18-709
TAX TYPE: INCOME TAX
TAX YEAR: 2014, 2015 and 2016
DATE SIGNED: 4/15/2020
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. 18-709 Account No. ##### Tax Type: Income Tax Tax Years: 2014, 2015 and 2016 Judge: Phan

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

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Tax Attorney
TAXPAYER-1
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 tax years 2014 through 2016. The Division issued the original Notices of Deficiency and Audit Change on DATE, 2018.[1] The Taxpayers timely

1 Petitioner's Exhibit 23.

appealed the notices under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

2. No penalties were assessed with the audit for any of the tax years.

3. The amount of tax and the accrued interest as listed on the original Notices of Deficiency for each year were as follows:[2]

Year	Tax	Penalties	Interest	Total as of Notice Date[3]
2014	$$$$$	$$$$$	$$$$$	$$$$$
2015	$$$$$	$$$$$	$$$$$	$$$$$
2016	$$$$$	$$$$$	$$$$$	$$$$$

During the hearing, the Division explained that it was going to issue amended audits for two of the tax years and reduce the tax deficiency by allowing credits for taxes paid to another state. After the hearing, the Division provided the Amended Notices of Deficiency for tax years 2015 and 2016 on DATE, 2019. The Amended Notices of Deficiency reduced the 2015 and 2016 audits to the following amounts:[4]

Year	Tax	Penalties	Interest	Total as of Amended Notice Date[5]
2015	$$$$$	$$$$$	$$$$$	$$$$$
2016	$$$$$	$$$$$	$$$$$	$$$$$

4. The Division issued the original and amended audits on the basis that the Taxpayers remained Utah resident individuals for income tax purposes for all of 2014 through 2016.

5. The Taxpayers claim that they were part-year Utah resident individuals for each tax year and had filed part-year Utah returns for each year. For 2014, the Taxpayers claim they had started the year as Utah resident individuals, but had moved to STATE-1 and became residents of STATE-1 on DATE, 2014. The Taxpayers filed a Utah Part-Year Resident Individual Income Tax return for 2014 and on schedule TC-40B, they listed that they were part-year Utah residents for the period from January 1, 2014 to DATE, 2014.[6] The Taxpayers claim that they remained living in STATE-1 through most of 2015, but had moved back to Utah at the end of 2015. The Taxpayers filed a Utah Part-Year Resident Individual Income Tax return for 2015 and on that return, on schedule TC-40B they listed that they were part-year

2 Petitioner's Exhibit 23.
3 Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on any unpaid balance.
4 The Amended Notices of Deficiency, issued on DATE, 2019, were received as post-hearing exhibits into the hearing record.
5 Interest continues to accrue on the unpaid balance.
6 Petitioner's Exhibit 22.

Utah residents for the period of DATE, 2015 to DATE, 2015.[7] For 2015, the Taxpayers had also filed a STATE-2 Nonresident return on which they claimed income taxable to STATE-2. This return indicated that they had paid $$$$$ in individual income tax to STATE-2 in 2015.[8] This is the basis for the credit the Division allowed in the 2015 Amended Notice of Deficiency.

6. In 2016, the Taxpayers claimed that after returning to Utah late in 2015, they had remained in Utah for several months until DATE, 2016, after which TAXPAYER-1 had a new employment opportunity and they moved to STATE-3. The Taxpayers filed a Utah Part-Year Resident Individual Income Tax return for 2016 and on that return, on schedule TC-40B they listed that they were part-year Utah residents for the period from January 1, 2016 to DATE, 2016.[9] The Taxpayers had also filed a Part-Year STATE-3 Individual Income Tax Return for 2016 and paid taxes to STATE-3 on income they earned while in that state.[10] This tax is the subject of the credit for taxes paid to another state allowed by the Division with the 2016 Amended Notice of Deficiency. The Taxpayers have continued to live primarily in STATE-3 since DATE, 2016 up through the date of the Formal Hearing, although they have maintained a residence in Utah to use as a second home since that time.

