

17-468
TAX TYPE: INCOME TAX
TAX YEAR: 2013, 2014 & 2015
DATE SIGNED: 01/17/2018
COMMISSIONERS: J VALENTINE, M CRAGUN, R PERO, R ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS,

Petitioners,

v.

AUDITING DIVISION OF THE UTAH
STATE TAX COMMISSION,

Respondent.

INITIAL HEARING ORDER

Appeal No. 17-468

Account No. #####

Tax Type: Income Tax

Tax Years: 2013, 2014 and 2015

Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
TAXPAYER-2, Taxpayer

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on October 17, 2017 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners (“Taxpayers”) filed an appeal under Utah Code §59-1-501 of Utah individual income tax audit deficiencies for tax years 2013, 2014 and 2015. Respondent (“Division”) had issued the Notices of Deficiency and Audit Change on March 16, 2017, on the basis that both Taxpayers were Utah resident individuals. The Taxpayers had filed joint federal returns and had filed part-year resident Utah returns on which they had claimed TAXPAYER-1’s income, but not TAXPAYER-2’s income. The Taxpayers timely appealed the audit deficiencies and argue that TAXPAYER-2 was not a resident of Utah. The amounts due as of the date of the Notices of Deficiency are as follows:

	<u>Tax</u>	<u>Interest¹</u>	<u>Penalties</u>	<u>Total as of Notice Date</u>
2013	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$
2014	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$
2015	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$

¹ Interest continues to accrue on the unpaid balance until paid in full.

APPLICABLE LAW

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

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

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

(q)(i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(B) an individual who is not domiciled in this state but: (I) maintains a place of abode in this state; and (II) spends in the aggregate 183 or more days of the taxable year in this state.

Beginning with the 2012 tax year, a new law was adopted regarding the factors to be considered for determining when someone is domiciled in Utah. This provision is at Utah Code §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.

Utah Code Sec. 59-1-1417(1) provides as follows:

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

DISCUSSION

The Division based its audit on the assertion that both Taxpayers were domiciled in Utah for all of 2013, 2014 and 2015, and, therefore are “resident individuals” for the purposes of Utah Code Sec. 59-10-104. Under Utah Code Sec. 59-10-103, a “resident individual” is one who is “domiciled” in Utah, or in the alternative if not “domiciled” in Utah, is one who maintains a place

of abode in this state and spends in the aggregate 183 days or more per year in Utah. It is the Division's position that both Taxpayers were domiciled in Utah for the entire audit period.

The facts were not in dispute and, in fact, the law in this matter is clear and supports the Division's position. The Taxpayers' argument is primarily that the law regarding domicile for Utah individual income tax purposes is unfair as applied in their situation and also inconsistent with Utah residency requirements for other purposes like obtaining a hunting and fishing license or in-state resident tuition at a public University.

TAXPAYER-1 had been a resident of Utah for most of her life. She was registered to vote in Utah, had filed Utah resident individual income tax returns, had a Utah Driver License and her vehicles were registered in Utah. In 2013, TAXPAYER-1 was employed in Utah and living with her parents temporarily. The Taxpayers had married sometime prior to the audit period but were living in separate locations due to work. TAXPAYER-2 was a resident of STATE and had been living continuously in STATE-1 since 1980. He had been working in STATE-1 for the DEPARTMENT and then as an OCCUPATION. He had no intent of ever moving to Utah. He owned a residence in STATE-1, was registered to vote in STATE-1, had a STATE-1 Driver License and registered his vehicles in that state. After learning that his father had cancer in 2013, TAXPAYER-2 retired from the OCCUPATION to move in with his father and take care of him until his father's death in 2014. TAXPAYER-2's father also lived in STATE. In 2014, the Taxpayers together purchased a residence in Utah, which was TAXPAYER-1's primary residence and that residence received the primary residential exemption. After his father's death, TAXPAYER-2 inherited three residential properties in STATE, all of which were in poor condition and he spent considerable time fixing them up to get to the condition to use as rental properties. The Taxpayers did not have any school age children during this time. After the audit period at issue, the Taxpayers moved together to STATE-2.

