

18-1325

TAX TYPE: INDIVIDUAL INCOME TAX

TAX YEAR: 2015

DATE SIGNED: 11/6/2019

COMMISSIONERS: J. VALENTINE, EXCUSED, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER 1 AND TAXPAYER 2, Petitioners, vs. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING DECISION Appeal No. 18-1325 Account No. ##### Tax Type: Individual Income Tax Tax Year: 2015 Judge: Jensen
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Presiding:

Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER 1, Taxpayer, appearing by telephone

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDANT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing on DATE, 2019 in accordance with Utah Code Ann. §59-1-502.5.

Petitioners (the “Taxpayers”) are appealing the assessment of Utah individual income tax for a portion of the 2015 tax year. On DATE, 2018, the Auditing Division of the Utah State Tax Commission (the “Division”) sent a Statutory Notice of Deficiency for the 2015 tax year. The Statutory Notice indicated that the Taxpayers owed additional amounts as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest¹</u>
2015	\$\$\$\$\$	None	\$\$\$\$\$

APPLICABLE LAW

¹ Interest continues to accrue on any unpaid balance.

A tax is imposed on the state taxable income of every resident individual for each taxable year.

Utah Code Ann. §59-10-104(1).

Utah Code Ann. §59-10-103(1)(q) defines “resident individual” as follows:

- (i) "Resident individual" means:
 - (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
 - (B) an individual who is not domiciled in this state but:
 - (I) maintains a place of abode in this state; and
 - (II) spends in the aggregate 183 or more days of the taxable year in this state.
- (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what constitutes spending a day of the taxable year in the state.

Utah Code Ann. §59-10-136 provides guidance concerning the determination of “domicile,” 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 Code Ann. §59-2-103.5 sets forth required actions when a taxpayer no longer qualifies for a primary residential exemption for Utah real property under Utah Code Ann. §59-2-103 as follows in pertinent part:

- (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 the 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 the 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 the property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.
- (5) A property owner is not required to file a written statement or make the declaration described in Subsection (4) if the property owner:
- (a) changes primary residences;
 - (b) qualified to receive a residential exemption authorized under Section 59-2-103 for the residence that was the property owner's former primary residence; and
 - (c) qualifies to receive a residential exemption authorized under Section 59-2-103 for the residence that is the property owner's current primary residence.

Utah Code Ann. §20A-2-305 provides general requirements for removing names from the official voting register 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. §59-1-1417 provides that “[i]n a proceeding before the commission, the burden of proof is on the petitioner”

DISCUSSION

The Division based its audit on the assertion that the Taxpayers were part year residents of Utah for tax purposes from DATE, 2015 to DATE, 2015. The Taxpayers had filed a Utah tax return as part year residents from DATE, 2015 to DATE, 2015. The issue in this appeal is whether one or both of the Taxpayers would qualify as a "resident individual" in Utah for the purposes of Utah Code Ann. §59-10-103 for the disputed period of DATE, 2015 to DATE, 2015. The parties agree that the Taxpayers did not

spend in the aggregate more than 183 days per year in Utah during 2015. A resident individual, in the alternative, is one who is "domiciled" in the State of Utah. The parties focused on the issue of domicile at the hearing.

The Taxpayers explained that before 2015, they were long-time residents of STATE 1. In 2014, they started the process of building a single-family residence in CITY 1, Utah. They closed on the purchase of the Utah property in DATE 2015. The builder completed construction in 2015 and the Taxpayers moved into the CITY 1 home on or about DATE, 2015. The parties agree that the Taxpayers applied for a primary residential exemption on their CITY 1 home for 2015 but that they incorrectly completed their application and thus received no primary residential exemption for their CITY 1 home in 2015.

During early 2015, TAXPAYER 1 took trips to Utah to review construction progress on the Taxpayers' home in CITY 1, Utah. On one of his trips from STATE 1 to Utah in DATE 2015, TAXPAYER 1 had occasion to be in the COUNTY 1, Utah offices and determined that he would register to vote in Utah. He registered to vote in Utah on DATE, 2015².

The parties discussed a history of the Taxpayers' voting registration and actual voting. On DATE, 2000, TAXPAYER 1 registered to vote in COUNTY 1, STATE 1. On DATE, 2004, TAXPAYER 2 registered to vote in COUNTY 1, STATE 1. DATE, 2011, both Taxpayers registered to vote in COUNTY 2, STATE 1. On DATE, 2012, both Taxpayers cancelled their COUNTY 1, STATE 1 voting registration. On DATE, 2015, TAXPAYER 1 registered to vote in COUNTY 1, Utah. On DATE, 2015, both Taxpayers voted in COUNTY 2, STATE 1. On DATE, 2016, TAXPAYER 1 voted by mail in COUNTY 1, Utah.