7. The Taxpayers were married all throughout 2014, 2015 and 2016. They were not divorced or legally separated. They had filed married filing joint federal individual income tax returns for each year at issue.[11] The Taxpayers are considered to be spouses for purposes of Utah Code Subsection 59-10-136(5).

8. The Taxpayers had no dependents in 2014. The Taxpayers' twins were born in DATE015 and they claimed them as dependents on their 2015 and 2016 federal and state income tax returns.[12] The children were not old enough to be school age and so did not attend a Utah public school in 2015 or 2016.

9. Neither Taxpayer attended a State of Utah institution of higher education. TAXPAYER-2 did attend COLLEGE during part of 2014, but that is not considered to be a Utah institution of higher education as described in Utah Code Sec. 53B-2-101.

10. The Taxpayers had been residing in Utah for several years prior to 2014 and in 2014 they owned two residences in Utah. The property in which they were living during the first part of 2014 was located at ADDRESS-1, CITY-1. The Taxpayer testified that after TAXPAYER-1 obtained employment in STATE-1and they moved to that state on DATE, 2014, they vacated this property and offered the property for lease. The Taxpayers did find a tenant to lease the property and provided a copy of this

7 Petitioner's Exhibit 22.
8 Petitioner's Exhibit 20.
9 Petitioner's Exhibit 13.
10 Petitioner's Exhibit 15.
11 Petitioner's Exhibits 10, 16 & 21.
12 Petitioner's Exhibits 10 & 16.

lease. The lease period began DATE, 2014 and went through DATE, after which it went on a month-to-month basis.[13]

11. The ADDRESS-1, CITY-1 property received the residential property tax exemption each audit year from 2014 through 2016.[14] This property was the Taxpayers' primary residence from January 1, 2014 until DATE, 2014. This property became the primary residence of a tenant from DATE, 2014 through the end of DATE 2015.

12. The Taxpayer represented that they did own a second residence in Utah prior to the audit years, during 2014, and into 2015, but they had always used this property as a rental. This residence was ADDRESS-2, CITY-1. This property received the primary residential property tax exemption during the period of time the Taxpayers owned this residence. The Taxpayers did not provide a lease agreement for this residence, but they had claimed the income and expenses from this residence as a rental on Schedule E of their 2014 and 2015 Federal Tax returns. Their 2015 return shows that they sold this residence on DATE, 2015, reporting the gain from the sale as a sale of business property on Form 4797 of their Federal return.[15] The Division did not contest that this property was leased to a tenant who used it as the tenant's primary residence for all of 2014 and up through DATE, 2015, when the Taxpayers sold the residence.

13. The Taxpayer testified at the hearing that after he had received a job offer from BUSINESS-1 located in STATE-1, he and TAXPAYER-2 had moved to STATE-1 by DATE, 2014. They leased a residence in STATE-1. They provided a copy of TAXPAYER-2's STATE-1 Driver License. They did not have a copy of a STATE-1 Driver License for TAXPAYER-1 but he states that he had also obtained one. TAXPAYER-1 provided a receipt indicating that he had obtained a STATE-1 resident fishing license in 2015.[16]

14. TAXPAYER-1's employment in STATE-1 ended DATE, 2015[17] and the Taxpayers moved back to Utah. The tenant at their Utah residence at ADDRESS-1 had moved out as of the end of DATE 2015 and the Taxpayers moved back into that residence by DATE, 2015. TAXPAYER-1 renewed his Utah Driver License DATE, 2015.[18]

15. TAXPAYER-1 received a job offer on DATE, 2016 from BUSINESS-2 to work at BUSINESS-2's CITY-2, STATE-3 facility.[19] TAXPAYER-1 started working there in March and TAXPAYER-2 and the children moved there after they purchased a house in STATE-3 in May 2016.[20]

13 Petitioner's Exhibit 3.
14 Respondent's Exhibit 9.
15 Petitioner's Exhibits 16 & 21.
16 See also Petitioner's Exhibits 1, 2, 4 & 5.
17 Petitioner's Exhibit 1.
18 Respondent's Exhibit 8.
19 Petitioner's Exhibit 6.
20 Petitioner's Exhibit 7.

