

Judge: Marshall

Presiding:

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, *Pro Se*

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on March 8, 2017 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Taxpayers”) are appealing an audit by the Respondent (“Division”) of their individual income tax return for the 2013 tax year. The Division assessed audit tax in the amount of \$\$\$\$ and interest in the amount of \$\$\$\$ through September 17, 2016.¹ Penalties were not assessed as part of the audit.

APPLICABLE LAW

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

The term “state taxable income” is defined in Utah Code Ann. §59-10-103(1)(w), below in pertinent part:

¹ Interest continues to accrue on any unpaid balance.

- (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115...

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(q), as follows:

- (i) “resident individual” means:
 - (A) An individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
 - (B) An individual who is not domiciled in this state but:
 - (I) Maintains a place of abode in this state; and
 - (II) Spends in the aggregate 183 or more days of the taxable year in this state.

The factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136, as set forth below:

- (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.

Under Utah Code Ann. §59-1-1417(1), the burden of proof is generally upon the petitioner in proceedings before the commission, as follows:

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

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

DISCUSSION

The Division issued a Notice of Deficiency and Audit Change on August 18, 2016. The audit changed the Taxpayer's return type to full-year resident from a non/part-year resident, increased federal adjusted gross income from \$\$\$\$\$ to \$\$\$\$\$, and gave a credit of \$\$\$\$\$ for taxes paid to another state. It is the Taxpayers' position that they were part-year residents of the State of Utah during the 2013 tax year. It is the Division's position that the Taxpayers were domiciled in Utah, and therefore considered residents for tax purposes.

TAXPAYER-1 was a resident of the State of Utah prior to the 2013 tax year. TAXPAYER-1 family moved to Utah when she was in high school. She held a Utah Driver License in 2013, and has not held a driver license from another state. TAXPAYER-1 was registered to vote in Utah in 2013. She acknowledged that voter registration records showing that she registered to vote in 2002 were accurate. TAXPAYER-1 stated that she could not remember having registered to vote in any other state. She stated she did not take any steps to cancel her voter registration, and noted she did not know that was something she needed to do when moving out of state.

In January 2013, TAXPAYER-1 moved from Utah, where she had been renting a home in CITY-1 from her mother, to STATE-1. She moved most of her personal property from Utah to STATE-1, though she was allowed to store a few boxes that contained craft supplies in the basement of the home she rented from her mother. TAXPAYER-1 stayed with her sister to help with her sister's newborn son, and briefly with her father, who lived near her sister. In April 2013, TAXPAYER-1 was transferred to CITY-2, STATE-2 after receiving a job promotion. TAXPAYER-1 signed a one-year lease on an apartment in CITY-2.

During this time period, TAXPAYER-1 met her husband, and they were married on June 15, 2013. TAXPAYER-2 resided in STATE-2 during 2013, until the Taxpayers moved to Utah on October 24, 2013, when TAXPAYER-1 was once again transferred by her employer.

TAXPAYER-1 stated that she learned in August 2013 about the possibility of being transferred back to Utah, and that it was confirmed in September. She explained that she did not have time to legally change her name or get a new driver license between the time of the wedding and learning of the transfer back to Utah.

TAXPAYER-1 has been employed by COMPANY-1 since 2008. Her position allowed her to work from home, but once she was promoted to MANAGER in April 2013, she had to travel to members' homes. TAXPAYER-2 worked for BUSINESS-1 in STATE-2, prior to the parties' marriage in June 2013. TAXPAYER-2 worked for BUSINESS-2 in STATE-2 from April 2013 to October 2013. TAXPAYER-2 also worked through a temporary employment agency in STATE-2, BUSINESS-3, while the parties were married.

TAXPAYER-1 owned a MAKE AND MODEL OF CAR-1 prior to moving out of the State of Utah in January 2013. She registered the CAR-1 in STATE-2 during 2013. The Taxpayers purchased a MAKE AND MODEL OF CAR-2 in STATE-1 in March of 2013 and registered the vehicle in STATE-2. The Taxpayers brought the CAR-1 and the CAR-2 with them when they moved to Utah in October 2013.

The Taxpayers filed their 2013 tax year return using the CITY-1 address. The Taxpayers filed returns for the states of STATE-1 and Utah, but did not file a return in STATE-2, as it does not have a state income tax.

The Division's representative argued that the Taxpayers have not met their burden of proof in this matter. She stated that there is a rebuttable presumption that an individual is domiciled in Utah if they are registered to vote. The Division's representative stated the Commission held in Appeal No. 15-720² that "not voting" is not sufficient to rebut the presumption, and she argued that there must be steps taken to cancel the voter registration or to register in another state.

