18-1782
TAX TYPE: INCOME TAX
TAX YEAR: 2013, 2014, 2015 and 2016
DATE SIGNED: 11/17/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| TAXPAYER-1 & TAXPAYER-2,<br><br>Petitioners,<br><br>v.<br><br>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,<br><br>Respondent. | **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION**<br><br>Appeal No. 18-1782<br><br>Account No. ####<br>Tax Type: Income Tax<br>Tax Years: 2013, 2014, 2015 and 2016<br><br>Judge: Phan |

**Presiding:**
Michael J. Cragun, Commissioner
Jane Phan, Administrative Law Judge

**Appearances:**
For Petitioner: TAXPAYER-1
TAXPAYER-2
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Manager, Auditing Division

## STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 2020, in accordance with Utah Code §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") had filed an appeal of audit deficiencies issued by Respondent ("Division") of Utah individual income tax and interest for tax years 2013 through 2016. The Division issued the Notice of Deficiency and Estimated Income Tax on DATE, 2018 for each tax year at issue in this appeal.[1] The Taxpayers timely appealed the notices under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

1 Respondent's Exhibit pp. 1-12.

2. The amount of tax, penalty and the accrued interest as listed on the Notice of Deficiency for the tax years at issue are as follows:[2]

| Year | Tax | Penalties | Interest | Total as of Notice Date[3] |
|---|---|---|---|---|
| 2013 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2014 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2015 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2016 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |

3. The Division issued the audits on the basis that both of the Taxpayers were Utah resident individuals for income tax purposes for part of tax year 2013, beginning on DATE, 2013 through DATE, 2013 and for all of tax years 2014 through 2016.

4. At the Formal Hearing, the Taxpayers no longer contested the audit as to the tax deficiency for the period from DATE, 2015 until DATE, 2016. They acknowledged at the Formal Hearing that they were domiciled in Utah for this portion of the audit period and, therefore, did not contest the tax assessment for this period. They did, however, contest the tax deficiency for the period from DATE, 2013 through DATE, 2015, as it was their position that they were not domiciled in Utah for this period. The Taxpayers also requested waiver of all the penalties for all of the tax years 2013 through 2016.

5. For all of the tax years 2013 through 2016 the Taxpayers were married. They were not divorced or legally separated during these years. The Taxpayers had filed their federal returns with the status of Married Filing Joint for the years 2013 through 2016.[4] Therefore, the Taxpayers were spouses for purposes of Utah Code Subsection 59-10-136(5).

6. Although the Taxpayers did claim dependents on their federal returns, the Taxpayers testified that during all of the audit years they had no children which they claimed as a dependent on their federal return who attended a public school in Utah. The Taxpayers testified that the Taxpayers did not themselves attend a Utah institution of higher education during any of the audit period.

7. During all of the audit years, the Taxpayers had claimed one of their children as a dependent on their federal income tax returns. This was the Taxpayers' son, CHILD-1. The Taxpayers testified that he graduated from HIGH SCHOOL in CITY-1, STATE-1 in DATE, 2013, although the report card they provided from DATE, 2013 did indicate he was in eleventh grade.[5] Regardless, the Division did not dispute that CHILD-1 never attended a Utah public high school or that he finished high

2 *Id.*
3 Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on the unpaid balance.
4 Respondent's Exhibit pp. 23-40 & Petitioners' Exhibit 12.
5 Petitioners' Exhibit Domicile 11 p. 6. (School Report Card).

school in STATE-1. The Taxpayers testified that after high school, CHILD-1 attended college in STATE-2 from 2013 to 2014 and then was in FOREIGN COUNTRY in 2015 and 2016.

8. The Taxpayers also had a daughter, CHILD-2, and testified that she had already graduated from high school in 2013. The Taxpayers had claimed her as a dependent on their 2013 and 2014 federal income tax returns, but not for 2015 or 2016. The Taxpayers testified that their daughter was attending a private university in CITY-2, Utah, from DATE, 2011 through DATE, 2015.[6]

9. The Taxpayers testified they had been renting a single-family residence in STATE-1, which had ##### square feet and they had stayed in that residence until their son graduated from high school. It was at that time, on DATE, 2013 that they purchased a ##### square foot residence in CITY-3, Utah for $$$$$. Also in DATE, 2013, the Taxpayers downsized their STATE-1 residence from the larger single family home that they had been leasing in STATE-1 to a condominium, with ##### square feet. As they had done with the larger, single family home in STATE-1, they leased instead of purchased the STATE-1 condominium.