The Taxpayers continue to reside in CITY-2, STATE-3 up to the date of this hearing. After moving to STATE-3, the Taxpayers did not sell or lease their Utah residence at ADDRESS-1. They maintained that residence for their own use to stay in when they returned to Utah for visits.

16. On DATE, 2018, the Taxpayers notified COUNTY by filling out and submitting a Taxpayer Statement of Primary Residence, that their ADDRESS-1 property was no longer a primary residence.[21]

17. Because the Taxpayers have been in or returned to Utah part of every year from 2014 to 2016, they were not absent from Utah for 761 consecutive days between January 1, 2014 and DATE, 2016. By DATE, 2016, TAXPAYER-2 and the children moved to STATE-3 with TAXPAYER-1 and they remained primarily in STATE-3 at least up to the date of the Formal Hearing. This started a 761 day period of absence. However, the Taxpayers continued to receive the Utah residential property tax exemption for their residence in Utah at ADDRESS-1. In addition, the Property Owners acknowledge that they returned to Utah for visits in 2017 and subsequent years.

18. While living in Utah prior to 2014, both Taxpayers had registered to vote in Utah. TAXPAYER-1 registered to vote in Utah in 2011 and he remained registered to vote in Utah from 2011 through the end of 2016. The COUNTY Clerk Voter Registration records show that the Voter Registration division had changed TAXPAYER-1'svoter registration to "inactive status" on DATE, 2014. The same records from COUNTY show that the Voter Registration division reactivated his status on DATE, 2016. TAXPAYER-1 voted in Utah for the DATE general elections in 2012 and 2016. He stated that he voted in Utah by absentee ballot for the DATE 2016 election because he had not yet registered to vote in STATE-3. He testified that he did eventually register to vote in STATE-3 and that he thought he had done that in 2017. However, he did not provide his STATE-3 voter records. TAXPAYER-1 also stated that he did not think about voting when in STATE-1 in 2014 or 2015 because he generally only voted in major elections.

19. TAXPAYER-2, had registered to vote in Utah in 2008. The COUNTY Clerk Voter Registration records show that the Voter Registration division had changed TAXPAYER-2's status to "inactive" on DATE, 2014. TAXPAYER-2 did not vote in the DATE 2016 election in Utah like TAXPAYER-1 had done and on DATE, 2016, the COUNTY Clerk Voter Registration had changed TAXPAYER-2's status to "made removable." TAXPAYER-2 had voted in Utah for the 2008 and 2012 general elections.[22]

20. Based on this, TAXPAYER-1 was registered to vote in Utah for all of the audit period from January 1, 2014 through DATE, 2016. He, in fact, voted in Utah in 2016. TAXPAYER-2 was

21 Petitioner's Exhibit 9.
22 Respondent's Exhibit 8.

registered to vote in Utah for all of 2014, 2015 and at least up until DATE, 2016. The Taxpayers did not request that they be removed from Utah voter registration or attempt to have their Utah voter registration canceled, nor did the Taxpayers register to vote in STATE-1 or STATE-3 during the audit years.

21. Based on the facts in this matter, the Taxpayers were presumed domiciled in Utah for all of tax years 2014, 2015 and 2016. The Taxpayers did not dispute they were domiciled in Utah from January 1, 2014 until DATE, 2014. After DATE, 2014, they were presumed domiciled in Utah until DATE, 2016, under Utah Code Subsection 59-10-136(2)(b) because TAXPAYER-1 was registered to vote in Utah for that entire period of time. In addition, they were presumed domiciled in Utah from January 1, 2014 through DATE, 2014, and again from DATE, 2015 through DATE, 2016 because they were receiving the residential property tax exemption on their ADDRESS-1 property.

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 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 years at issue in this appeal. The law was further revised effective beginning with tax year 2018, but the revisions were not made retrospective to the tax years at issue in this appeal. Utah Code §59-10-136 as in effect from 2014 through 2016 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 residential 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 residential 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 January 1, 2014 through DATE, 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." 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) from January 1, 2014 until DATE, 2016, because both Taxpayers were domiciled in Utah during this period. Utah Code Sec. 59-10-136 specifically addresses what constitutes having "domicile" in Utah.