The Division's representative noted the Division's audit included all of TAXPAYER-2 income in its audit. She noted that if the Commission determines the Taxpayers were domiciled in Utah, that only the income earned by TAXPAYER-2 after the date the parties married should be included in the audit. The Division's representative noted this would exclude all of the income earned at BUSINESS-1, as well as approximately two months of income earned at BUSINESS-2.

The Legislature enacted new domicile legislation that became effective in 2012. Utah Code Ann. §59-10-136 contains four subsections that address when an individual is considered to have domicile in Utah. Subsection (4) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have domicile in the State of Utah if certain qualifications are met. The

² Prior Commission decisions are available online at tax.utah.gov/commission-office/decisions.

Taxpayers do not meet the requirements of Subsection (4) because they were in the State of Utah for more than 30 days in the 2013 calendar year.

It is the Division's position that TAXPAYER-1 was domiciled in the State of Utah for the 2013 tax year, and that TAXPAYER-2 was domiciled in the State of Utah once the parties married. The Division primarily relies upon TAXPAYER-1 being registered to vote in the State of Utah as support for its position. Utah Code Ann. §59-10-136(2) provides:

There is a rebuttable presumption that an individual is considered to have domicile in this state if:

(b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration...

TAXPAYER-1 acknowledges she was registered to vote in the State of Utah. She could not recall having registered to vote in another state. There are no statutes or rules that provide guidance on how the presumption in Utah Code Ann. §59-10-136(2)(b) can be rebutted. The Commission found in Appeal No. 05-720 that not voting in Utah despite being registered to do so is not sufficient to rebut the presumption. The Commission reasoned that had the Legislature intended actual voting in Utah to be the event that triggered domicile in Utah, it easily could have stated so in the statute. Thus, under Utah Code Ann. §59-10-136(2)(b), TAXPAYER-1 was domiciled in Utah for the 2013 tax year. Further, TAXPAYER-2 is considered to be domiciled in Utah for that portion of the 2013 tax year he was married to TAXPAYER-1. Utah Code Ann. §59-10-136(5)(a) provides that if an individual is considered to have domicile within this section, the individual's spouse is considered to have domicile in this state. Subsection (5)(b) provides that an individual is not considered to have a spouse if the individual is legally separated or divorced from the spouse, or the individual and individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. The Division's Exhibit 8 shows that the Taxpayers submitted a federal return with a married filing joint filing status for the 2013 tax year. There was no evidence or testimony presented at the hearing that would suggest the Taxpayers were legally separated or divorced. Thus, because TAXPAYER-1 was domiciled in Utah for the 2013 tax year, TAXPAYER-2 was domiciled in Utah for that portion of the year he was married to TAXPAYER-1.

The Taxpayers are considered to be "resident individuals" under Utah Code Ann. §59-10-103(1)(q), as they were domiciled in Utah. TAXPAYER-2 is only considered to be domiciled in Utah from the date of his marriage to TAXPAYER-1, as Subsection (1)(q)(i)(A) of Utah Code Ann. §59-10-103 provides that a resident individual is one who is domiciled in this state, "but only for the duration of the period during which the individual is domiciled in this state..." Thus,

the income earned by TAXPAYER-2 at BUSINESS-1 and the income learned by TAXPAYER-2 from BUSINESS-2 through June 14, 2013 should not be included in the audit assessment.

In accordance with Utah Code Ann. §59-10-104(1), tax is imposed on the state taxable income of a resident individual. State taxable income is defined to mean the individual's adjusted gross income after making certain additions and subtractions required by statute. Utah Code Ann. §59-10-103(1)(a) defines "adjusted gross income" as defined in Section 62 of the Internal Revenue Code. Section 62 of the internal revenue code defines "adjusted gross income" to mean "gross income" less certain deductions. "Gross income" is defined in Section 61 of the Internal Revenue Code to mean "all income from whatever source derived." The Division's audit determined The Taxpayers had adjusted gross income in the amount of \$\$\$\$ for the 2013 tax year. However, the Division's audit includes all of TAXPAYER-2 income, and should only include that portion of income earned after the Taxpayers were married. The Division should adjust its audit accordingly.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that TAXPAYER-1 was domiciled in Utah for the 2013 tax year, and that TAXPAYER-2 was domiciled in Utah once the Taxpayers married. The Division should adjust its audit accordingly, to exclude that portion of TAXPAYER-2 income earned prior to his becoming a domiciliary of Utah. 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 _____, 2017.

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.