18-1866
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 10/16/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 18-1866 Account No. #### Tax Type: Income Tax Tax Year: 2015 Judge: Phan

Presiding:
John L. Valentine, Commission Chair
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, By Teleconference
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General, By Teleconference
RESPONDENT, Manager, Income Tax Auditing, By Teleconference

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 Ann. §59-1-501 and §63G-4-201 et seq. The hearing was conducted by teleconference. 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 an audit deficiency issued by Respondent ("Division") of Utah individual income tax and interest for tax year 2015. The Division issued the original 2015 Notice of Deficiency and Audit Change on DATE, 2018 and then an Amended Notice of Deficiency and Audit Change on DATE, 2018.[1] The Taxpayers did not appeal the original audit. The

1 Respondent's Exhibit 1.

Taxpayers did timely appeal the amended notice of deficiency under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing. It is the amended audit that is at issue for this hearing.

2. The amount of tax and the accrued interest as listed on the Amended Notice of Deficiency for tax year 2015 is as follows:

Year	Tax	Penalties	Interest	Total as of Notice Date[2]
2015	$$$$$	$$$$$	$$$$$	$$$$$

3. The difference between the original and amended audit notices were that in the original audit notice the Division had determined that both Taxpayers were Utah resident individuals from DATE, 2015 until DATE, 2015, which was the time period they had claimed to be Utah residents on their Utah 2015 part-year return. The Original audit was not appealed. In the amended audit, the Division changed the period of Utah domicile from DATE, 2015 to DATE, 2015, which increased the income taxable to Utah by five more days. In addition, the Division determined that an $$$$$ excess benefit payment should be taxable to Utah.

4. The representative for the Division testified that they had increased the period of domicile to DATE, 2015 based on the information they had at the time that DATE, 2015 was when the school year ended for the Taxpayers' children who were attending a Utah public school. The Taxpayer acknowledged and agreed at the hearing that two of his children attended a Utah public high school until the school year ended and the graduation from high school for one of his children. The Taxpayer did not argue or provide evidence at the Formal Hearing that the school year had ended prior to DATE, 2015.

5. The Taxpayers had originally filed a Utah part-year resident return on which they claimed to be Utah resident individuals from DATE, 2015 to DATE, 2015. However, the only income that they had claimed on their original Utah return as Utah income was TAXPAYER-2's wage income in the amount of $$$$$, which she had earned while residing in Utah. The Taxpayers acknowledge that TAXPAYER-2 was living in Utah with the couple's children during this period. The Taxpayers did not claim on their original Column A of their Utah Form TC-40B any income that TAXPAYER-1 had earned during the period from DATE, 2015 to DATE, 2015. TAXPAYER-1 was working as a (X), was based out of the CITY-1 airport, and the Taxpayers did not originally claim any of the income he earned from his employment.

6. After the original audit was issued, the Taxpayers submitted an amended Form TC-40B on DATE, 2018,[3] on which they claimed as Utah income additional wage income in the amount of $$$$$,

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

which was the wage income that TAXPAYER-1 had earned from his employment in STATE-1 from DATE, 2015 up through a pay stub issued on DATE, 2015.[4] With this amended filing most of the tax deficiency is no longer in dispute. TAXPAYER-1 testified at the hearing that his children had been generally homeschooled, but by 2015, two of his children were attending a Utah public high school. He explained that after the original audit had been issued, he now understood that the law change effective in 2012 at Utah Code Subsection 59-10-136(1) made him domiciled in Utah while his children were enrolled in a Utah public school. That is why the Taxpayers filed the amended Utah return for 2015, claiming his wage income at least through DATE, 2015.

7. With the Taxpayers' amended return, most of the tax deficiency from the amended audit is no longer in dispute. Under Utah law, both Taxpayers were domiciled in Utah while their children attended a Utah public school until DATE, 2015. The main dispute was whether an $$$$$ excess benefit payment from TAXPAYER-1's employer profit share plan was taxable to Utah. At the hearing, TAXPAYER-1 also seemed to be disputing wage income he had earned between DATE, 2015 and DATE, 2015, because he had moved to STATE-2 by DATE, 2015. However, even though TAXPAYER-1 moved to STATE-2 by DATE, 2015, two of the Taxpayers' children remained attending a Utah public high school until DATE, 2015. Therefore, as noted above, the Taxpayers were domiciled in Utah until DATE, 2015 under Subsection 59-10-136(1), so the income TAXPAYER-1 earned from DATE, 2015 to DATE, 2015 is taxable to Utah.

8. The Taxpayers were legally married during all of 2015. They were not divorced or legally separated at any point during 2015. They had filed their 2015 federal return with the filing status of "married filing joint." The Taxpayers are considered to be spouses for purposes of Utah Code Sec. 59-10-136(5).

9. The Taxpayers had six children which they claimed as dependents on their 2015 federal return.[5]

10. At least two of the couple's children, which they had claimed as dependents on their 2015 federal return, were enrolled in a public secondary school in Utah from DATE, 2015 until the school year ended.[6] As noted above, the Division had concluded based on information it had at the time it issued the amended audit that the school year had ended on DATE, 2015. This was not disputed by the Taxpayers at the Formal Hearing. Therefore, the Tax Commission finds that two of the Taxpayers' children were enrolled in a public secondary school in Utah from DATE, 2015 to DATE, 2015.