2. The Taxpayers filed their 2014 through 2016 federal and state returns with the filing status of married filing joint. They were not divorced or legally separated at any point during 2014 through 2016. The Taxpayers are considered to be spouses under Utah Code Subsection 59-10-136(5) for purposes of the domicile provisions.

3. Utah Code Subsection 59-10-136(4) provides an exception to being considered domiciled in Utah if the individual and the individual's spouse are gone from Utah for 761 consecutive days and a number of other criteria have been met,[23] including that the taxpayer or taxpayer's spouse has not claimed the residential property tax exemption on a Utah residence. Neither party argued that this exception applied in this matter. The Taxpayers did move to CITY, STATE-3 in May 2016 and continued to reside in STATE-3 to the date of the hearing, starting a 761 day period of absence. However, even if May 2016

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23 Subsection 59-10-136(4) provides:

> (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;
>
> . . . .
>
> (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
>
> . . . .

were considered the start of the 761 day period, for all of the audit years including 2016 they had claimed the property tax residential exemption[24] on their ADDRESS-1 residence, therefore, they failed to qualify for this exception. At the hearing, the Division's position was that the Taxpayers were domiciled in Utah for all of 2014 through 2016 under Utah Code Subsection 59-10-136(2).[25] 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 part-year resident of this state (emphasis added) . . . ." The Division argued that the Taxpayers were domiciled in Utah for all of the audit period under Subsection 59-10-136(2)(b) and some of the audit period under Subsection 59-10-136(2)(a). Based on the express language of Subsection 59-10-136(2), if an individual meets the criteria found in any one of Subsections 59-10-136(2)(a) through (c), that individual is considered to be domiciled in Utah even if the individual does not meet the criteria found in any of the other subsections.[26]

4. The Division argues that regardless of their moving to other states for various times during the audit period, the Taxpayers were domiciled in Utah for the entire audit period from January 1, 2014 through DATE, 2016 under Utah Code Subsection 59-10-136(2)(b). Subsection 59-10-136(2)(b) provides that there is a rebuttable presumption that an individual is domiciled in Utah if the individual or the individual's spouse is registered to vote in Utah. TAXPAYER-1 was registered to vote in Utah for the entire audit period. He did in fact vote in Utah in the DATE 2016 election. As noted in the Findings above, TAXPAYER-2 was registered to vote in Utah from January 1, 2014 through DATE, 2016. The Taxpayers did not attempt to remove their names as registered voters in Utah at any point during the audit period. They did not register to vote in STATE-1 or STATE-3 during the audit period. TAXPAYER-1 eventually

24 For a discussion of what constitutes "claim a residential exemption" for purposes of Utah Code Sec. 59-10-136 see Conclusions of Law No. 7.

25 The Division did not argue that the Taxpayers were considered to be domiciled in Utah for the period at issue under Subsection 59-10-136(1), under which an individual is domiciled in Utah if children claimed as dependents on the individual or the individual's spouse's federal tax return attend a Utah public school, or if the individual or the individual's spouse attends a Utah institution of higher education and receives resident tuition. Instead, the Division's position was that the Taxpayers were domiciled in Utah under the rebuttable presumptions of domicile set out at Utah Code Subsections 59-10-136(2)(a) and (2)(b).

26 Furthermore, because the Taxpayers are spouses pursuant to Subsection 59-10-136(5) if presumption under Subsection 59-10-136(2)(a) or (b) arises for one Taxpayer it arises for both Taxpayers. If a Subsection 136(2)(a) or (b) presumption has arisen then for both Taxpayers, the presumption would have to be rebutted for both Taxpayers. Utah Code Subsection 59-10-136(5) 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."

registered to vote in STATE-3, but he states he thought it was sometime in 2017. Therefore, the Taxpayers are presumed domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) for the entire audit period because TAXPAYER-1 was registered to vote in Utah for the entire audit period.

