18-209
TAX TYPE: INCOME TAX
TAX YEAR: 2012, 2013, 2014, 2015 and 2016
DATE SIGNED: 11/1/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER 1 AND TAXPAYER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 18-209 Account No. #### Tax Type: Income Tax Tax Years: 2012, 2013, 2014, 2015 and 2016 Judge: Phan

Presiding:
Lawrence C. Walters, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER 1
TAXPAYER 2
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 2019, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners ("Taxpayers") are appealing audit deficiencies issued by Respondent ("Division") of Utah individual income tax and interest for the tax years 2012 through 2016. The Division issued Notices of Deficiency and Audit Change on DATE, 2018 for each tax year at issue.[1] The Taxpayers timely appealed the notices under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

1 Respondent's Exhibit 1.

2. Interest was assessed for all audit years pursuant to Utah Code §59-1-402. Interest continues to accrue until the balance is paid in full. No penalties were assessed with the audits.

3. The amount of tax and the accrued interest as listed on the Notices of Deficiency were as follows:

Year	Tax	Penalties	Interest	Total[2]
2012	$$$$$$	$$	$$$$$	$$$$$$
2013	$$$$$$$	$$	$$$$$$	$$$$$$$
2014	$$$$$$	$$	$$$$	$$$$$$
2015	$$$$$$$	$$	$$$$$$	$$$$$$$
2016	$$$$$$$	$$	$$$$$	$$$$$$$

4. The Division issued the audits on the basis that both Taxpayers were Utah resident individuals for income tax purposes from 2012 through 2016. The Taxpayers claim that they were not Utah resident individuals for income tax purposes, and that they were living in COUNTRY 1 and COUNTRY 2 for all of the years at issue.

5. The Taxpayers had filed married filing joint federal returns for each of the tax years at issue in the subject appeal. The Taxpayers also had filed Utah non-resident individual income tax returns for each year with the status of married filing joint. On those returns, they claimed some Utah source income and losses, but did not claim their other income which they felt was not Utah source income.[3]

6. During the years 2012 through 2016, the Taxpayers were married and not legally separated.[4] They had no minor children, as their children were adults at this time. The Taxpayers claimed no dependents on their Utah non-resident returns.[5] The Taxpayers themselves were not enrolled in a public university in Utah during the audit years.[6]

7. The Taxpayers testified at the hearing that TAXPAYER 1 had worked for UNIVERSITY-1 in CITY-1, Utah for many years and they had purchased a family home in CITY-1 in the 1970s or 1980s and that is where they raised their children. TAXPAYER 1 retired from UNIVERSITY-1 in 2004. At that time he was offered an overseas project on behalf of UNIVERSITY-1 and UNIVERSITY-2 IN COUNTRY-2. TAXPAYER 1 AND TAXPAYER 2 moved to COUNTRY-1 in 2004 and then at some point during the audit years they moved to COUNTRY-2 until they returned to Utah in 2017. They testified that during these years they lived full time in COUNTRY-1 and COUNTRY-2. They would return to Utah each year, but would be in Utah for less than one month per year with the exception of 2014. In 2014 they

2 Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on any unpaid balance.
3 Respondent's Exhibit 3.
4 It was not disputed that the Taxpayers were spouses for purposes of Utah Code Subsection 59-10-136(5).
5 Copies of Federal Tax returns were not provided as exhibits at this hearing.
6 The Division is not arguing the Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(1).

were in Utah for three months because of a medical surgery and treatment TAXPAYER 1 received in Utah. The Division did not contest that the Taxpayers spent most of their time each audit year overseas.

8. During all of the audit years the Taxpayers continued to own the residence that they had purchased in CITY-1, which was located at CITY-1, Utah. During all audit years 2012 through 2016 they were receiving from COUNTY-1 the primary residential property tax exemption on this residence.[7] During all of the audit years nobody lived in this residence. The Taxpayers testified at the hearing that they were too busy to move out their belongings and furniture to get it ready for sale during the audit years. They did not lease this residence to tenants. The Taxpayers eventually listed this residence for sale in 2018 and it sold shortly after the listing.

