

TAX TYPE: INCOME
TAX YEAR: 2013 AND 2014
DATE SIGNED: 7/30/2019
COMMISSIONERS: J. VALENTINE EXCUSED, M. CRAGUN, R. ROCKWELL, L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER 1, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 18-943 Account No. ##### Tax Type: Income Tax Years: 2013 & 2014 Judge: Chapman
---	--

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER 1, Taxpayer (by telephone)
For Respondent: RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on May 28, 2019.

Mr. Bradley M. Phillips (“Petitioner” or “taxpayer”) appealed Auditing Division’s (the “Division”) assessments of Utah individual income taxes for the 2013 and 2014 tax years. On March 22, 2018, the Division issued Notices of Deficiency and Audit Change (“Statutory Notices”) to the taxpayer, in which it imposed taxes and interest (calculated as of April 21, 2018),¹ as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
2013	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2014	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue until any tax liability is paid. No penalties were imposed.

The taxpayer, who is unmarried, filed 2013 and 2014 federal and Utah returns with a filing status of single. The taxpayer filed a 2013 Utah full-year *nonresident* return and a 2014 Utah full-year *resident* return. On his 2013 Utah *nonresident* return, the taxpayer allocated to Utah \$\$\$\$ of his \$\$\$\$ of 2013 federal adjusted gross income (“FAGI”). The Division, however, determined that the taxpayer was domiciled in Utah for all of the 2013 tax year based on a preponderance of 12 factors listed in Utah Code Ann. §59-10-136(3)(b) (2013). As a result, the Division changed the taxpayer’s 2013 Utah nonresident return to a resident return and imposed Utah tax on all of the taxpayer’s 2013 income. In addition, the Division reduced the \$\$\$\$ of itemized deductions that the taxpayer reported on his 2013 Utah return to a standard deduction of \$\$\$\$ to match the change that the Internal Revenue Service (“IRS”) had made for 2013 federal tax purposes.

At the federal level, the taxpayer did not contest the IRS’s changing the \$\$\$\$ of itemized deductions that he had claimed on his 2013 federal return to a standard deduction of \$\$\$\$. As a result, the taxpayer stated that he is not contesting the Division’s changing his 2013 Utah return to reflect a standard deduction of \$\$\$\$. The taxpayer, however, does contest the Division’s determination that he was domiciled in Utah and that his 2013 Utah nonresident return should be changed to a resident return. The taxpayer stated that Utah should not tax any of his 2013 income because he earned all of this income in STATE 1 (i.e., he did not earn any of it in Utah).

For the 2014 tax year, the Division accepted the taxpayer’s filing of a 2014 Utah resident return. The Division’s 2014 assessment, however, reflects the IRS’s reducing the \$\$\$\$ of itemized deductions that the taxpayer claimed on his 2014 federal return to \$\$\$\$. The taxpayer stated that he would accept the Division’s assessment for the 2014 tax year. As a result, the Commission will sustain the Division’s 2014 assessment in its entirety.

As to the 2013 tax year remaining at issue, however, the taxpayer asks the Commission to find that he properly filed a 2013 Utah nonresident return and to reverse the Division’s assessment for this

year in its entirety. The Division, on the other hand, asks the Commission to find that the taxpayer was domiciled in Utah for all of 2013 and to sustain its 2013 assessment in its entirety.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2013)², “a tax is imposed on the state taxable income of a resident individual[.]”

2. For purposes of Utah income taxation, a “resident individual” is defined in UCA §59-10-103(1)(q)(i), as follows in pertinent part:

- (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.

....

3. Effective for tax year 2012 (and applicable to 2013 tax year remaining at issue), UCA §59-10-136 provides for the determination of “domicile,” as follows:³

- (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

2 All substantive law citations are to the 2013 version of Utah law. Although the 2014 tax year is no longer at issue, the Commission notes that the substantive law was the same for both 2013 and 2014.

3 Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in Senate Bill 13 (2019) (“SB 13”). However, it is the version of Section 59-10-136 in effect during the 2013tax year that is applicable to this appeal.

- (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.