5. The presumptions of domicile under Utah Code Subsection 59-10-136(2) are rebuttable presumptions. The Tax Commission has considered what does rebut and what does not rebut the Subsection 59-10-136(2)(b) presumption of Utah domicile based on voter registration in many appeal decisions. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019). Factors found to rebut the presumption include a showing that the individual registered to vote in the state to which they moved relatively soon after moving there.[27] In this case, TAXPAYER-1 eventually registered to vote in STATE-3 in 2017, but not until after voting in Utah in DATE 2016. The Commission has also found that the Subsection 59-10-136(2)(b) presumption can be rebutted if the individual who is registered to vote in Utah requested for their name to be removed from the Utah voter registry and the local county clerk or other official who received the request did not remove the individual's name from the registry.[28] In addition, the Commission found the presumption could be rebutted from the date that Utah voting laws provide for an individual's name to be removed or "made removable" from the Utah voter registry and a local county clerk does not immediately remove their name from the registry. However, the Commission has found that the registration being in "inactive status" did not rebut the presumption. TAXPAYER-1's voter registration was changed by COUNTY to "inactive status" from DATE, 2014 to DATE, 2016. In a prior appeal the Tax Commission explained that pursuant to Subsection 20A-2-306(4)(c), a Utah voter on "inactive" status is "allowed to vote, sign petitions, and have all other privileges of a registered voter[,]" but might not receive "routine mailings." So even though in "inactive status" TAXPAYER-1 was still considered registered to vote in Utah.[29] In this appeal, COUNTY Clerk Voter Registration did change TAXPAYER-2 's status to "made removable" on DATE, 2016, but TAXPAYER-1 remained registered to vote in Utah for all of the audit period. On the other hand, the Commission has found that an individual cannot rebut the Subsection 59-10-136(2)(b) presumption by showing that they did not vote in Utah during the tax year at issue. See *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720* (5/6/16). TAXPAYER-1 actually voted in Utah in 2016. The Taxpayers have not rebutted the presumption that they were domiciled in Utah for the entire audit period based on voter registration.

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27 *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720* (3/6/2016).
28 *Utah State Tax Commission Initial Hearing Order Appeal No. 18-793* (2/22/2019).
29 See *Utah State Tax Commission Initial Hearing Order Appeal No. 18-539* (4/30/2019). The Commission has also stated that it might find that the Subsection 59-10-136(2)(b) presumption is rebutted if an individual moves from Utah to a state that does not require voter registration prior to voting and if the individual eventually votes in that state. *Utah State Tax Commission Initial Hearing Order Appeal No. 17-1552* (2/7/ 2019).

6. In addition, the Division points out at the hearing that 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." However, Under Subsection 59-10-136(6), whether or not the Taxpayers claimed a property tax residential exemption on property that is the primary residence of a tenant is not considered in determining the Taxpayers' domicile in this state.[30] The Taxpayers received the primary residential property tax exemption on their Utah residence at ADDRESS-1 for every year from 2014 through 2016. However, the Taxpayers have demonstrated that after moving from Utah on DATE, 2014, they did lease this residence to a tenant on DATE, 2014, until the end of DATE 2015. The Division did not refute that this property was the primary residence of the tenant during the time the tenant was leasing the property. The Commission does not consider that the Subsection 136(2)(a) presumption has arisen for the period for which this property was leased to the tenant from DATE, 2014 through the end of 2015. However, after the tenant moved from the property by the end of DATE 2015, the Taxpayers did not attempt to re-lease the property to another tenant, and instead moved back into the property. By DATE, 2015, there was no tenant in this property. Therefore, analysis is warranted on whether the Taxpayers are presumed domiciled in Utah under Subsection 59-10-136(2)(a) for the period from January 1, 2014 through DATE, 2014 and again from DATE, 2015 until DATE, 2016 and whether they have rebutted this presumption for any of this period.

7. 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 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

30 During all of 2014 and until they sold the property on DATE, 2015, the Taxpayers owned a second residence in Utah at ADDRESS-2, CITY-1, which they used as rental property. This rental property also received the residential property tax exemption, but it was not disputed that this property was the primary residence of a tenant for the entire portion of the audit period that the Taxpayers owned this rental property. Therefore, no presumption of domicile arises from the fact that this rental property was receiving the property tax residential exemption and the Division did not argue that this rental property gave rise to the Subsection 136(2)(a) presumption.