10. For 2013 to 2016, the Taxpayer TAXPAYER-1 was employed full time by the same employer and his job was in STATE-1. The Taxpayers testified that they had purchased the CITY-3 residence as a vacation residence and they maintained the residence for their own personal use. They never leased the residence to tenants. They testified that from 2013 until DATE, 2015, they primarily resided in their condominium in STATE-1 where TAXPAYER-1 worked full time and TAXPAYER-2 did volunteer work. They testified that TAXPAYER-2 had spent about one month at the CITY-3 residence after the purchase in DATE, 2013 getting it set up for their use and the family spent its holidays in the CITY-3 residence in 2013. Therefore, in 2013, TAXPAYER-2 spent more than 30 days in Utah. The Taxpayers also provided a listing of the days that they had spent at the CITY-3 residence in 2014 for holidays and getting their children settled in at the beginning and ending of each college year. This list indicated that one or both of the Taxpayers had spent more than 30 days in Utah in 2014 as well.[7] As the Taxpayers had moved to their CITY-3 residence full time in DATE 2015 and 2016, they clearly spent more than 30 days in Utah for 2015 and 2016.

11. The Taxpayers testified that by DATE, 2015 they had determined that they were going to move to their CITY-3 residence full time. They ended their lease of the STATE-1 condominium and no longer maintained a residence in STATE-1. They had moved into their CITY-3 residence by DATE, 2015, which is why they conceded they were domiciled in Utah beginning DATE, 2015.

12. CITY-3 is located in COUNTY-1. COUNTY-1 requires an application from a property owner on which the property owner states the property is the owner's primary residence before granting

6 See Also Respondent's Exhibit, p. 16.
7 Respondent's Exhibit, p. 19.

the primary residential exemption for a property. When the Taxpayers purchased their residence in CITY-3, Utah, they filled out the application to receive the primary residential property tax exemption. TAXPAYER-1 testified that he was a little confused because they had never owned a second residence before and, also, the CITY-3 residence was the only residence that they actually owned at the time, as they were only leasing their condominium in STATE-1. He did not dispute at the hearing that he had filled out the application for the property tax exemption. COUNTY-1 confirmed that the property had received the exemption from 2013 to 2016.[8]

13. TAXPAYER-1 testified that when they had made the decision that they were going to move to Utah full time, he had intended to quit his job in STATE-1, but when he told that to his employers, they instead made arrangements that if TAXPAYER-1 would continue to work for the company he could telecommute part of his time from his CITY-3 residence. He said they did still require significant travel back to the STATE-1 office, so he still spent much of his time there.

14. After the Taxpayers moved to Utah on DATE, 2015, TAXPAYER-1's only employment continued to be his STATE-1 employment and TAXPAYER-2 was not employed. TAXPAYER-1 testified that he spoke with someone in his employer's Human Resources Department and that they told him he could continue to have his wages listed as STATE-1 wages. It was TAXPAYER-1's testimony that he relied on that and did not think he needed to have Utah withholding or file a Utah return on income he was earning from his employment in STATE-1.

15. STATE-1 does not have a state income tax.

16. The Taxpayers testified that they were registered to vote in STATE-1 and they voted in STATE-1 in 2013 and 2014. The Division did not refute this or argue the Taxpayers were registered to vote in Utah prior to DATE, 2015.

17. TAXPAYER-2 had obtained a STATE-1 Driver License in 2012 and provided a copy of that record from STATE-1.[9] At the hearing, the taxpayers testified that she had obtained a Utah License in 2015. TAXPAYER-1 testified he had never obtained a STATE-1 license and had a STATE-3 License until he obtained a Utah Driver License using the address of the CITY-3 residence. The Division did not argue that the Taxpayers had obtained Utah Driver Licenses prior to DATE, 2015.

