TAX TYPE: INCOME TAX
TAX YEAR: 2014
DATE SIGNED: 2/18/2020
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. 18-573 Account No. #### Tax Type: Income Tax Tax Year: 2014 Judge: Phan

Presiding:
Rebecca L. Rockwell, Commissioner
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER 1
For Respondent: REPRESENTATIVE FOR RESPONDANT, Assistant Attorney General
RESPONDANT, Manager, Income Tax Auditing
RESPONDANT, Senior Auditor

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 year 2014. The Division issued the Notice of Deficiency and Audit Change on DATE, 2018.[1] The Taxpayers timely appealed the notice under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

2. No penalties were assessed with the audit.

1 Respondent's Exhibit 1.

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

Year	Tax	Penalties	Interest	Total[2]
2014	$$$$$	$$	$$$$$$	$$$$$$$

4. The Division issued the audits on the basis that both Taxpayers remained Utah resident individuals for income tax purposes from DATE, 2014 until DATE, 2014. The Division agreed that the Taxpayers were no longer Utah resident individuals after DATE, 2014.

5. The Taxpayers claim that they were part-year Utah resident individuals for income tax purposes in 2014 but that TAXPAYER 1 was a Utah resident for about # months less than TAXPAYER 2. It was their position that TAXPAYER 1 was a Utah resident individual from DATE, 2014 to DATE, 2014 and that after DATE, 2014, that TAXPAYER 1 had moved to STATE 1 and was no longer a Utah resident. The Taxpayers did not contest that TAXPAYER 2 and the couple's # children who they claimed as dependents on their tax return for that year remained domiciled in Utah until DATE, 2014. The issue argued by the Taxpayers was that the income TAXPAYER 1 received after DATE, 2014 should not be subject to Utah taxation. The dispute then is whether TAXPAYER 1 was domiciled in Utah from DATE, 2014 through DATE, 2014. The Division conceded that after DATE, 2014 both Taxpayers were no longer domiciled in Utah.

6. The Taxpayers were married all throughout 2014. They were not divorced or legally separated. They had filed a married filing joint federal individual income tax return in 2014.[3] The Taxpayers are considered to be spouses for purposes of Utah Code Subsection 59-10-136(5).

7. The Taxpayers have # children who they claimed as dependents on their 2014 Federal and Utah income tax returns. The testimony from the Taxpayer, which was unrefuted by the Division, was that neither of the children attended a Utah public school in 2014.

8. Neither Taxpayer attended a Utah institution of higher education in Utah in 2014.

9. The Taxpayers had filed a Utah married filing joint part-year resident individual income tax return in 2014. On that return, on Schedule TC-40B, they had checked that they were part-year Utah residents and the listed in the space provided that they were Utah residents from DATE, 2014 until DATE 2014.[4] TAXPAYER 1 indicated they listed it in this manner because the return does not provide a way for each spouse on a married filing joint return to list a separate period of Utah residency from the other spouse. They chose DATE, 2014 because TAXPAYER 2 was employed in Utah until DATE, 2014, but after that

2 Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on any unpaid balance.
3 Respondent's Exhibit 5.
4 Respondent's Exhibit 5.

was no longer employed in Utah or anywhere else. She did, however, receive social security disability payments in 2014. TAXPAYER 1 had transferred his full time employment to STATE 1 by DATE, 2014. In addition to his full time employment, TAXPAYER 1 was in the EMPLOYMENT, stationed in Utah and then later in CITY 1, STATE 2. TAXPAYER 1 was not an active duty service member in 2014.

10. Although they had listed on form TC-40B of their part-year Utah return they were Utah residents for from DATE, 2014 to DATE, 2014, they did not allocate TAXPAYER 1 income based on those dates. They basically allocated his income to Utah based on income he received prior to DATE, 2014. On Form TC-40B in Column A–Utah, they had not claimed any of the income TAXPAYER 1 had received after DATE, 2014. The income they had sourced to Utah was the employment income that they both earned while in Utah, TAXPAYER 1 income from the EMPLOYMENT while he was still residing in Utah and # months of TAXPAYER 2 disability payments.

11. The Taxpayer testified at the hearing and it was not refuted by the Division, that the Taxpayers' older DEPENDANT, who was about ## years old in 2014, had finished the 2013/2014 school year in Utah, but was attending a private school and not a Utah public school. The Taxpayer testified that in 2014, his younger child was also not in Utah public school, but was instead homeschooled and the homeschool was not through a Utah public homeschooling program, but was also a private program.

