

17-609  
TAX TYPE: INCOME TAX  
TAX YEAR: 2013 & 2014  
DATE SIGNED: 01/26/2018  
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL  
EXCUSED: J VALENTINE  
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. 17-609

Account No. #####

Tax Type: Income Tax

Tax Years: 2013 and 2014

Judge: Phan

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1

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 October 30, 2017 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Taxpayers”) are appealing audit deficiencies for tax years 2013 and 2014. The Taxpayers had filed a Utah resident return for tax year 2013, but had excluded income earned by TAXPAYER-2. The Taxpayers did not file a Utah return for tax year 2014. Respondent (“Division”) issued the audits on the basis that the Taxpayers were resident individuals in Utah for all of 2013 and part-year Utah residents in 2014. The Notices of Deficiency had been issued by the Division on March 15, 2017. Penalties were assessed with the 2014 audit. The audit deficiency and interest calculated to the date the notices were issued for each year is as follows:

Year	Tax	Interest	Penalties	Audit Total Due <sup>1</sup>
2013	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$

---

<sup>1</sup> This is the total balance as of the date the Audit Notices were issued. Interest continues to accrue on the unpaid balance until paid in full.

2014                \$\$\$\$\$                \$\$\$\$\$                \$\$\$\$\$                \$\$\$\$\$

APPLICABLE LAW

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

Effective beginning with tax year 2012 the Utah Legislature adopted a law specifying the factors considered for the determination of domicile. This law replaced the prior Tax Commission rule defining domicile and was a significant change in this area. The new law is Utah Code Ann. §59-10-136 and is as set forth below in its entirety:

- (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.
  - (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
    - ...
    - (v) other factors the commission deems appropriate.

#### DISCUSSION

At the hearing, the Taxpayers asked for abatement of the tax because they did not know the Utah tax law and had relied on a tax preparer at the military base where TAXPAYER-2 worked as a civilian employee. TAXPAYER-1 had explained their position at the hearing. TAXPAYER-2 had been working as a civilian employee for the DEPARTMENT OF COUNTRY since 2009, which is where he resided. In 2012, TAXPAYER-1 had been living primarily in STATE with their son and daughter-in-law who just had a baby. In 2012, her son and daughter-in-law moved to Utah and TAXPAYER-1 moved with them to help with childcare. She resided in Utah for all of 2013, although she did travel some to COUNTRY. She was residing in the residence with her son and daughter-in-law, which they had purchased. She did not lease or own a property of her own in Utah. She had stated at the hearing that she could not remember if she had registered to vote in Utah, but the representative for the Division had looked up her Utah Driver License, voter registration and vehicle registration information. He reported that she had both obtained a Utah Driver License and registered to vote in Utah on May 30, 2012. She also had a vehicle registered in Utah during the audit period.

TAXPAYER-1 had part-time employment in Utah during 2013 and had received a W-2 from that employer addressed to her at the Utah address. TAXPAYER-1 explained that she had moved from Utah to COUNTRY in May 2014. The Division's 2014 audit was on the basis of the Taxpayers being domiciled in Utah through May 2014 and they agreed they were no longer domiciled in Utah after TAXPAYER-1 had moved from the state. TAXPAYER-1 stated that the purpose for her being in Utah in 2013 and part of 2014 was always intended to be temporary and just to help with the childcare of her granddaughter.

The Division pointed out that for 2013 the Taxpayers had filed a married filing joint federal return and had filed a joint Utah resident individual return. This return listed the Utah address where TAXPAYER-1 had been staying. However, on the Utah return they had claimed an equitable adjustment to subtract from their Utah taxable income all of TAXPAYER-2's wage and pension income. They had claimed on the Utah return the wage income that TAXPAYER-1 had earned while in Utah. TAXPAYER-1 did not work in Utah during 2014 and the Taxpayers did not file a Utah return for that year. They had filed a married filing joint federal return in 2014.

It was the Division's position that the Taxpayers were both domiciled in Utah for all of 2013 and up until May of 2014 based on provisions of Utah Code Sec. 59-10-136. The Taxpayers were both presumed to be domiciled in Utah under Subsection 59-10-136(2)(b) because TAXPAYER-1 was registered to vote in Utah. Subsection (2)(b) provides a rebuttable presumption that an individual is considered domiciled in Utah if "the individual or the individual's spouse is registered to vote in this state . . ." There is also the rebuttable presumption at Subsection 59-10-136(2)(c) that an individual is domiciled in Utah if the "individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return." The Taxpayers had done this on their 2013 Utah resident return. The Taxpayers did not provide information to rebut these two presumptions.<sup>2</sup>

In this appeal, the Taxpayers were primarily arguing ignorance of the Utah domicile laws. Other taxpayers have argued that they did not have knowledge of the rebuttable presumptions at Subsection (2) or the implications to domicile and the Tax Commission has concluded that ignorance of the law is not sufficient to rebut the presumption of domicile under Utah Code Subsection 59-10-136(2).<sup>3</sup> The Taxpayers have the burden of proof under Utah Code

---

<sup>2</sup> The Tax Commission has previously considered what factors would rebut this presumption in *Utah State Tax Commission Initial Hearing Order, Appeal No. 16-792 (8/16/17)*. These and other Tax Commission decisions are available for review in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

<sup>3</sup> See *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30 (9/2/2015)*; and *Initial Hearing Order, Appeal No. 16-117(1/18/17)*.

Sec. 59-1-1417 and have not provided information to rebut the presumption of having a Utah domicile. The Tax Commission must apply Utah Code Sec. 59-10-136 as written and, therefore, the audits as to the tax and interest deficiency should be upheld.

Penalties were assessed with the 2014 audit. Under Utah Code Subsection 59-1-401(14) the Commission may waive penalties for reasonable cause. The Tax Commission often waives penalties in these domicile cases due to the complicated nature of the law in this area. Considering that for 2014 only TAXPAYER-2 was employed and receiving income and he had never resided in Utah, there is sufficient cause for waiver of the 2014 penalties.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission sustains the Utah individual income tax audits as to tax and the interest accrued thereon for tax years 2013 and 2014. The Tax Commission waives the penalties assessed for tax year 2014. 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



Appeal No. 17-609

**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.**