The Division pointed out that TAXPAYER-1 was clearly a Utah resident for all of the audit period. TAXPAYER-1 was domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) because she had been registered to vote in Utah for all of the audit period. Utah Code Subsection 59-10-136(2)(b) provides that it is a rebuttable presumption that an individual is considered to have domicile in Utah if "the individual or the individual's spouse is registered to vote in this state . . ." TAXPAYER-1 did not present any evidence to rebut this presumption as she acknowledged being a lifelong Utah resident and registered to vote in Utah. As TAXPAYER-1 was registered to vote in Utah and did not present factors rebutting this presumption, TAXPAYER-2 would be domiciled under this subsection based on Utah law. In 2014, the Taxpayers had jointly purchased a Utah residence and that residence received the primary

residential exemption. This gives rise to a second rebuttable presumption under Utah Code Subsection 59-10-136(2)(a), which is if “the individual or the individual’s spouse” claims a property tax exemption for a primary residence. This property received the property tax exemption and the Taxpayers did not provide information that rebuts this presumption. Therefore, both TAXPAYER-2. and TAXPAYER-1 are considered domiciled in Utah based on Utah law. The Division also notes that under Utah Code Subsection 59-10-136(5), if married Taxpayers file joint federal returns and are not legally separated or divorced, if one Taxpayer is domiciled in Utah under Utah Code Sec. 59-10-136, the other is domiciled in Utah for purposes of Utah Individual Income Tax law.

The Taxpayers argue that the law regarding domicile for tax purposes is unfair because it requires TAXPAYER-2 to pay income taxes to Utah on income he earned in STATE, but Utah law does not provide him any of the benefits of being a Utah resident. They assert that TAXPAYER-2, who enjoys hunting and fishing, could not obtain a Utah resident hunting and fishing license and would have to pay the much higher nonresident rate to hunt or fish in this state.² Also, if TAXPAYER-2 had wanted to attend a Utah public University he would not have qualified for the discounted Utah resident tuition. The Taxpayers did not cite to the applicable statutory provisions regarding Utah residency for these other purposes, but the Division did not dispute this claim and the Taxpayers may very well be correct with this assertion. However, the Tax Commission must apply the law as written specifically for Utah individual income tax purposes when determining if TAXPAYER-2 was subject to Utah individual income tax.

Upon reviewing the facts in this matter, the Division’s interpretation of Utah Code Sec. 59-10-136 is consistent with a plain reading of these provisions.³ The Tax Commission has previously heard a number of appeals of the domicile provisions where one spouse resided in another state and had as few ties to Utah as TAXPAYER-2 has had in this appeal and found that

² In *Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1614* (Nov. 1, 2016), the Taxpayer had argued that under federal law he was a resident of a state other than Utah, although domiciled in Utah and, therefore, a Utah resident under Utah Code Sec. 59-10-136. In that case, the Division cited to *Nebeker v. Utah State Tax Commission*, 2001 UT 74 (Utah 2001) for the position that the Utah State Tax Commission did not have authority to find a statute unconstitutional. In *Appeal No. 15-1614* the Tax Commission applied the Utah law as written at Utah Code Sec. 59-10-136. Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

³ Regarding statutory language, the Utah Supreme Court has stated, “When interpreting statutory language, our primary objective is to ascertain the intent of the legislature. To discern legislative intent, we first look to the plain language of the statute. We presume that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning.” (Internal Citations Omitted) *Ivory Homes v. Tax Commission*, 2011 UT 54, ¶ 21 (2011).

the spouse was domiciled in Utah under Utah Code §59-10-136.⁴ TAXPAYER-2 may have resided in STATE-1 and had many contacts with STATE-1, but is domiciled in Utah for Utah individual income tax purposes. The audit deficiencies of tax and interest should be upheld. No penalties were assessed with the audits.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the audit deficiencies of Utah individual income tax for the tax years 2013, 2014 and 2015. 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 _____, 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.

⁴ See Utah State Tax Commission *Initial Hearing Orders, Appeal No. 14-1869* (August 17, 2015); *Appeal No. 15-1154* (February 1, 2016); *Appeal No. 15-1200* (May 23, 2016); *Appeal No. 16-518* (May 30, 2017); and *Findings of Fact, Conclusions of Law and Final Decision Appeal No. 15-1985* (August 22, 2017).