18. The Taxpayers had used a STATE-1 address when filing their federal tax returns for each of the years 2013, 2014, 2015 and 2016, although they had used three different STATE-1 addresses on their returns. For 2013 the address was their first residence at RESIDENCE-1, for 2014 and 2015 the address listed was the address for their condominium in CITY-4 and for 2016 the address listed was for a

8 Respondent's Exhibit, pp. 21 & 22.
9 Petitioners' Exhibit 6.

post office box at a UPS Store.[10] The Taxpayers did not file Utah individual income tax returns during any of the audit years.

19. TAXPAYER-1 had a membership to a CLUB in STATE-1 from 2011 until 2017.

20. During the years 2013 through 2016, the Taxpayers' children did not reside with them as they were college students and no longer minors.

21. During the years 2013 through 2016, the Taxpayers had several vehicles that were registered in Utah. The vehicles their children drove and a VEHICLE-1 were all registered in Utah in DATE 2013. They left the VEHICLE-1 in Utah to drive when they were staying at their CITY-3 residence.

22. Up until DATE, 2015, the Taxpayers received most of their regular mail at an address in STATE-1 including things like W-2s, donation receipts, high school records and employment records. The Taxpayers did provide some evidence of mail sent to their STATE-1 address for the hearing.[11]

23. The Taxpayers are both presumed domiciled in Utah from DATE, 2013 through DATE, 2016 under Utah Code Subsection 59-10-136(2)(a) because they had claimed the primary residential property tax exemption on the residence that they owned in Utah. They maintained that residence for their own personal use and stayed in it from time to time while visiting Utah for holidays or other occasions. The residence was never leased to a tenant as that tenant's primary residence and was never listed for sale or for lease while vacant.

## APPLICABLE LAW

Utah Code Ann. §59-10-104(1) (2016)[12] imposes a tax as follows:

"a tax is imposed on the state taxable income of a resident individual[.]"

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.
> . . . .

Utah Code §59-10-136 was adopted effective beginning with tax year 2012 regarding what constitutes domicile in the State of Utah. This was a substantial change in which Utah enacted a statute

10 Respondent's Exhibit pp. 23-40; Petitioner's Exhibit 12.
11 Petitioners' Exhibit 11.
12 All substantive law citations are to the 2016 version of Utah law. The substantive law remained the same during the 2013, 2014, 2015, and 2016 tax years.

that sets out a hierarchy of very specific factors that constitute Utah domicile. This legislation indicates a clear change from the pre-2012 factors for determining domicile in Utah. After the 2012 law had been in effect for a number of years, the Utah Legislature made some limited, specific revisions to the law 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 for the 2013 through 2016 tax years 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.
> . . .

In Utah Code §59-10-136, two subsections require the Commission to determine whether the property for which an individual or an individual's spouse claims a residential exemption is that individual's or individual spouse's "primary residence."[13] To assist in determining whether a property is considered the "primary residence" of the individual or individual's spouse who claimed the exemption, the Legislature enacted new property tax provisions at the same time it enacted the new domicile law in Section 59-10-136. Specifically, to assist in the determination of Utah income tax domicile of a property owner, Utah Code §59-2-103.5(4) provides, as follows:[14]

> (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.

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13 *See* Subsections 59-10-136(2)(a) and (4)(a)(ii)(D). It is noted that the term "primary residence" is also found in Subsection 59-10-136(6). However, Subsection 59-10-136(6) concerns the "primary residence" of a tenant, not the "primary residence" of the individual or individual's spouse who owns the property for which the residential exemption was claimed. Accordingly, the guidance provided in Subsection 59-2-103.5(4) does not apply when determining the "primary residence" of a tenant.

14 During the 2013 through 2016 tax years at issue, Subsection 59-2-103.5(4) was renumbered and amended. The amendments to Subsection 59-2-103.5(4) during the tax years at issue were nonsubstantive. In SB 13 (2019), the Utah Legislature also amended Section 59-2-103.5 effective for tax years beginning on or after DATE, 2018. Again, however, the SB 13 amendments have no applicability to the 2013, 2014, 2015, and 2016 tax years at issue in this appeal.

Utah Code §59-1-401(14) provides that "[u]pon 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."