4. For the instant matter, UCA §59-1-1417(1) (2019) provides guidance concerning which party has the burden of proof, as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
 - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and

(c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:

(i) required to be reported; and

(ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter. Remaining at issue is whether the taxpayer was a Utah resident individual for the 2013 tax year. The Division claims that the taxpayer was a Utah resident individual for all of 2013, while the taxpayer claims that he was not a Utah resident individual for any portion of 2013. For 2013, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the “domicile test”); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the “183 day test”).

The Division does not argue that the taxpayer is a Utah resident individual for the 2013 tax year under the 183 day test. Instead, the Division contends that the taxpayer is a Utah resident individual for all of 2013 under the domicile test. As a result, the Commission must apply the facts to the Utah domicile law in effect for the 2013 tax year to determine whether the taxpayer is considered to be domiciled in Utah for all of 2013 (as the Division contends) or whether the taxpayer is not considered to be domiciled in Utah during any portion of 2013 (as the taxpayer contends).

I. Additional Facts.

TAXPAYER 1 was born in Utah in DATE and lived in Utah until around DATE, when he was laid off from his job with COMPANY 1. Since DATE, TAXPAYER 1 has worked outside of Utah. TAXPAYER 1 was not married to anyone during 2013 (he and his ex-wife divorced in DATE). During the 2013 tax year, TAXPAYER 1 children and grandchildren lived in Utah. TAXPAYER 1 did not claim

Appeal No. 18-943

any dependents on his 2013 federal return, nor did TAXPAYER 1 attend an institution of higher education during 2013. In addition, TAXPAYER 1 was not registered to vote in Utah during 2013.

In DATE, TAXPAYER 1 moved to STATE 2 to work in construction, after which he sold his Utah home and purchased a home in STATE 2. In DATE (around the time of the financial crisis), TAXPAYER 1 declared bankruptcy in STATE 2 and lost his STATE 2 home. TAXPAYER 1 has not owned any real estate since losing his STATE 2 home around DATE.

Since DATE (including the 2013 tax year at issue), TAXPAYER 1 has been “traveling” to work in various states other than Utah. While working in these various states, TAXPAYER 1 would live in a fifth wheel trailer that he owned and parked in RV parks or stay in motel rooms provided by his employer(s). In addition, TAXPAYER 1 rented a room at his DEPENDENTS home in CITY 1, Utah, to which he returned between jobs or when he was on vacation. TAXPAYER 1 stated that he pays his DEPENDENT \$\$\$\$ a month to rent this room.

For all of 2013, TAXPAYER 1 worked on a construction job at a COMPANY 2 in STATE 1. It is unclear whether TAXPAYER 1 employer was paying for him to live in a motel in STATE 1 or whether TAXPAYER 1 was living in his fifth wheel trailer in STATE 1 during 2013. However, throughout 2013, TAXPAYER 1 stated that his employer would pay for him to fly home to Utah once a month and that he would stay in the room he rented at his DEPENDENTS house during these trips. TAXPAYER 1 estimated that he spent 36 days in Utah during 2013.

TAXPAYER 1 did not attend a church during the 2013 tax year. However, during 2013, he was a member of a union in STATE 2 (specifically a union of operating engineers). TAXPAYER 1 explained that he has been a member of this union in STATE 2 since DATE. TAXPAYER 1 was not a member of any other club or other similar organization in any state during 2013.

TAXPAYER 1 claims that he had a Utah driver’s license until DATE, at which time he obtained a STATE 2 driver’s license. TAXPAYER 1 also claims that around DATE, he obtained a STATE 3

driver's license that he kept until he again obtained a Utah driver's license in early 2014. However, he provided no documentary evidence to show that he had a STATE 3 driver's license instead of a Utah driver's license during 2013. The Division proffered "Utah Driver License Details" about the taxpayer that the Division obtained from the Utah Criminal Justice Information System ("UCJIS"). These details show that the taxpayer last renewed his Utah driver's license in 2016 and that he updated his address to a CITY 1, Utah address (which is his DEPENDENTS address) in February 2012.