TAXPAYER 1 indicated that at one point, he received correspondence from voting officials in COUNTY 1, Utah indicating that he was registered to vote in two states. He indicated that he received

² The Division did not explain why it used a start date of DATE, 2015 for its audit period rather than using a start date of DATE, 2015.

three letters to this effect. His recollection is that all three letters came in hard copy format via U.S. Mail. At the initial hearing, TAXPAYER 1 explained that his interpretation of the letters was that his Utah voting registration was void. He indicated that he did not have a copy of any of the letters. Both parties indicated that they had reached out to voting officials for COUNTY 1, Utah. Both parties received the same answer that COUNTY 1, Utah had no record of sending these letters. Both parties also determined that between the time TAXPAYER 1 registered to vote in COUNTY 1, Utah on DATE, 2015 and when he voted by mail on DATE, 2016, TAXPAYER 1 did not have to take any action to re-register to vote in Utah nor did he have to take any additional action such as reactivating his voting registration.

The Taxpayers filed their 2015 federal tax return as married filing jointly. They indicated that they had been married for 27 years. The Taxpayers had no school age children, did not attend school, and had no dependents in school during the years at issue in this appeal.

The Taxpayers lived in a single-family residence during their time in STATE 1 and built a home of similar size in Utah. The Taxpayers did not rent their home in Utah to anyone during 2015.

TAXPAYER 2 worked in STATE 1 until her retirement in mid-2015. TAXPAYER 1 was retired for all of 2015.

TAXPAYER 1 had a STATE 1 driver license until he applied for and received a Utah driver license on DATE, 2015. TAXPAYER 1 had a STATE 1 driver license for all of 2015. The Taxpayers owned ##### vehicles. As of DATE, 2015, both were registered in STATE 1. In DATE 2015, the Taxpayers registered one of the vehicles in Utah but left the other registered in STATE 1. The Taxpayers stated that they did not have any membership in any club, church, or similar organization in Utah in 2015. They did not indicate membership in any club, church, or similar organization in STATE 1 in 2015. The Taxpayers indicated that they received mail at their address in STATE 1 in early 2015 and had switched to receiving mail in Utah by late 2015. The Taxpayers filed their 2014 federal tax return with a STATE 1

Address and their 2015 federal tax return with a Utah address. The Taxpayers did not fail to obtain any licenses required by any states.

The Commission considers the facts of this case under Utah Code Ann. §59-10-136 beginning with Utah Code Ann. §59-10-136(5), which provides that “[i]f 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.” The Taxpayers filed their 2015 federal return with a status of married filing jointly and had been married for many years as of 2015. The Taxpayers were thus a married couple filing joint federal returns for 2015. For purposes of Utah Code Ann. §59-10-136, each of the Taxpayers is thus a spouse of the other. If one of the Taxpayers is considered to have Utah domicile under the provisions of Utah Code Ann. §59-10-136, the individual's spouse will also be considered to have Utah domicile.

The Commission next considers Utah Code Ann. §59-10-136(1), which deals with attendance at Utah schools. The test under Utah Code Ann. §59-10-136(1) is not applicable because the Taxpayers had no dependents attending Utah schools and the Taxpayers themselves were not students at a Utah institution of higher education.

Utah Code Ann. §59-10-136(2)(a) creates a rebuttable presumption of Utah domicile for an individual 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.” Although the Taxpayers applied for a primary residential exemption on their Utah real property for the 2015 tax year, that application was not successful. Inasmuch as Utah Code Ann. §59-10-136(2)(a) presumes domicile if a taxpayer “claims” a primary residential exemption, there is not a basis to find that the Taxpayers’ attempt to claim a primary residential benefit matured into an actual claim.

Utah Code Ann. §59-10-136(2)(b) creates a presumption of Utah domicile if an “individual or the individual's spouse is registered to vote in” Utah. From DATE, 2018 through DATE, 2018, TAXPAYER 1 was registered to vote in Utah. This creates a presumption of domicile in Utah. The presumption of

Utah domicile under Utah Code Ann. §59-10-136(2)(b) applies to the period from DATE, 2015 to DATE, 2015. The presumption applies to TAXPAYER 1 as an individual registered to vote in Utah. It also applies to TAXPAYER 2 as a spouse of an individual registered to vote in Utah.