9. At some point in time, TAXPAYER 2 was working in CITY-2 and they bought a condo located at CITY-2 Utah. Although at the hearing the Taxpayers' testimony as to the dates when they had purchased their various residences was a little confused, in the written response to the Division's Domicile Survey they stated that they owned this condo since 1973.[8] They continued to own this condominium during all of the audit years. They did not lease this condo to tenants during any of the audit years. They testified that during the audit years they did stay in this condo when they returned to Utah during the audit years, the Taxpayers received from COUNTY-2 the primary residential property tax exemption on this property.[9]

10. The Taxpayers testified that at some point, because the CITY-2 condo was too small for family life or family events, the Taxpayers also purchased a residence at CITY-3, Utah. They purchased this residence in 1987.[10] They owned this property for all of the audit years and received the primary residential exemption on this property for all of the audit years. They did not lease this property to tenants so there was no one living in this property for all of the audit years. Because they were receiving the primary residential property tax exemption from COUNTY-2, they saved more than $$$$ in property tax each year for just this property alone.[11]

11. The Taxpayers also owned another condominium in Utah during the audit years at CITY-2, HOME-2. They testified at the hearing that they did lease this property to tenants during the audit years. The Division did not dispute this fact at the hearing. This property also received the primary residential exemption for each of the audit years from COUNTY 1.[12]

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7 Respondent's Exhibit 2, pgs. AUD000026-30.
8 Respondent's Exhibit 7, pg. AUD000092.
9 Respondent's Exhibit 2, pgs. AUD000022, AUD000096-100.
10 Respondent's Exhibit 7, pg. AUD000092.
11 Respondent's Exhibit 2, pgs. AUD000031-49. The primary residential exemption reduces the property tax amount by 45% on a household's primary residence. See Utah Code Subsection 59-2-103(2).
12 Respondent's Exhibit 2, pgs. AUD000101-105.

12. The Taxpayers testified at the hearing that they were unaware they were receiving primary residential exemptions for any of their Utah properties. It was their argument that they had never applied for these exemptions, did not know they were receiving these exemptions and would not have known what they were for. These properties were located in three different counties. They also were unaware that they would be entitled to the primary residential exemption for only one of their properties in Utah and should not have been receiving a second and third residential exemption, unless that residence was leased to a tenant and was the tenant's primary residence. The Taxpayers did not assert that they had informed any of the counties they no longer qualified for this property tax exemption on any of their residential properties in Utah.

13. The Taxpayers had filed Utah Individual Income Tax Forms TC-40 as non-residents for each tax year at issue. However, they never checked the box on page 3 of Utah Form TC-40, which is located under the subsection on Part 7 "Property Owner's Residential Exemption Termination" to indicate that they no longer qualified for the primary residential exemption for any of their residences in Utah.

14. The Taxpayers were registered to vote in Utah and testified that they intended to remain registered to vote in Utah so they could vote while TAXPAYER 1 was working overseas. However, their voter history does indicate that they did not actually vote during the audit years.[13] The Taxpayers did not assert that they had tried to cancel their Utah voter registration or that they had registered to vote in a different jurisdiction.

15. The Taxpayers testified that they always intended to return to Utah when TAXPAYER 1 finished working overseas, so they kept their Utah residences. They had Utah Driver Licenses which they maintained throughout the audit period.[14] They did leave a vehicle in Utah to drive when they returned for their visits and they registered this vehicle in Utah.[15]

16. In 2017, TAXPAYER 1, who was now in his early 80s, decided because of health reasons it was time to retire from his employment. TAXPAYER 1 AND TAXPAYER 2 returned to Utah.

17. Based on the facts in this matter, the Taxpayers were presumed domiciled in Utah for all of the audit years under Utah Code Subsection 59-10-136(2)(a) because they were receiving the primary residential property tax exemption on properties they owned in three different counties in Utah. The Taxpayers may also have been domiciled in Utah under other provisions of Utah Code Sec. 59-10-136, including Subsection 59-10-136(2)(b) because they were registered to vote in Utah.

18. The Taxpayers did not present evidence that would rebut the presumptions under Utah Code Subsection 59-10-136(2). They did not provide evidence that they had contacted any of the three

13 Respondent's Exhibit 4.
14 Respondent's Exhibit 5.
15 Respondent's Exhibit 6.

counties in which their residential properties were located to inform that County that they were not using that property as their primary residence. They did not present evidence that they had requested their Utah voter registration be canceled or that they had registered to vote in another state or country. In fact, it was their testimony that they intended to be registered to vote in Utah.