Utah Admin. Rule R861-1A-42 ("Rule 42") (2019) provides guidance concerning the waiver of penalties and interest that is authorized under Section 59-1-401(14), 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.
> (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
> (a) Timely Mailing…
> (b) Wrong Filing Place…
> (c) Death or Serious Illness…
> (d) Unavoidable Absence…
> (e) Disaster Relief…
> (f) Reliance on Erroneous Tax Commission Information…
> (g) Tax Commission Office Visit…
> (h) Unobtainable Records…
> (i) Reliance on Competent Tax Advisor: The taxpayer:
> (i) furnishes all necessary and relevant information to a competent tax advisor, and the tax advisor:
> (A) incorrectly advises the taxpayer;
> (B) fails to timely file a return on behalf of the taxpayer; or
> (C) fails to make a payment on behalf of the taxpayer; and
> (ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and diligence in determining whether to seek further advice.
> (j) First Time Filer:
> (i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.
> (ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.
> (k) Bank Error…
> (l) Compliance History:
> (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
> (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
> (m) Employee Embezzlement…
> (n) Recent Tax Law Change…
> (4) Other Considerations for Determining Reasonable Cause.
> (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
> (i) whether the commission had to take legal means to collect the taxes;
> (ii) if the error is caught and corrected by the taxpayer;
> (iii) the length of time between the event cited and the filing date;

> (iv) typographical or other written errors; and
> (v) other factors the commission deems appropriate.
> (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
> (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
> (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

Utah Code §59-1-1417 provides guidance concerning which party has the burden of proof and on statutory construction, as follows in relevant part:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner . . .
> (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee or charge shall:
> (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer, and
> (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

## CONCLUSIONS OF LAW

1. The issue in this appeal is whether the Taxpayers were "resident individuals" in the State of Utah for the purposes of Utah Code Sec. 59-10-104, for the audit period from DATE, 2013 through DATE, 2016. The Taxpayers concede that they had become Utah resident individuals by DATE, 2015, but dispute they were Utah resident individuals prior to that date. For the purposes of Utah individual income tax during the audit period, a "resident individual" was 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, that the Taxpayers were Utah "resident individuals" for the whole audit period under Subsection 59-10-103(1)(q)(i)(A), because they were domiciled in Utah during this period.

2. Utah Code Sec. 59-10-136 specifically addresses what constitutes having "domicile" in Utah.

3. For all of the tax years at issue in this appeal, the Taxpayers were married, not divorced and not legally separated. They had filed federal individual income tax returns with the filing status of married filing joint. They are spouses for purposes of Utah Code Subsection 59-10-136(5).

4. The Taxpayers did not claim they met, nor did they meet the exception to domicile provided at Utah Code Subsection 59-10-136(4). Under that subsection there is an exception if the individual **and** the individual's spouse have been absent from Utah for at least 761 consecutive days and

if other factors have been met. They did not meet this requirement as one or both of the Taxpayers were in Utah for more than the 30 days of the calendar year for each year at issue and their CITY-3, Utah residence was receiving the primary residential property tax exemption.

5. There was no evidence submitted at the hearing that indicated the Taxpayers were domiciled in Utah under Subsection 59-10-136(1). Subsection 59-10-136(1)(a)(i) provides that an individual is domiciled in Utah if "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." Subsection 59-10-136(1)(a)(ii) provides that an individual is domiciled in Utah if "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 . . ." From the evidence submitted, the Taxpayers' children did not attend a Utah public kindergarten, elementary or secondary school during the audit period and the Taxpayers themselves were not enrolled in a Utah institution of higher education during that period.

6. However, the Taxpayers are presumed domiciled in Utah under one of the provisions of Subsection 59-10-136(2). 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 (emphasis added). . . . " If an individual or the individual's spouse meets any one of these three provisions, the individual is presumed domiciled in Utah. The Division argued that the Taxpayers were domiciled in Utah for all of the audit period under Subsection 59-10-136(2)(a) because they owned a residence in Utah that received the residential property tax exemption. There was no assertion from the Division and no factual information that indicated the Taxpayers were domiciled in Utah under Subsection 136(2)(b) or (c). However, it was the Division's position that the Taxpayers were domiciled in Utah under Subsection 136(2)(a) for the entire audit period.

7. 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." 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).