12. The Taxpayers had been residing in Utah for many years prior to 2014 and owned a residence in Utah at ADDRESS, Utah. They received the primary residential property tax exemption on the residence in 2014.[5] During 2014, after TAXPAYER 1 had moved to STATE 1, TAXPAYER 2 and the Taxpayers' children continued to reside in their Utah residence until they sold the residence in DATE 2014 and then they also moved to STATE 1 by DATE, 2014. The Taxpayer testified the reason TAXPAYER 2 and the children stayed behind and did not move to STATE 1 when he moved was so that their older DEPENDANT could finish the school year in Utah and so that TAXPAYER 2 could get their Utah residence sold. They did sell their Utah residence and the settlement date for the sale was DATE, 2014.[6]

13. After selling their Utah residence, they purchased a residence in STATE 1, with the closing date DATE, 2014. They had made their offer to purchase this residence in DATE 2014.[7]

14. While living in Utah the Taxpayers had registered to vote in Utah. The Division provided their Utah Voter Registration history.[8] TAXPAYER 1 registered to vote in Utah in 2005. He was removed as a registered voter in 2018. He testified that he registered to vote in STATE 1 in DATE 2014. TAXPAYER 2 registered to vote in Utah in 2012 and was made removable in 2018. TAXPAYER 2

5 Respondent's Exhibit 3.
6 Respondent's Exhibit 3, pg. AUD 007.
7 Respondent's Exhibit 6.
8 Respondent's Exhibit 4.

testified at the Formal Hearing that TAXPAYER 2 also registered to vote in STATE 1 prior to the DATE 2014 election. However, they did not provide any copies of STATE 1 voter registration records.

15. The Taxpayers had obtained Utah Driver Licenses prior to 2014. TAXPAYER 1 testified that they both obtained STATE 1 Driver Licenses shortly after moving to STATE 1 but did not provide copies of their STATE 1 Driver Licenses to show when they were obtained.

16. TAXPAYER 1 explained that he was a civilian employee of the EMPLOYMENT in 2014 and he had been working in Utah, but his employment was permanently transferred to STATE 1. This was the reason for his move to STATE 1 by DATE, 2014. TAXPAYER 1 provided documentation regarding this transfer including a Form Request/Authorization for EMPLOYMENT, which indicated he was transferred from the EMPLOYMENT in CITY 2, Utah to the EMPLOYMENT in CITY 1, STATE 1 effective DATE, 2014.[9] He provided a receipt from a CITY 1 HOTEL that showed he had checked in on DATE, 2014 and checked out DATE, 2014.[10] He provided emails inquiring about more permanent housing in STATE 1. The Taxpayer provided copies of two letters from the EMPLOYMENT, which were both addressed to him at two different addresses in STATE 1 in DATE 2014. These letters indicated the EMPLOYMENT had awarded him a monthly benefit payment.[11] He also provided information that indicated because his employment was transferred from Utah to STATE 1, some of the expenses to move his family and buy a residence in STATE 1 were reimbursed by the EMPLOYMENT.

17. TAXPAYER 1 provided documentation of a 3-day EMPLOYMENT training event in CITY 3, Utah beginning on DATE, 2014.[12] He testified that was the final period that he had EMPLOYMENT training in Utah. On DATE, 2014, he took over command of the EMPLOYMENT in CITY 1, STATE 2. He provided a letter from EMPLOYMENT where he assumed command dated DATE, 2014.[13] He indicated that after that time, all his EMPLOYMENT activity was out of the STATE 2 command.

18. The Taxpayers have remained residents of STATE 1 since moving there in 2014.

19. After the hearing, the Taxpayers provided some additional documentation to show when they had been reimbursed for travel and moving expenses, via an email dated DATE, 2019. Because the Taxpayer was a civilian with the EMPLOYMENT when he was transferred from Utah to STATE 1, he was reimbursed for some travel expenses as well as some expenses resulting from his purchase of the new residence in STATE 1. The Taxpayers' documentation showed that much of this reimbursement occurred after the Taxpayers had moved, in DATE or later in 2014.

9 Petitioners' Exhibit 2.
10 Petitioners' Exhibit 6.
11 Petitioners' Exhibits 8-9.
12 Petitioners' Exhibit 3.
13 Petitioners' Exhibit 4.