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 what constituted domicile in the State of Utah. This was a substantial change in law and one that governs all tax years at issue in this appeal. Utah Code §59-10-136 provides 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 provides for property tax assessment for all tangible property located within Utah, but it also allows for a 45% exemption on a property that is used as an individual's primary residence at Utah Code Sec. 59-2-103 as follows:

(1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located with the state is allowed a residential exemption equal to a 45% reduction in the value of the property.

. . .

(5) (a) Except as provided in Subsection (5)(b)(ii), a residential exemption described in Subsection (2) is limited to one primary residence per household.

. . . .

For purposes of the 45% property tax exemption, "Residential Property" is defined at Utah Code Sec. 59-2-102(36)(a) (2016) as follows:

> Subject to Subsection 36(b), "residential property," for purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.

For the purposes of Utah Code Secs. 59-2-102 and 59-2-103, Utah Admin. Rule R884-24P-52 (2016) defines "primary residence" and provides as follows:

> (2) "Primary residence" means the location where domicile has been established.
> (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

If a property owner no longer qualifies for the primary residential exemption on their residential property they are required to notify the county in which the property is located pursuant to Utah Code Sec. 59-2-103.5(4) (2016) as follows:

> (4)Except as provided in Subsection (5), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence, the property owner shall:
> (a) file a written statement with the county board of equalization of the county in which the property is located:
> (i) on a form provided by the county board of equalization; and
> (ii)notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence; and
> (b)declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence.

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 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.

CONCLUSIONS OF LAW

1. The issue in this appeal is whether the Taxpayers were "resident individuals" in the State of Utah for the purposes of Utah Code Sec. 59-10-104, for tax years 2012 through 2016. For Utah individual income tax purposes a "resident individual" is defined at Utah Code Subsection 59-10-103(1)(q)(i) to be: "(A) an individual who 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 Taxpayers were Utah "resident individuals" under Subsection 59-10-103(1)(q)(i)(A) because they were domiciled in Utah during the audit period.

2. In 2012 "domicile" was substantially revised by statute at Utah Code Sec. 59-10-136. Under the express provisions of Utah Code Subsection 59-10-136(2)(a) there is a presumption that an individual is domiciled in Utah if: "the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, . . ." The Taxpayers received primary residential exemptions on four different Utah residential properties in three different counties for each tax year in the audit period. They are presumed domiciled in Utah under Subsection 59-10-136(2)(a).

3. The Taxpayers testified they were unaware that they had been receiving the primary residential exemption on all of their Utah properties. They testified they did not know that there was an exemption, had not requested the exemption and would not have known what it was for. Additionally, they apparently were unaware that even if they were domiciled in Utah, they still would have only been entitled to receive this exemption for one property. The Taxpayers argued that their circumstances were unique. However, the issue has been presented to the Tax Commission in numerous appeals where a taxpayer was claiming they were no longer domiciled in Utah, still had a residence in Utah on which they were receiving the primary residential property tax exemption under Utah Code Sec. 59-2-103 and they were arguing ignorance of the law regarding the exemption. Based on Utah law, individuals are only entitled to receive the primary residential property tax exemption if that residence is where their domicile has been established. See Utah Code Secs. 59-2-102, 59-2-103 and Utah Admin. Rule R884-24P-52(2). Many individuals have argued in appeals before the Utah State Tax Commission ignorance of the law in regards to receiving the primary residential exemption on their Utah property as basis for rebutting the presumption set out at Utah Code Subsection 59-10-136(2)(a). However, the Tax Commission has concluded that ignorance of receipt of this exemption, or the effect this exemption had on the income tax provisions is not a sufficient basis to

rebut the presumption set out at Utah Code Subsection 59-10-136(2)(a).[16] Regarding what factors would rebut this presumption the Commission concluded in *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30 (September 21, 2015), pg.* 9:

> It follows that to rebut the presumption set out at Subsection 136(2)(a) a taxpayer would have to show something other than a preponderance of the domicile factors, for example that the taxpayer had taken the proper steps to notify the County that they no longer qualified for the exemption and the County then in error continued to leave the property in that status, or that there was a tenant in the property and the tenant used it as his or her primary residence, which would allow the property to qualify based on the tenant's use.