The Division admits that this UCJIS information does not show whether the taxpayer had a Utah driver's license during 2013 or not, but contends that the information appears to contradict TAXPAYER 1's assertion that he did not have a Utah driver's license between 2008 and 2014. Otherwise, the Division opined, why would TAXPAYER 1 have changed his address for Utah driver's license purposes in 2012. For this reason and because TAXPAYER 1 has not provided any documentary evidence to show that he had a STATE 3 and not a Utah driver's license during 2013, the Division asks the Commission to find that TAXPAYER 1 had a Utah driver's license for all of 2013. Because the taxpayer has the burden of proof in this matter, the Division's arguments are persuasive. Based on the evidence provided at the Initial Hearing, the Commission finds that TAXPAYER 1 had a Utah driver's license for all of 2013.

Throughout the 2013 tax year, TAXPAYER 1 received his mail at his DEPENDENTS home in CITY 1, Utah. In addition, TAXPAYER 1 used the address of his DEPENDENTS Utah home to file his 2012 federal and Utah income tax returns during 2013, as well as his 2013 federal and Utah income tax returns during 2015 (TAXPAYER 1 filed his 2013 returns late). TAXPAYER 1 stated that on his 2013 federal return, he claimed Utah as his tax home for purposes of deducting business expenses he incurred while working in STATE 1 during 2013.

During 2013, TAXPAYER 1 owned the fifth wheel trailer (that was discussed earlier), a motorcycle, and, at different times, two pickup trucks. As to the two pickup trucks, TAXPAYER 1 purchased one of them prior to 2013 (the "first pickup truck") and continued to own it until DATE 2013,

when he traded it in on the purchase of another pickup truck from a STATE 1 dealership (the “second pickup truck”). TAXPAYER 1 proffered that he had always registered the first pickup truck in STATE 3. In addition, he proffered that his fifth wheel trailer and motorcycle were registered in STATE 3 until early DATE, when he registered them in Utah while spending several months at his DEPENDENTS Utah home between jobs. As to his second pickup truck, TAXPAYER 1 proffered that the STATE 1 dealership that sold it to him was able to register it in Utah at the time of his DATE purchase.

The Division proffered “Vehicle/Registration Information” that it also obtained from the UCJIS, which shows that TAXPAYER 1’ second pickup truck was registered in Utah on DATE, but does not show that his first pickup truck, his fifth wheel trailer, or his motorcycle was registered in Utah during any portion of 2013. While the Division’s information does not confirm TAXPAYER 1 recollection that he registered his fifth wheel trailer and motorcycle in Utah in early DATE, it appears to support his recollection that he registered his first pickup truck, his fifth wheel trailer, and motorcycle in a state other than Utah during DATE. As a result, the Commission finds that from DATE to DATE, TAXPAYER 1 first pickup truck, his fifth wheel trailer, and his motorcycle were registered in a state other than Utah. From DATE to DATE, the Commission finds that TAXPAYER 1 second pickup truck was registered in Utah, while his fifth wheel trailer and his motorcycle were registered in a state other than Utah.

II. Domicile Test for the 2013 Tax Year Remaining at Issue.

UCA §59-10-103(1)(q)(i)(A) defines a “resident individual” as “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[.]” For 2013, a taxpayer’s domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a

taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).⁴

A. Subsection 59-10-136(4). The taxpayer does not argue that he is *not* considered to be Utah domiciliary for any portion of the 2013 tax year under Subsection 59-10-136(4). For a single individual like the taxpayer, this subsection applies if the individual is “absent from the state” for at least 761 consecutive days, if a number of listed conditions are all met. Regardless of whether TAXPAYER 1 was absent from Utah for a 761-day or more period that included the 2013 tax year or not, he does not meet all of the conditions listed in Subsection 59-10-136(4)(a)(ii).

First, the Subsection 59-10-136(4)(a)(ii)(A) condition provides that an individual does not satisfy Subsection 59-10-136(4) if the individual returns to Utah more than 30 days in a calendar year. Because TAXPAYER 1 proffered that he was present in Utah 36 days of the 2013 calendar year, he does not meet this condition for any portion of 2013. Second the Subsection 59-10-136(4)(a)(ii)(E) conditions that provides that an individual does not satisfy Subsection 59-10-136(4) if the individual asserts that Utah is the individual’s tax home for federal income tax purposes. Because TAXPAYER 1 proffered that he claimed Utah as his tax home for purposes of deducting business expenses on his 2013 federal income tax return, he also does not meet this condition. For these reasons, the taxpayer is *not* considered to not be domiciled in Utah under Subsection 59-10-136(4) for any portion of 2013.