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 COUNTY that does not require an application (which includes most Utah counties) generally asserts an enduring claim to the residential exemption.[31] For purposes of determining if the second element of whether the residence is the individual or the individual's spouse's 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 for their home at ADDRESS-1. Under Subsection 59-10-136(2)(a), the Taxpayers are presumed domiciled in Utah for the period from January 1, 2014 until DATE, 2014 and again from DATE, 2015 until DATE, 2016.

8. The Commission has considered what rebuts the Subsection 59-10-136(2)(a) presumption of domicile in numerous decisions. One factor the Commission has previously found to rebut the Subsection 59-10-136(2)(a) presumption was that it could be rebutted for that period that a home 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). For the period of time after the Taxpayers moved from their ADDRESS-1 residence on DATE, 2014, until they were able to lease it to a tenant beginning DATE, 2014, the property was vacant and being listed for rent. It was leased two months after the Taxpayers had moved from the property to a long term tenant who used the property as their primary residence. These facts are similar to those discussed in *Appeal No. 17-758* and on this basis the Taxpayers have rebutted the Subsection 59-10-136(2)(a) presumption for the period from DATE, 2014 until DATE, 2014.

31 Furthermore, in those 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.

9. Regarding the periods from January 1, 2014 to DATE, 2014 and DATE, 2015 to DATE, 2016 the Taxpayers have not rebutted the presumption that they were domiciled in Utah that arose under Subsection 59-10-136(2)(a) in regards to their ADDRESS-1 residence. Other factors the Commission has found to rebut the presumption were 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).[32] 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).[33] The Taxpayers have not demonstrated any of these type of factors to rebut the Subsection 59-10-136(2)(a) presumption for the periods from January 1, 2014 to DATE, 2014 and for DATE, 2015 until DATE, 2016.[34] During these two periods they either lived in the residence or maintained the residence for their own use as a second home and have provided no basis to rebut the presumption.

10. Many individuals have argued ignorance of the law in regards to voter registration or receiving the primary residential exemption on their Utah property as basis for rebutting the presumptions set out at Utah Code Subsection 59-10-136(2). However, the Tax Commission has concluded that ignorance of the law or ignorance of receipt of the primary residential exemption 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).

11. The Taxpayers argued at the hearing that voter registration and receipt of the primary residential property tax exemption should not be the controlling factors to be considered regarding domicile in Utah. The Taxpayers argue that the Tax Commission should instead place more weight on the factors they asserted were more important, such as that the Taxpayers had actually moved their residence and were working full time for those periods in the other states. The Taxpayers' argument that the primary residential property tax exemption and voter registration should be given less weight than other factors is contrary to Utah law for the audit period at issue in this appeal. The Taxpayers' factors are the type of factors found in Utah Code Subsection 59-10-136(3). However, the Subsection 136(3) factors are

32 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.
33 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1332* (6/27/2016 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*.

specifically not applicable if an individual is domiciled in Utah under Subsections 136(1) or 136(2) as Subsection 59-10-136(3)(a) states, "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 . . ." and then goes on in Subsection 136(3)(b) to list twelve factors. Utah Code Sec. 59-10-136 provides a very specific hierarchy of factors that establish domicile. If an individual meets any one of the factors in Subsection 136(1), they are domiciled in Utah. If they meet any one of the factors in Subsection 136(2), they are presumed domiciled in Utah. Only if the taxpayers are not domiciled in Utah under Subsection 59-10-136(1) or (2) is Subsection 136(3) applicable. Other individuals have argued that if they met a preponderance of, or more than a preponderance of, the twelve factors at Subsection 59-10-136(3)(b), that should be sufficient to rebut the presumption of domicile that arises under Utah Code Subsection 59-10-136(2). The Tax Commission has considered this argument and concluded it would not be appropriate. In *Appeal No. 17-1624,* pgs. 23-24, the Tax Commission held that relying on the list of 12 factors described in Subsection 59-10-136(3)(b) to rebut the Subsection 59-10-136(2) presumptions was contrary to the express language of Subsection 59-10-136(3)(a) and it would "be contrary to the plain meaning of Section 59-10-136 as a whole by allowing the hierarchy of factors set forth in Subsection 59-10-136(2) to be rebutted by satisfying a list of factors set forth in Subsection 59-10-136(3) that are lower in the hierarchy of domicile factors established by the Legislature." Therefore, in this appeal, because the Taxpayers are domiciled in Utah under Subsection 59-10-136(2), the Commission does not look to the Subsection 59-10-136(3) factors.