Utah Code Ann. §59-10-136(2)(c) creates a presumption of Utah domicile if an “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.” This Subsection applies to the period from DATE, 2015 to DATE, 2015 when the Taxpayers declared themselves Utah residents. It does not apply to the period in dispute from DATE, 2015 to DATE, 2015 because the Taxpayers made no such declaration for this period.

Utah Code Ann. §59-10-136(3) sets forth a list of twelve “facts and circumstances” to determine Utah domicile. For the period of DATE, 2015 to DATE, 2015, the facts and circumstances do not indicate that the Taxpayers had a Utah domicile.

The twelve “facts and circumstances” listed in Utah Code Ann. §59-10-136(3) do not apply to the period of DATE, 2015 to DATE, 2015 in this case. Utah Code Ann. §59-10-136(3) is applicable only “if the requirements of Subsection (1) or (2) are not met.” As indicated above, this is a case in which the Taxpayers met the presumption of domicile under Subsection (2)(c) of Utah Code Ann. §59-10-136 for the period of DATE, 2015 to DATE, 2015. The Taxpayers made no attempt to rebut the presumption of domicile under Utah Code Ann. §59-10-136(2)(c) for that period. Thus, the facts and circumstances of Subsection (3) have no applicability for the period of DATE, 2015 to DATE, 2015.

Utah Code Ann. §59-10-136(4) provides an exception addressing when an individual does not have domicile in Utah, notwithstanding Subsections (1) through (3). Subsection (4) applies to an individual who is absent from Utah “for at least 761 consecutive days.” This exception does not apply to

the Taxpayers because there is no showing that they were absent from Utah for at least 761 consecutive days after coming to Utah.

Utah Code Ann. §59-10-136(6) deals with exceptions from domicile for those claiming a primary residential exemption for Utah real property occupied by a tenant. It does not apply in this case because the Taxpayers did not rent their property in Utah to a tenant.

The Commission considers whether the Taxpayers have rebutted the presumption of Utah domicile created by Utah Code Ann. §59-10-136(2)(b). It is undisputed that notwithstanding registering to vote in Utah in DATE 2015, TAXPAYER 1 voted in STATE 1 in DATE 2015. The Commission has previously considered the effect of voting and voting registration in another state in Tax Commission Case No. 17-1552.³ In that case, the facts involved a taxpayer that had the ability to vote in another state but did not actually vote during the time that taxpayer lived in the other state. The Commission noted that the taxpayer in that case “could have diminished [the legal effect of Utah voting registration] by actually voting in” the other state. However, because that taxpayer “did not vote in any election in [the other state] during the various periods that he lived there (including the 2012 presidential election that took place during the 2012 tax year at issue), the Commission [found that the taxpayer had not] rebutted the Subsection 59-10-136(2)(b)” presumption.

In the case now before the Commission, the Taxpayers have presented facts different from those presented in Tax Commission Case No. 17-1552, but the reasoning of Case No. 17-1552 is persuasive in this case. It is undisputed that on DATE, 2015, both Taxpayers voted in COUNTY 2, STATE 1. In this case, because the Taxpayers voted in COUNTY 2, STATE 1 on DATE, 2015, in contrast to the taxpayer in Case No. 17-1552, the Taxpayers diminished the legal effect of Utah voter registration by actually voting in the State of STATE 1. There is thus good cause for the Commission to find that under the reasoning of Case No. 17-1552, the Taxpayers’ voting in STATE 1 on DATE, 2015 is sufficient to rebut

³ The cited case is among the previous Tax Commission cases available online in a redacted format at <https://tax.utah.gov/commission-office/decisions>.

the presumption of Utah domicile under Utah Code Ann. §59-10-136(2)(b) from DATE, 2015 through DATE, 2015.

The facts, taken as a whole, provide basis to reverse the Division's audit as to Utah individual income tax, together with interest on that tax, for the 2015 tax year and to accept the Taxpayers' Utah individual income tax filing in which they indicated themselves to be part year Utah residents for the period of DATE, 2015 to DATE, 2015.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the information presented at the hearing, the Commission finds that Taxpayers were not domiciled in Utah for the period of DATE, 2015 to DATE, 2015 as claimed by the Division. There is good cause to reverse the Division's audit as to Utah individual income tax, together with interest on that tax, for the 2015 tax year and to accept the Taxpayers' Utah individual income tax filing in which they indicated themselves to be part year Utah residents for the period of DATE, 2015 to DATE, 2015. 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 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