

16-1870
TAX TYPE: INCOME TAX
TAX YEAR: 2011, 2012, 2013 & 2014
DATE SIGNED: 01/17/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 16-1870</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Years: 2011, 2012, 2013 and 2014</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE FOR TAXPAYER, Representative
For Respondent: RESPONDENT-1, Manager, Income Tax Auditing
RESPONDENT-2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 28, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioner (“Taxpayer”) is appealing audit deficiencies for tax years 2011 through 2014. The Notices of Deficiency and Estimated Income Tax for each year had been issued by Respondent (“Division”) on November 21, 2016. Ten percent late filing and ten percent late payment penalties were assessed with the audits. The audit tax, penalties and interest calculated to the notice date for each year is as follows:

Year	Tax	Interest	Penalties	Audit Total Due ¹
2011	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2012	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2013	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2014	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ This is the total balance as of the date the Audit Notices were issued. Interest continues to accrue on the unpaid balance.

APPLICABLE LAW

For all four tax years at issue, Utah Code §59-10-104(1) provides that “a tax is imposed on the state taxable income of a resident individual.”

For all four tax years at issue and for purposes of Utah income taxation, a “resident individual” is defined in Utah Code §59-10-103(1)(q), as follows in pertinent part:

- (i) “Resident individual” means:
 - (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
 - (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.

Domicile Law for the 2011 Tax Year.

For 2011 only, Utah Admin. Rule R865-9I-2 provides guidance concerning the determination of “domicile,” as follows in pertinent part:²

- A. Domicile.
 - 1. 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.
 - 2. 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.
 - a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.
 - b) Domicile applies equally to a permanent home within and without the United States.
 - 3. A domicile, once established, is not lost until there is a concurrence of the following three elements:
 - a) a specific intent to abandon the former domicile;
 - b) the actual physical presence in a new domicile; and
 - c) the intent to remain in the new domicile permanently.
 - 4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the

² Effective beginning with tax year 2012, Utah law concerning “domicile” was substantively amended. The Rule 2 definition of “domicile” in effect for 2011 was repealed beginning with tax year 2012 and new criteria concerning “domicile” were enacted in UCA §59-10-136.

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.

....

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:³

....

- (5) Factors or objective evidence determinative of domicile include:
 - (a) whether or not the individual voted in the place he claims to be domiciled;
 - (b) the length of any continuous residency in the location claimed as domicile;
 - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
 - (d) the presence of family members in a given location;
 - (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
 - (f) the physical location of the individual's place of business or sources of income;
 - (g) the use of local bank facilities or foreign bank institutions;
 - (h) the location of registration of vehicles, boats, and RVs;
 - (i) membership in clubs, churches, and other social organizations;
 - (j) the addresses used by the individual on such things as:
 - (i) telephone listings;
 - (ii) mail;
 - (iii) state and federal tax returns;
 - (iv) listings in official government publications or other correspondence;
 - (v) driver's license;
 - (vi) voter registration; and
 - (vii) tax rolls;
 - (k) location of public schools attended by the individual or the individual's dependents;
 - (l) the nature and payment of taxes in other states;
 - (m) declarations of the individual:
 - (i) communicated to third parties;
 - (ii) contained in deeds;
 - (iii) contained in insurance policies;
 - (iv) contained in wills;
 - (v) contained in letters;
 - (vi) contained in registers;

³ Rule 52 is referenced in the version of Rule 2 that was in effect for 2011. As a result, Rule 52 is applicable when determining the Taxpayer's 2011 domicile, but not 2012, 2013 and 2014 domicile.

- (vii) contained in mortgages; and
- (viii) contained in leases.
- (n) the exercise of civil or political rights in a given location;
- (o) any failure to obtain permits and licenses normally required of a resident;
- (p) the purchase of a burial plot in a particular location;
- (q) the acquisition of a new residence in a different location.

....

Domicile Law for the 2012 through 2014 Tax Years.

For the 2012 through 2014 tax years, Utah Code §59-10-136 provides how domicile is to be determined 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.

Utah Code Ann. §59-1-1417 provides, “[i]n 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.
- (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:
 - . . .
 - (v) other factors the commission deems appropriate.