Accordingly, the Commission must analyze whether TAXPAYER 1 is considered to have domicile in Utah during 2013 under one or more of the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found

⁴ Prior to tax year 2012, an individual’s income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) (“Rule 2”), which provided, in part, criteria to be used when determining an individual’s income tax domicile and which referred to a non-exhaustive list of domicile factors in Utah Admin. Rule R884-24P-52 (2011) (“Rule 52”) (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile for the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

in *any one* of these subsections, 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. The Division claims that the only subsection of Section 59-10-136 under which the taxpayer would be domiciled in Utah is Subsection 59-10-136(3).⁵

B. Subsection 59-10-136(3). Subsection 59-10-136(3)(a) provides that an individual is considered to be domiciled in Utah if they have a permanent home in Utah to which they intend to return after being absent and if they have voluntarily fixed their habitation in Utah not for a special or temporary purpose, but with the intent of making a permanent home. Subsection 59-10-136(3)(b) provides that the Commission shall base its determination of whether a taxpayer is domiciled in Utah under Subsection 59-10-136(3)(a) on a preponderance of the evidence, taking into account the totality of 12 specific facts and circumstances.⁶ Accordingly, for purposes of determining whether the taxpayer is considered to be domiciled in Utah under Subsection 59-10-136(3) for the 2013 tax year, only the 12 facts and circumstances listed in Subsection 59-10-136(3)(b) will be considered.

⁵ It appears that the Division has correctly determined that TAXPAYER 1 would not be considered to be domiciled in Utah for any portion of 2013 under Subsection 59-10-136(1), (2)(a), (2)(b), or (2)(c) because TAXPAYER 1: 1) did not claim any dependents on his 2013 federal income tax return and did not attend an institution of higher education during 2013; 2) did not own any real property on which he claimed the Utah residential exemption from property taxation during 2013; 3) was not registered to vote in Utah during 2013; and 4) did not file a 2013 Utah resident or part-year resident income tax return.

⁶ Subsection 59-10-136(3)(b) does not indicate that the facts to be considered “include” the 12 listed facts and circumstances or use some other wording that would suggest that other facts and circumstances may also be considered. The language clearly provides for the determination of domicile under Subsection 59-10-136(3) to be limited to the 12 facts and circumstances listed in Subsection 59-10-136(3)(b).

Furthermore, for purposes of determining an individual’s domicile under Subsection 59-10-136(3) based on a “preponderance of the evidence,” the Commission notes that in *T-Mobile USA, Inc. v. Utah State Tax Comm’n*, 2011 UT 28 (Utah 2011), the Utah Supreme Court indicated that “preponderance of the evidence” means “more likely than not” and as the “greater weight of the evidence” (citing *Harken Sw. Corp. v. Bd. Of Oil, Gas & Mining*, 920 P.2d 1176 (Utah 1996) and *Alvarado v. Tucker*, 2 Utah 2d 16, 268 P.2d 986 (Utah 1954)). As a result, the Commission will consider whether the greater weight of these 12 facts and circumstances supports a determination that the taxpayer was domiciled in Utah during 2013.

Of the 12 Subsection 59-10-136(3)(b) factors, five of them are not relevant to the taxpayer's circumstances during 2013, specifically Subsections 59-10-136(3)(b)(ii), (3)(b)(iv), (3)(b)(x), (3)(b)(xi), and (3)(b)(xii). As a result, these five factors will receive no weight in determining the taxpayer's domicile under Section 59-10-136(3). The other seven factors, however, are relevant to the taxpayer's circumstances and indicate either a domicile in Utah or a domicile in a jurisdiction other than Utah. Following is an analysis of the seven relevant factors.

1) *Subsection 59-10-136(3)(b)(i)*. The first relevant factor is “whether the individual or the individual's spouse has a driver license in this state[.]” Pursuant to Subsection 59-10-136(5), TAXPAYER 1 does not have a “spouse” for purposes of Section 59-10-136. However, for reasons discussed earlier, the Commission has found that TAXPAYER 1 had a Utah driver's license throughout 2013. Accordingly, the Subsection 59-10-136(3)(b)(i) factor indicates that TAXPAYER 1 is domiciled in Utah for all of the 2013 tax year.