20. From the evidence presented it is clear that although TAXPAYER 1 civilian employment for the EMPLOYMENT was transferred from Utah to STATE 1, his EMPLOYMENT 2 duties transferred from Utah to STATE 2, and TAXPAYER 1 physically moved to STATE 1 several months prior to DATE, 2014, TAXPAYER 2 remained in Utah until DATE, 2014. TAXPAYER 2 and the Taxpayers' children did not move from Utah when TAXPAYER 1 moved and they continued to reside in the residence they owned in Utah while it was listed for sale until it sold DATE, 2014. From the arguments presented by TAXPAYER 1 at the Formal Hearing, it is clear he thought he could have a separate domicile from TAXPAYER 2 and needed only to show evidence that he had moved from Utah and was no longer employed in Utah to prove a change of domicile for himself separate from his spouse. However, TAXPAYER 1 position is contrary to Utah law. The fact that he had moved from Utah sooner than TAXPAYER 2 was not an issue disputed by the Division. However, as a matter of Utah law, both TAXPAYER 1 AND TAXPAYER 2 remained domiciled in Utah until DATE, 2014, under Utah Code Sec. 59-10-136.

21. Based on the facts in this matter, the Taxpayers were presumed domiciled in Utah until DATE, 2014 under Utah Code Subsection 59-10-136(2)(a) because they were receiving the primary residential property tax exemption on the property they owned in Utah. They did not provide evidence to rebut this presumption for the period prior to DATE, 2014, because TAXPAYER 2 continued to reside with their children at their Utah residence until it was sold at the end of DATE 2014 and then they moved from the residence. They did not provide evidence that they had contacted the County in which their residence was located to inform the County that they were not entitled to receive the primary residential exemption. They had not checked the box on their 2014 Utah Individual Income Tax Return that indicated they were not qualified to receive this exemption.[14] The Taxpayers were also presumed domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) up through at least DATE, 2014 because they were registered to vote in Utah. The Division conceded that they were no longer domiciled in Utah after they had moved from Utah by DATE, 2014.

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

14 Respondent's Exhibit 5.

(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 the tax year 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 Subsection 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.

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 Subsection 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. §20A-2-305 provides for removal of a voter's name from the official voter registration, as follows:

> (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
> (2) The county clerk shall remove a voter's name from the official register if:
> (a) the voter dies and the requirements of Subsection (3) are met;
> (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
> (c) the county clerk has:
> (i) obtained evidence that the voter's residence has changed;
> (ii) mailed notice to the voter as required by Section 20A-2-306;
> (iii) (A) received no response from the voter; or
> (B) not received information that confirms the voter's residence; and
> (iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;
> (d) the voter requests, in writing, that the voter's name be removed from the official register;
> (e) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or
> (f) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.
> (3) The county clerk shall remove a voter's name from the official register within five business days after the day on which the county clerk receives confirmation from the Department of Health's Bureau of Vital Records that the voter is deceased.

Utah Code Ann. §20A-2-306 addresses the removal of names from the official voter register where a change of residence occurs, as set forth below:

> (1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:
> (a) confirms in writing that the voter has changed residence to a place outside the county; or
> (b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and
> (ii) has failed to respond to the notice required by Subsection (3).
> (2) (a) When a county clerk obtains information that a voter's address has

changed and it appears that the voter still resides within the same county, the county clerk shall:

(i) change the official register to show the voter's new address; and

(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

_____

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

_____

Signature of Voter"

"The portion of your voter registration form that lists your driver license or identification card number, social security number, email address, and the day of your month of birth is a private record. The portion of your voter registration form that lists your month and year of birth is a private record, the use of which is restricted to government officials, government employees, political parties, or certain other persons.

You may apply to the lieutenant governor or your county clerk to have your entire voter registration record classified as private."

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the county clerk may list that voter as inactive.

(ii) If a county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter, the county clerk may list that voter as inactive.

> (iii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.
> (iv) A county is not required to send routine mailings to an inactive voter and is not required to count inactive voters when dividing precincts and preparing supplies.

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 both Taxpayers were "resident individuals" in the State of Utah for the purposes of Utah Code Sec. 59-10-104, for the period from DATE, 2014 through DATE, 2014. 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." It was the Division's position, which is consistent with Utah law, that both Taxpayers were Utah "resident individuals" under Subsection 59-10-103(1)(q)(i)(A) until DATE, 2014, because both Taxpayers were domiciled in Utah during this period. What constitutes having "domicile" in Utah is specifically addressed by Utah Code Sec. 59-10-136.