DISCUSSION

The Taxpayer had purchased a residence in Utah in 1985, which was located at ADDRESS-1. He had obtained a Utah Driver License. However, he had never registered to vote in Utah. The Taxpayer had dual citizenship, being a citizen of both the United States and COUNTRY-1. He worked as an OCCUPATION for the INSTITUTION for many years and retired in October 2010. After retirement, he sold his Utah residence in November 2010 and moved to the COUNTRY-2. Having COUNTRY-1 citizenship, he had the right to reside permanently in COUNTRY-2 and the Taxpayer represents that he has resided in COUNTRY-2 ever since his retirement. He has not been employed since his retirement. Since his retirement, he has filed U.S. federal returns because his income, which is solely retirement and investment based, is from the U.S. The Taxpayer is single and has a daughter who was an adult at the time of his retirement. His daughter, who was born in YEAR, remained living in the CITY area. He did not claim his daughter as a dependent on his federal tax returns for the years at issue and she was not attending a college or university in Utah.

The Taxpayer did, however, purchase a house jointly with his daughter in Utah, because she was a young adult at the time and not able to obtain a mortgage on her own. This residence is located at ADDRESS-2, Utah. His daughter has resided at this residence for all of the audit period. The Taxpayer has had mail directed to this Utah address and used this address on federal tax filings. The reason given for this was that the mail in COUNTRY-2 was unreliable. The amount for which the Taxpayer had sold his original residence on ADDRESS-1 and what was paid for the residence he purchased with his daughter on ADDRESS-2 were not provided. The Division had provided County tax information on the ADDRESS-2 property and that information indicated the County considered the property to have a market value of \$\$\$\$\$ in 2013. In comparison, the Taxpayer's original residence on ADDRESS-1, based on the CITY County Assessor's website, which is a public database, had a market value of \$\$\$\$\$ in 2013.

The Taxpayer stated that he returned to Utah two to three weeks every year to visit his family and friends. He left his VEHICLE-1 in Utah for his use when he visited and his daughter's use. He did state that he shipped his VEHICLE-2 to COUNTRY-2 and that is what he drives there. The VEHICLE-1 was registered in Utah every year during the audit period at his daughter's address. The Taxpayer kept his Utah Driver License and renewed it in 2014, so that he would have a license to use when in the U.S. He used a Utah tax preparation firm to prepare his U.S. federal taxes.

The residence that he owned jointly with his daughter was her primary residence. The residence received the property tax primary residence exemption for all the years at issue. In 2017, the Taxpayer quitclaimed this residence over to his daughter, so he no longer has an ownership interest in it. Although the Taxpayer had used his daughter's Utah address on his federal tax return, he did not claim Utah as his tax home for federal tax purposes. The Taxpayer's representative points out that the Taxpayer had no earned income, and therefore no reason to designate a tax home for federal income tax purposes.

At the hearing, the representative for the Division argued that the Taxpayer had not abandoned his Utah domicile under the old law and rule, which applied to tax year 2011. He would also be domiciled in Utah under the new law, which became effective for 2012 and subsequent years because the Utah residence that he owned jointly with his daughter was receiving the property tax exemption for a primary residence. The representative for the Taxpayer argued that the Taxpayer has been absent from Utah for more than 761 days and, therefore, fits under that exception.

The issue in this appeal is whether the Taxpayer was a "resident individual" in the state of Utah for the purposes of Utah Code Sec. 59-10-104 for the years 2011 through 2014. Under Utah Code Sec. 59-10-103, a resident individual is one who is "domiciled" in Utah, or in the alternative, one who maintains a place of abode in this state and spends in the aggregate 183 days or more per year in this state. The Division argues that the Taxpayer was domiciled in Utah during all of the audit years. There were substantial revisions to the law defining domicile that became effective for the 2012 tax year. Therefore, in resolving this question, the Commission must look at 2011 separately from 2012 through 2014, and apply the law in effect for each period.

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.⁴ As discussed by the courts,

⁴ The issue of domicile based on the law in effect up through 2011 for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals in the following cases: *Benjamin v. Utah State Tax Comm'n*, 250 P.3d 39, 2011 UT 14 (Utah 2011); *Lassche v. State Tax Comm'n*, 866

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).

The Taxpayer acknowledges being a resident of Utah for a number of years up to November of 2010. Based on the law in effect in 2011, once domicile had been established in Utah three things needed to be shown to establish a new domicile: 1) a specific intent to abandon the Utah 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.