8. 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 had filed an application requesting the exemption and received the primary residential exemption for the audit period. Subsection 59-2-103(2) generally provides that a Utah residential property will receive a %%%%% residential exemption, while Subsection 59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county adds the second step of requiring formal application in order to receive the benefit of the exemption. The claim persists until the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner). Therefore, simply owning a residential property in Utah generally asserts an enduring claim to the residential exemption. In this matter, however, COUNTY-1 does require an application for the exemption and the Taxpayers admitted that they had filed one requesting the exemption when they bought the property in 2013, so the Taxpayers are considered to have claimed the exemption for their Utah residence.[15]

9. For purposes of determining if the second element of whether the residence is the individual's 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. Under Subsection 59-10-136(2)(a), both Taxpayers are presumed domiciled in Utah for the entire audit period.

10. The Subsection 59-10-136(2) factors are rebuttable presumptions. Because Subsection 59-10-136(2) involves rebuttable presumptions, the Legislature clearly intended not only for there to be circumstances where an individual whose actions give rise to this presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to this presumption *is not* considered to have domicile in Utah. However, the Legislature has not provided

15 In a county that requires an application, receiving the residential exemption without filing an application does not constitute a claim to the exemption.

in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. As a result, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

11. The Commission has considered what rebuts the Subsection 59-10-136(2)(a) presumption of domicile in numerous decisions and there was no information presented by the Taxpayers in this matter that supported rebuttal of this presumption. The Taxpayers had filed an application with COUNTY-1 representing to the County that they were qualified for this exemption. The Taxpayers were maintaining the property for their own personal use and stayed at the property on a number of occasions from DATE, 2013 through DATE, 2015 and by DATE, 2015, they were living in the property permanently. One factor the Commission has found to rebut the Subsection 136(2)(a) presumption was 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).[16] The Taxpayers did not take this step. In addition, the Commission has previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual has asked a county to remove the residential exemption, and the county failed to implement the individual's request.[17] The Taxpayers' Utah residence was located in a County that requires an application to receive this exemption. The Taxpayers had, in fact, applied for the exemption with the County and had not notified the County to remove the exemption. Other factors the Tax Commission has found to rebut this presumption were that it was rebutted for the period that a home was listed for sale, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for sale)[18] and 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).[19] The Taxpayers have not demonstrated any of these type of factors to rebut the

16 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.

17 See also *Initial Hearing Order, Appeal No. 19-1218* (7/10/2020) in which that taxpayer had indicated on the application that the property would only be the taxpayer's primary residence for a period of two years and the County granted the exemption based on the application and never removed the exemption after the two year period had expired.

18 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*.

19 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-758* (1/26/2018).

Subsection 59-10-136(2)(a) presumption. As the Commission has noted in previous decisions, the Commission may recognize additional grounds for rebuttal in future cases.

12. As a rebuttal for the Subsection 59-10-136(2)(a) presumption of domicile, the Taxpayers did argue at the hearing that they were willing to go back and pay COUNTY-1 the difference between the reduced property tax they had received due to claiming the primary residential property tax exemption and the tax that would have been charged had they not claimed that exemption. It was the Taxpayers' position that this would be the more fair solution as it was the County whose taxes were reduced by the Taxpayers' action and not the State. However, the Commission has previously found that retroactively removing the primary residential exemption and paying the difference in property tax is insufficient to rebut the presumption of domicile.[20]

13. The Commission has also previously found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an individual had never heard of the residential exemption or did not know that they were receiving the residential exemption.[21] Many individuals have argued ignorance of the law as a basis to rebut a Subsection 59-10-136(2) presumption and the Tax Commission has concluded that ignorance of the law is not a sufficient basis to rebut the presumptions or abate the audit deficiency. 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).

14. If an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), he or she may still be considered to be domiciled in Utah based on a preponderance of the evidence relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Subsection 59-10-136(3), however, is applicable only if the requirements of Subsection (1) or (2) are not met. Because the Commission has already found that the Taxpayers are considered to be domiciled in Utah for all of the audit period under Subsection 59-10-136(2)(a), Subsection 59-10-136(3) has no applicability to this case.