2) *Subsection 59-10-136(3)(b)(iii)*. The second relevant factor is “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[.]” Throughout the 2013 tax year, the taxpayer rented a room at his DEPENDENTS home in CITY 1, Utah, where he would stay a few days each month. In addition, while working in STATE 1 during DATE, the taxpayer lived in his fifth wheel trailer and/or a motel room provided by his employer. The taxpayer did not provide any information about the characteristics of his fifth wheel trailer or his DEPENDENTS home. Generally, the Commission would consider the nature and quality of a room in a home to be a more permanent living accommodation to that of a fifth wheel or a motel room, especially where the taxpayer has not provided sufficient details of the nature and quality of his DEPENDENTS Utah home in comparison to that of the fifth wheel trailer and/or motel room in which he resided in STATE 1. For these reasons, the taxpayer has not met his burden of proof to show that his STATE 1

living accommodations were superior to his Utah living accommodations. Accordingly, the Subsection 59-10-136(3)(b)(iii) factor indicates that TAXPAYER 1 is domiciled in Utah for all of the 2013 tax year.

3) *Subsection 59-10-136(3)(b)(v)*. The third relevant factor is “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[.]” Under IRC §32(c)(2)(A), “earned income” is defined to mean:

- (i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus
- (ii) the amount of the taxpayer’s net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

Form W-2’s show that almost all of TAXPAYER 1 2013 federal adjusted gross income (“FAGI”) was from “wages, tips, and other compensation.” As a result, all of these wages are considered “earned income” under IRC §32(c)(2). None of these wages, however, was earned from employment at a physical location in Utah. Accordingly, the Subsection 59-10-136(3)(b)(v) factor indicates that TAXPAYER 1 is not domiciled in Utah for any portion of 2013.

4) *Subsection 59-10-136(3)(b)(vi)*. The fourth relevant factor is “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[.]” The taxpayer proffered that the first pickup truck, the second pickup truck, the fifth wheel trailer, and the motorcycle that he owned during 2013 were all required to be registered, which the Division did not refute. In addition, neither party argued that any of these items of personal property would not be considered a “vehicle” as defined in Section 59-12-102. As a result, the Commission will consider the states of registration of all of these vehicles when analyzing the Subsection 59-10-136(3)(b)(vi) factor.

The taxpayer owned three vehicles for the DATE to DATE portion of 2013, specifically the first pickup truck, the motorcycle, and the fifth wheel trailer. Because all of these vehicles were registered outside of Utah for this period, the Subsection 59-10-136(3)(b)(vi) factor indicates a domicile outside of Utah for the taxpayer for the DATE to DATE portion of 2013.

The taxpayer also owned three vehicles for the DATE to DATE portion of 2013, specifically the second pickup truck, the motorcycle, and the fifth wheel trailer. For this period, the second pickup truck was registered in Utah, while the motorcycle and fifth wheel trailer were registered outside of Utah. Because a majority of these three vehicles were registered outside of Utah during this period, the Subsection 59-10-136(3)(b)(vi) factor also indicates a domicile outside of Utah for the taxpayer for the DATE to DATE portion of 2013.⁷ Accordingly, the Subsection 59-10-136(3)(b)(vi) factor indicates that TAXPAYER 1 is not domiciled in Utah for any portion of 2013.

5) *Subsection 59-10-136(3)(b)(vii)*. The fifth relevant factor is “whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state[.]” During 2013, TAXPAYER 1 was a member of a union in STATE 2, but was not a member of a church or another club or similar organization. As a result, the Subsection 59-10-136(3)(b)(vii) factor indicates that TAXPAYER 1 is not domiciled in Utah for any portion of 2013.

6) *Subsection 59-10-136(3)(b)(viii)*. The sixth relevant factor is “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[.]” TAXPAYER 1 admitted that he received most, if not all, of his mail at the address of his DEPENDENTS Utah home throughout the 2013 tax year. As a result, the Subsection 59-10-136(3)(b)(viii) factor indicates that TAXPAYER 1 is domiciled in Utah during all of 2013.