The Taxpayer did not attend the hearing, but from his written answers to the questions sent by the Division and the proffer of his representative, the Taxpayer did have the actual physical presence in COUNTRY-2 after November 2010. The question was whether he had the specific intent to abandon the Utah domicile and whether he had the intent to remain in the new domicile permanently. After retiring, the Taxpayer did sell his Utah residence and move to COUNTRY-2. Although he had purchased a second Utah residence with his daughter, the value differences between these two properties and the fact that he later deeded his interest to his daughter, supports his assertion that this second home was really intended to be his daughter’s property. Because he had dual citizenship, he could stay permanently in the COUNTRY-2 territory. He took his motorcycle to COUNTRY-2, which he drove there. He did, however, retain his Utah Driver License and registered a vehicle in this state for his daughter’s use, or when he visited Utah, and had a Utah mailing address. Very little information was provided as to his accommodations where he resided on COUNTRY-2, except that he rented there. There was no explanation as to why he did not purchase a residence if he intended his move to COUNTRY-2 to be permanent. Sufficient evidence was not shown to meet the requirements of Utah Admin. Rule R865-9I-2 regarding the specific intent to abandon the Utah domicile and the intent to remain permanently in COUNTRY-2.

For tax years 2012 through 2014, what determines domicile is set out at Utah Code Sec. 59-10-136. Utah Code Subsection 59-10-136(4) provides the exception argued by the Taxpayer’s representative for someone who is absent from Utah for more than 761 days. Utah Code §59-10-

P.2d 618 (Utah Ct. App. 1993); *Clements v. State Tax Comm’n*, 839 P.2d 1078 (Utah Ct. App. 1995); *O’Rourke v. State Tax Comm’n*, 830 P.2d 230 (Utah 1992); and *Orton v. State Tax Comm’n*, 864 P.2d 904 (Utah Ct. App. 1993).

136(4) provides an individual is not considered to have domicile in this state if the individual is absent from the state for 761 consecutive days and the following criteria are met:

(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.

From the information presented at the hearing, the Taxpayer had been absent from Utah more than 761 days and had returned less than 30 days per year for visits. There is no question that he could meet the requirements to not be domiciled under Subsections 59-10-136(4)(a)(ii)(A), (B), (C) and (E).⁵ Regarding Subsection (D), receiving the primary residence exemption, the Utah residence the Taxpayer jointly owned with his daughter did receive this property tax exemption, although this was her primary residence. However, this residence was not the Taxpayer's primary residence and the Taxpayer did not have a spouse.

Based on the provisions of Utah Code Subsection 59-10-136(4) the Taxpayer met the requirements of the 761 day provisions and qualified for the exception to domicile. Therefore, for tax years 2012 through 2014, he was not domiciled in Utah and the audit should be abated for those years. Because the audits are to be abated for those years, there will be no tax, penalties or interest.

For tax year 2011, the tax and interest deficiency should be upheld. Penalties had been assessed with the audit for that year in the amount of \$\$\$\$ under Utah Code Sec. 59-1-401. Under Subsection 59-1-401(14), the Commission may waive penalties upon a showing of

⁵ For purposes of Subsection 59-10-136(4)(a)(ii)(E), using a Utah address as the mailing address on the federal return is not the same as claiming Utah as the individual's tax home for federal individual income tax purposes. A "tax home" for federal tax purposes is necessary for determining whether the taxpayer can deduct certain expenses. Utah Code Sec. 59-10-136 does clearly distinguish between a "tax home" and a mailing address, as under Utah Code Subsection 59-10-136(3)(b)(ix) a factor that might support domicile is "whether the individual or the individual's spouse lists an address in this state on a state or federal tax return."

reasonable cause. The Tax Commission often waives penalties in domicile appeals due to the complicated nature of the law and difficulty in determining whether or not the Utah domicile had been abandoned. The Taxpayer did move from Utah, but had kept a number of ties in Utah in 2011. The complicated nature of the facts and law in this case establish reasonable cause for waiver of the penalties. Although the tax and interest for 2011 should be upheld, the penalties should be waived.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayer was domiciled in Utah during 2011 and sustains the tax and interest for that year. The penalties assessed for 2011 are hereby waived for reasonable cause shown. The Taxpayer was not domiciled in Utah for tax years 2012 through 2014 and the audits for those years should be abated. 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
CITY City, Utah 84134

or emailed to:
taxappeals@utah.gov

Appeal No. 16-1870

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 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.