15. The Taxpayers point out at the hearing that they had been living in STATE-1 and had established ties to STATE-1 including maintaining a permanent residence, voter registration, driver licenses and their child's attendance at secondary school. They testified that when they purchased their residence in Utah on DATE, 2013, they intended it to be a vacation home. They continued to spend most of their time in STATE-1 until DATE, 2015 and TAXPAYER-1's full time employment was in STATE-1. Although these are traditional common law factors for determining domicile, the Utah Legislature

20 *See Appeal Nos. 15-1582 and 17-1787.*

21 *See, e.g., Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1582.*

abandoned the traditional notions of domicile when the Legislature adopted Utah Code Sec. 59-10-136 effective beginning in tax year 2012. Instead of the traditional domicile notions, the Legislature set out a very specific hierarchy of factors to consider, clearly giving more weight to certain factors. 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]). 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 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).[22]

16. The Taxpayers primarily seemed to be arguing at the hearing that the Utah domicile law was unfair, that it would be fairer to allow them to go back to the County and pay the property tax difference that would have resulted from them not claiming their CITY-3 residence as their primary residence. They also argue Section 59-10-136 as written for the tax years at issue results in bad tax policy in their situation. While the Commission is tasked with the duty of implementing laws enacted by the Utah Legislature, the Commission is not authorized to amend these laws to achieve what the Taxpayers may consider to be a better tax policy.[23] That is the role of the Legislature.[24]

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22 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.

23 Utah Code Sec. 59-10-136 was adopted effective beginning with tax year 2012 and has been applied uniformly since that time and for the tax years at issue in this appeal. There are now currently appeals of Tax Commission decisions in other cases involving Utah Code Sec. 59-10-136 pending before the courts that may possibly provide guidance on the interpretation of Utah's domicile law. However, no decisions have been issued by the courts on these appeals at this time.

24 The Legislature has made some amendments to Section 59-10-136. For example, the 2019 Legislature amended Section 59-10-136 in SB 13. Among the SB 13 changes, the Legislature amended the Subsection 59-10-136(2)(b) rebuttable presumption by changing the event that would trigger this presumption from being registered to vote in Utah to actual voting in Utah during the tax year. The Legislature, however, elected for the SB 13 amendments to take effect beginning with tax year 2018, purposefully electing not to apply the amendments to tax years prior to 2018 (including the tax years at issue in this appeal). While the Commission is tasked with the implementation of Section 59-10-136 and SB 13 changes to this statute, the Commission is not authorized to change the effective date of the bill and apply the SB 13 amendments to the tax years at issue in this appeal.

17. As the Taxpayers were both domiciled in Utah for all of DATE, 2013 through DATE, 2016, they were both Utah resident individuals. 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 imposed by another state. In this case, STATE-1 has no state individual income tax so there was no credit available on the income the Taxpayers earned in STATE-1.

18. Penalties for failure to timely file a tax return and for failure to timely pay the tax when due, along with the interest that has accrued on the balance were assessed in the audit pursuant to Utah Code Sections 59-1-401 & 59-1-402. Utah Code Subsection 59-1-401(14) does provide that the Commission may waive, reduce or compromise penalties and interest upon a showing of reasonable cause. Utah Admin. Rule R861-1A-42 sets out what constitutes reasonable cause for waiver of penalties, and separately what constitutes reasonable cause for waiver of interest. The Tax Commission has generally waived penalties where the issue is domicile based on the complicated and fact-specific nature of the law and equitable provisions for waiver set out at Utah Admin. Rule R861-1A-42(4). For these reasons, the Tax Commission finds there is reasonable cause to waive all of the audit penalties for the period from DATE, 2013 to DATE, 2016.

19. Under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove "that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." The Taxpayers have not asserted a basis for waiver of interest.

After review of the evidence submitted by the parties at the hearing and the applicable law, the Taxpayers were domiciled in Utah for all of the audit period from DATE, 2013 through DATE, 2016 and the audit tax and interest should be sustained for the audit period. There is reasonable cause, however, for waiver of all of the audit penalties.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that both Taxpayers were domiciled in Utah for all of the audit period from DATE, 2013 through DATE, 2016. The Commission sustains the Division's audit deficiency as to the tax and interest for the audit period. The Tax Commission finds that there is reasonable cause for waiver of all the penalties for the entire audit period. 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.