2. As both Taxpayers were domiciled in Utah from DATE, 2014 through DATE, 2014, both Taxpayers were Utah resident individuals, subject to Utah individual income tax on all their income received during this period. Under Utah Code Sec. 59-10-104 a "resident individual" in the State of Utah is subject to Utah individual income tax on all taxable income regardless of where it was earned, subject to a credit for the individual income taxes paid to another state. In this case, since the state the Taxpayers moved to was STATE 1, which has no individual income tax, there is no credit available to the Taxpayers.

3. At the hearing, TAXPAYER 1 argues he had moved from Utah several months prior to TAXPAYER 2. He does not dispute that TAXPAYER 2 remained in Utah until DATE, 2014. However, the fact that he moved several months prior to TAXPAYER 2 does not establish a change of his domicile sooner than TAXPAYER 2 as a matter of Utah law. The Taxpayers filed their 2014 federal and Utah part-year returns with the filing status of married filing joint. They were not divorced or legally separated in 2014. The Taxpayers are considered to be spouses under Utah Code Subsection 59-10-136(5) for purposes of the domicile provisions. Utah Code Subsection 59-10-136(5)(a) provides "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. This makes it clear that if TAXPAYER 2 was still domiciled in Utah under Utah Code 59-10-136, then TAXPAYER 1 was also domiciled in Utah.

4. At the hearing, the Division's position was that the Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(2)(a).[15] Subsection 59-10-136(2) provides, "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 party-year resident of this state . . . . "

5. Utah Code Subsection 59-10-136(2)(a) provides that there is a rebuttable presumption that an individual is considered to have domicile in Utah if "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." The Taxpayers received the primary residential property tax exemption on their Utah residence for 2014 and TAXPAYER 2 continued to reside in that residence with their children until it was sold at the end of DATE 2014. For this presumption to arise, two elements must exist. First, the taxpayer or the taxpayer's spouse must have claimed the residential exemption on their Utah home. Second, the Utah home on which the taxpayer claimed the residential exemption must be considered the "primary residence" of one or both of the taxpayers in accordance with the guidance provided in Subsection 59-2-103.5(4). As to the first element, the Taxpayers are considered to have claimed the residential exemption on their Utah home for the period at issue because they received the primary residential

15 The Division did not argue that the Taxpayers were considered to be domiciled in Utah for the period at issue from DATE through DATE, 2014 under Subsection 59-10-136(1), under which an individual is domiciled in Utah if children claimed as dependents on the individual's tax return attend a Utah public school, or if the individual attends a Utah institution of higher education and receives resident tuition. Instead, the Division's position was that the Taxpayers were domiciled in Utah until DATE, 2014 under Utah Code Subsection 59-10-136(2)(a).

exemption for this period. Subsection 59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Subsection 59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county adds the second step of requiring formal application in order to receive the benefit of the exemption. The claim persists until the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner). Therefore, simply owning a residential property in a Utah county that does not require an application (which includes most Utah counties) generally asserts an enduring claim to the residential exemption.[16] For purposes of determining if the second element of whether the residence is the individual or the individual spouses primary residence, when Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; *and* 2) declare on the property owner's Utah individual income tax return for the taxable year that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence. The Taxpayers did not take either of these steps. Under Subsection 59-10-136(2)(a), both Taxpayers are presumed domiciled in Utah until they sold the residence on DATE, 2014.

6. The domicile provisions at Subsection 59-10-136(2) are rebuttable presumptions, meaning an individual is presumed domiciled in Utah, but certain factors could rebut that presumption. For example, the Commission has found that the Subsection 59-10-136(2)(a) presumption was rebutted where an individual whose home was receiving the residential exemption disclosed on their Utah income tax return that the home no longer qualified for the exemption (even if the individual did not contact the county directly).[17] In addition, the Commission has found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home was listed for sale, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for sale).[18] The Taxpayers have not

16 Furthermore, in those Utah counties that require an application, receiving the residential exemption after filing the application also constitutes a claim to the exemption. On the other hand, in a county that requires an application, receiving the residential exemption without filing an application does not constitute a claim to the exemption.

17 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-812* (3/13/2018). These and other prior Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decision.

18 S*ee, Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1332* (6/27/2016).

demonstrated any of these type of factors to rebut the Subsection 59-10-136(2)(a) presumption.[19] Many individuals have argued 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 law provisions is not a sufficient basis to rebut the presumptions set out at Utah Code Subsection 59-10-136(2). See *Utah State Tax Commission 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); *Appeal No. 17-237* (9/18/17); *Appeal No. 17-609* (1/26/2018); and *Appeal No. 18-88* (3/22/2019).