4. Furthermore, under Utah law, if an individual no longer qualifies for the property tax primary residential exemption, the individual has the affirmative requirement to notify the county that they no longer qualify pursuant to Utah Code Subsection 59-2-103.5(5). Beginning in 2012, the Utah Individual Income Tax TC-40 Forms and Instructions contained an instruction that if the taxpayer no longer qualified for the primary residential exemption the taxpayer was required to notify the county in which the property is located. Additionally, beginning in 2012, the Utah Individual Income Tax Return Form TC-40, Part 7, contained the requirement that a taxpayer must check a box on the taxpayer's individual income tax return if the taxpayer no longer qualified for a residential property exemption. The Taxpayers failed to take these affirmative actions. Thus one of the Taxpayers' Utah homes would be considered the Taxpayers' primary residence entitled to receive a primary residential exemption and the Subsection (2)(a) presumption arises. The Taxpayers have not provided a basis to rebut the presumption caused by having the primary residential exemption on three of their Utah properties for tax years 2012 through 2016.

5. The one factor in this case that is unique, is that the Taxpayers were receiving the primary residential exemption on more than one Utah residential property without having all of the properties leased to tenants, which conflicts with Utah law regarding the exemption. For taxpayers who are domiciled in Utah, they are generally only eligible to receive one primary residential exemption per household and that would be the household where they have established domicile. See Utah Code Sec. 59-2-103 and Utah Admin. Rule R884-24P-52. If an individual is not domiciled in Utah, they are generally not entitled to a primary residential exemption on any residential property in this state, unless the property is leased to tenants and is the primary residence of the tenants. The primary residential exemption is a substantial property tax reduction, reducing the property tax otherwise owed by 45%.[17] The Taxpayers owned three

16 See *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30* (9/2/2015); *Initial Hearing Orders, Appeal No. 15-1154* (2/1/16); *Appeal No. 16-117*(1/18/17); *Appeal No. 16-792* (8/16/2017); and *Appeal No. 17-237* (9/18/17). Many Tax Commission decisions are published in a redacted format and available for review at tax.utah.gov/commission-office/decisions.

17 Estimating from the property tax information the Division provided, the reduction the Taxpayers had received in property tax on the three properties they owned in Utah that sat vacant during the audit years exceeds the audit assessments of individual income taxes for each tax year at issue in this appeal.

residential properties in Utah that were not leased to tenants. If they were not domiciled in Utah and instead were domiciled overseas as they have claimed, based on the statutory provisions they should have contacted the counties to let them know they did not qualify for the residential exemption on any of these three residential properties. Even if a property owner is domiciled in Utah, they do not qualify for this exemption on their second, third or additional residence in this state, unless the residence is leased to a tenant as is the primary residence of the tenant. The fact that the Taxpayers were unaware of these laws does not excuse their noncompliance with them and is certainly not basis to rebut the presumption under Utah Code Subsection 59-10-136(2)(a).

6. As the Taxpayers were domiciled in Utah for tax years 2012 through 2016 under the presumption at Utah Code Subsection 59-10-136(2)(a), further consideration is not needed as to whether they were domiciled in Utah due to the presumption at Utah Code Subsection 59-10-136(2)(b) regarding Utah voter registration. A taxpayer is domiciled in Utah if any one of the rebuttable presumptions at Subsection 59-10-136(2) have been met and not rebutted.

7. The Division did not assess any penalties against the Taxpayers and from their testimony in this matter it did appear that they were sincerely trying to comply with the laws as far as they understood them and they did not know they were violating any statutory provisions. For this reason, the Tax Commission agrees with the Division's decision not to impose any audit penalties. Utah Code Subsection 59-1-401(14) does provide that the Commission may waive, reduce or compromise interest upon a showing of reasonable cause. However, under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove "that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." The Taxpayers have not asserted a basis for waiver of interest.

After review of the evidence submitted by the parties at the hearing and the applicable law, the Taxpayers were domiciled in STATE-1 for all tax years at issue and the tax and interest accrued thereon should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayers were domiciled in STATE-1 for all of tax years 2012 through 2016 and sustains the Utah individual income tax audit deficiency as to the tax and interest for each year at issue. It is so ordered.

DATED this _____day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Appeal Rights and 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 assessed. You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.