12. In addition the Commission in *Appeal No. 17-1624* considered the law prior to the Legislature's adoption of Utah Code Sec. 59-10-136. The prior law had been based more on traditional common law factors of domicile. In *Appeal No. 17-1624*, Conclusions of Law No. 18, the Commission explained:

> Prior to Section 59-10-136 becoming effective for tax year 2012, the three factors that the Utah Legislature described and set forth as rebuttable presumptions in Subsection 59-10-136(2) (as well as the two education factors described in Subsection 59-10-136(1)) had been among the numerous and non-exhaustive list of factors that the Commission had used to determine income tax domicile for years prior to 2012 (as set forth in Rule 2 [R865-9I-2]and/or Rule 52[R884-24P-52]).[35] In Section 59-10-136, however, the Utah Legislature established a hierarchy of specific factors described in Subsections 59-10-136(1) and (2) to establish income tax domicile, with the education factors creating an absolute indication of domicile and the three Subsection 59-10-136(2) factors creating rebuttable presumptions of domicile. Thus, each of the factors described in Subsections

35 Prior to tax year 2012, Rule 2(1)(b) had provided that for purposes of determining income tax domicile, "an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation" and that Rule 52 "provides a *non-exhaustive* list of factors or objective evidence determinative of domicile" (emphasis added).

> 59-10-136(1) and (2) were given greater import than they had received in establishing income tax domicile for years prior to 2012 (when each of these factors was merely one of the many factors with which domicile was determined). [36]

13. 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 noted above the Taxpayers are considered domiciled in Utah for all of the tax years at issue under Subsection 59-10-136(2)(b). Although a taxpayer need not be shown to have domicile in Utah under any other of the three presumptions set out at Subsection 59-10-136(2), in addition to being domiciled in Utah under Subsection 136(2)(b) the Taxpayers were also domiciled in Utah for various portions of the audit period as noted above under Subsection 136(2)(a). In addition to Subsections 59-10-136(2)(a) & (b) is Subsection 59-10-136(2)(c) pursuant to which 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 all of the periods that they had claimed they were Utah residents on the Utah Part-Year Individual Income Tax Returns they had filed in this matter. These periods were January 1, 2014 to DATE, 2014, DATE, 2015 to DATE, 2015, and January 1, 2016 to DATE, 2016. However, the Taxpayers do not dispute that they were Utah residents during the periods they had claimed to be Utah residents on their Utah returns and they had paid Utah individual income tax on the income they had earned during those periods.

14. As the Taxpayers were domiciled in Utah for all of the period from January 1, 2014 through DATE, 2016, the 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 one of the states the Taxpayers had moved to was STATE-1, and they paid no income tax in that state, there is no credit available to the Taxpayers for the period when they were in STATE-1. The Division has allowed a credit for taxes paid to STATE-3 and to STATE-2.

15. The Division did not assess any penalties against the Taxpayers. 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

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36 Almost all of the factors that were given greater import in Subsections 59-10-136(1) and (2) are based on an individual or individual's spouse availing themselves of certain benefits of being a resident of Utah, such as having their dependent attend a Utah public school, being enrolled as a resident student at a Utah institution of higher education, receiving a property tax benefit in the form of a residential exemption, or being able to register to vote in Utah.

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 Utah for all of tax years 2014, 2015 and 2016 and, therefore, the Division's original audit for tax year 2014 and amended audits for tax years 2015 and 2016 should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the Taxpayers were domiciled in Utah for the entirety of 2014, 2015 and 2016 and sustains the Division's original audit deficiency for tax year 2014 and amended audit deficiencies for tax years 2015 and 2016. 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.