7. 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. As the Taxpayers were domiciled in Utah under the presumption at Utah Code Subsection 59-10-136(2)(a) regarding the primary residential exemption until they sold their Utah residence, the Division did not argue further consideration was needed as to whether they were also domiciled in Utah under Subsections 59-10-136(2)(b) or (c). However, under Utah Code Subsection 59-10-136(2)(b) there is a rebuttable presumption that an individual is domiciled in Utah if the individual *or* the individual's spouse was registered to vote in Utah. The Taxpayers were both registered to vote in Utah until 2018, although TAXPAYER 1 testified that he and TAXPAYER 2 registered to vote in STATE 1 after DATE, 2014 and prior to the DATE 2014 election. The Taxpayers provided no supporting evidence like STATE 1 Voter Registration Records at the Formal Hearing. The Division, however did not call these assertions into question and had audited the Taxpayers on the basis that they were domiciled in Utah only until DATE, 2014. Both Taxpayers were also domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) until at least DATE, 2014, because they were registered to vote in Utah.[20] Because the Division did not assert that the Taxpayers were domiciled in Utah after DATE, 2014, the Commission

19 Other factors the Commission found rebutted the Subsection 59-10-136(2)(a) presumption were that it could be rebutted for that period that a home that was listed for rent, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for rent) and if the home would continue to qualify for the residential exemption by being rented to tenants who would use the home as the tenants' primary residence (i.e., not being rented to tenants who would not use the home as their primary residence, such as a short-term rental). S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-758* (1/26/2018). In another decision, the Commission found that the Subsection 59-10-136(2)(a) presumption would be rebutted for that period that a home was under its initial construction (not a remodel) and until it received a certificate of occupancy, if the home would be used as a primary residence upon its completion. *See Appeal No. 15-1582*.

20 The Tax Commission has considered what would rebut and what does not rebut the Subsection 59-10-136(2)(b) presumption of Utah domicile in many appeal decisions. For a discussion of these see *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019).

declines to find the Taxpayers were domiciled in Utah under Subsection 59-10-136(2)(b) after DATE, 2014.[21]

8. Under Utah Code Subsection 59-10-136(2)(c) a taxpayer is presumed domiciled in Utah for that period that "the individual or the individual's spouse asserts residency in this state" on their Utah tax return. Therefore, under Subsection 59-10-136(2)(c) the Taxpayers were also domiciled in Utah for the period they had stated on their Utah part-year Individual Income Tax Return that they were in Utah, which was DATE, 2014 through DATE, 2014.

9. If an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), or (2)(c), he or she may still be considered to be domiciled in Utah based on a preponderance of the evidence relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Subsection 59-10-136(3), however, is applicable "if the requirements of Subsection (1) or (2) are not met[.]" Because the Commission has already found that both taxpayers would be considered to be domiciled in Utah from DATE, 2014 through DATE, 2014 under one or more of Subsections 59-10-136(2)(a), 2(b) and 2(c), Subsection 59-10-136(3) has no applicability to this case.

10. The Division did not assess any penalties against the Taxpayers and from TAXPAYER 1 testimony at the Formal Hearing, it did appear that the Taxpayers were sincerely trying to comply with the laws as far as they understood them. 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, both Taxpayers were domiciled in Utah from DATE, 2014 through DATE, 2014, and both Taxpayers are subject to income tax on all income they received from whatever source it was derived during this period. This includes TAXPAYER 2 wage income received until DATE, 2014, even if it was received from his employment in STATE 1, as well as his EMPLOYMENT income received up to DATE, 2014, even if some

21 However, once the Taxpayers moved from Utah, no longer owned a property that was receiving the primary residential exemption in Utah and met other factors, the exception for being absent from Utah more than 761 consecutive days, which is set out at Subsection 59-10-136(4), could have come into play and been a factor in the Division's decision that the Taxpayers were not considered to have domicile in Utah after DATE, 2014. The 761 day period would have started on the later date of when the individual or the individual's spouse leaves Utah. Since TAXPAYER 2 moved from Utah DATE, 2014 and the Division did not assert domicile after DATE, 2014, the Commission need not determine if the Subsection 4 exception became applicable after that date.

of that was after he took EMPLOYMENT unit in CITY 1, STATE 2. The audit deficiency is consistent with this decision and the tax and interest accrued thereon should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Tax Commission finds that both Taxpayers were domiciled in Utah from DATE, 2014 through DATE, 2014 and sustains the Utah individual income tax audit deficiency for tax year 2014 on that basis. It is so ordered.

DATED this _____day of _____, 2020.

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.