7) *Subsection 59-10-136(3)(b)(ix)*. The seventh relevant factor is “whether the individual or the individual's spouse lists an address in this state on a state or federal tax return[.]” The taxpayer listed a Utah address on all federal and state income tax returns that he filed during the 2013 tax year. As a

⁷ Subsection 59-10-136(3)(b)(vi) does not ask the Commission to determine only whether a vehicle owned or leased by the individual or the individual’s spouse is registered “in this state.” If it had, a different conclusion might have been reached for the November 26, 2013 to December 31, 2013 portion of 2013.

result, the Subsection 59-10-136(3)(b)(ix) factor indicates that TAXPAYER 1 is domiciled in Utah during all of 2013.

Summary of the Subsection 59-10-136(3)(b) Factors. To decide whether TAXPAYER 1 is considered to be domiciled “in this state” for all or a portion of 2013 under Subsection 59-10-136(3), Subsection 59-10-136(3)(b) requires the Commission to determine whether a preponderance or greater weight of the evidence concerning 12 specific factors shows a Utah domicile. As previously mentioned, five of the Subsection 59-10-136(3)(b) factors are not relevant to TAXPAYER 1 circumstances for any portion of 2013. These five factors will receive no weight in the analysis.

For all of 2013, the remaining seven Subsection 59-10-136(3)(b) factors are relevant to TAXPAYER 1 circumstances. Of the seven relevant factors, four of them show a Utah domicile for all of 2013 (the Subsection 59-10-136(3)(b)(i), (3)(b)(iii), (3)(b)(viii), and (3)(b)(ix) factors), while three of them show a domicile outside of Utah for all of 2013 (the Subsection 59-10-136(3)(b)(v), (3)(b)(vi), and (3)(b)(vii) factors). As a result, a greater weight of the seven relevant factors indicates that TAXPAYER 1 is domiciled in Utah for all of 2013. Accordingly, TAXPAYER 1 is considered to be domiciled in Utah for all of the 2013 tax year pursuant to Subsection 59-10-136(3).

E. Domicile – Summary. Based on the foregoing, TAXPAYER 1 is considered to be domiciled in Utah for all of the 2013 tax year. As a result, TAXPAYER 1 is a Utah resident individual for all of 2013, pursuant to Subsection 59-10-103(1)(q)(i)(A).

III. Taxpayer’s Other Arguments.

TAXPAYER 1 contends that Utah should not tax the 2013 income that he earned outside of Utah. This argument seems inconsistent with TAXPAYER 1 filing a 2014 Utah resident return on which he reported that his 2014 Utah income was subject to Utah taxation, even though he worked only in states other than Utah during 2014. Regardless, pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), all of a Utah resident individual’s federal adjusted gross income is subject to Utah income

taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that “a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]” In accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because TAXPAYER 1 has been found to be Utah resident individual for all of 2013, Subsection 59-10-117(2)(c) does not apply to him for any portion of 2013. Accordingly, all of TAXPAYER 1 2013 income is subject to Utah taxation, including the income that TAXPAYER 1 received while he was living and working outside of Utah. Double taxation concerns are alleviated by the credit that Utah allows for income taxes paid to another state.⁸

IV. Conclusion.

Based on the foregoing, TAXPAYER 1 is considered to be domiciled in Utah for all of the 2013 tax year. As a result, he is a Utah resident individual for all of 2013. Accordingly, all of the income that he received during 2013 is subject to Utah taxation. For these reasons, the Commission should sustain the Division’s 2013 assessment, as well as the 2014 assessment that the taxpayer is no longer contesting.

Kerry R. Chapman
Administrative Law Judge

⁸ For a Utah resident individual, Utah Code Ann. §59-10-1003 (2013) provides a credit against the Utah tax otherwise due for income taxes imposed by another state. It does not appear that this credit would apply to the taxpayer’s circumstances because STATE 1 does not impose a state income tax and because the taxpayer did not contend that any state other than Utah taxed his 2013 income.

Appeal No. 18-943

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments for the 2013 and 2014 tax years in their entireties. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal

number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.