4 Respondent's Exhibit 5, pg. 58.
5 Respondent's Exhibit 3.
6 Respondent's Exhibit 2.

11. Neither TAXPAYER-1 & TAXPAYER-2 resident students enrolled in an institution of higher education in Utah during 2015.[7]

12. The Taxpayers owned a residence in COUNTY, at ADDRESS-1, CITY-2, Utah, which they had purchased in 2008. When the Taxpayers purchased their Utah residence, the Taxpayers had filled out an application and submitted it to COUNTY to apply for the primary residential property tax exemption. The application was dated DATE, 2008. On that application, they certified that the residence was their primary residence. They also indicated that they did not own a residence in any other location. Both TAXPAYER-1 & TAXPAYER-2 signed this application form.[8] The property did receive the primary residential exemption in 2015.

13. The County records submitted by the Division in this matter also confirm that the Taxpayers had sold this property in 2015.[9]

14. TAXPAYER-2 was registered to vote in Utah from 2008 up through at least 2018. TAXPAYER-1 had also registered to vote in Utah in 2008 but his voter registration status was changed to "made removable" on DATE, 2012.[10]

15. Sometime in 2011, the Taxpayers purchased a second residence. This was a property located in STATE-1 because TAXPAYER-1's work was based out of the CITY-1 airport. TAXPAYER-1 resided at the STATE-1 residence most of the time to be near his employment, up until his employment was transferred to STATE-2 around DATE, 2015. After purchasing the residence in STATE-1, TAXPAYER-1 obtained a STATE-1 Driver License, registered to vote and registered his vehicle in STATE-1. TAXPAYER-2, however, had continued to reside in the Utah residence with the children, was registered to vote in Utah, had a Utah Driver License and had a vehicle that was registered in Utah. TAXPAYER-1 did stay at the Utah residence with his family during his times off from work.

16. TAXPAYER-1's employment had been solely based in STATE-1 for all of the period from at least 2011 through DATE, 2015. He reported to the CITY-1 airport and that was where his EMPLOYMENT originated and ended. For the few days from DATE, 2015 to DATE, 2015, his employment was based out of CITY-3, STATE-2. Therefore, all of his salary, wages, commissions, or other compensation that he received from his employment in 2015 were for personal services rendered outside the State of Utah.

17. On DATE, 2015, TAXPAYER-1's employment was transferred from CITY-1 to STATE-2 and it was undisputed that he moved to STATE-2 about that time and TAXPAYER-2 and the couple's children moved to STATE-2 shortly after the school year ended on DATE, 2015. From DATE, 2015,

7 Respondent's Exhibit 2.
8 Respondent's Exhibit 7.
9 Respondent's Exhibit 7.
10 Respondent's Exhibit 6.

until they moved to STATE-2, TAXPAYER-2 and the couple's children did continue to reside at their Utah residence. The Taxpayers did list their Utah residence for sale at some point and they sold the residence, with the closing of the sale occurring on DATE, 2015, based on TAXPAYER-1's testimony at the Formal Hearing, which was not refuted by the Division. The Taxpayers did not provide as evidence at this hearing closing documents to show when they sold their Utah residence or when they purchased the new residence in STATE-2, but TAXPAYER-1 testified that they purchased a new residence in STATE-2 and closed on that purchase on DATE, 2015. He testified that he had sold and moved out of his CITY-1 residence by DATE, 2015. He testified that TAXPAYER-2 and the children had moved out of the Utah residence after the end of the school year and spent some time traveling around and visiting with family, but they had moved from their Utah residence and were on the road to STATE-2 by DATE, 2015.

18. At the hearing, the Division originally suggested that the Taxpayers be considered domiciled in Utah until DATE, 2015, but then later acknowledged that the Division would have the burden of proof to extend the date from the date they had used in their amended audit, which had been DATE, 2015. Thereafter, the Division did not pursue extending the date at the hearing. The Taxpayers had appealed the amended audit, which was based on their being domiciled in Utah until DATE, 2015, not the original audit. Under Utah Code Subsection 59-1-1417(1), taxpayers generally have the burden of proof in a proceeding before the Tax Commission. However, where the Division increases a deficiency after the notice of deficiency is issued and the taxpayer has appealed, the burden of proof shifts to the Division in regards to the increase in the deficiency. As the Division withdrew its assertion that the Taxpayers remained domiciled in Utah after DATE, 2015, the burden of proof remains with the Taxpayers in this matter. Under Utah Code Subsection 59-10-136 (1), the Taxpayers were considered domiciled in Utah as long as their children were attending public school in Utah, thus, even though TAXPAYER-1 moved to STATE-2 on DATE, 2015, the Taxpayers would remain domiciled in Utah until the school year ended on DATE, 2015. The Taxpayers did not establish that their domicile ended in Utah prior to DATE, 2015. Therefore, the Tax Commission sustains the determination made in the amended audit that both of the Taxpayers were domiciled in Utah up through DATE, 2015, under Subsection 59-10-136(1).

19. After the Taxpayers moved from Utah to STATE-2, they have continued to reside in STATE-2. TAXPAYER-1 testified that they did occasionally return to Utah to visit relatives, but both he and TAXPAYER-2 spent no more than one week per year in Utah. Therefore, after both Taxpayers had moved to STATE-2 they were gone from Utah for the 761 day period which is part of the exception to domicile set out at Utah Code Sec. 59-10-136(4), but the 761 day period did not start until after DATE, 2015.

20. As a result of finding that the Taxpayers were domiciled in Utah up through DATE,

2015, $$$$$ of the wages that TAXPAYER-1 received are taxable to Utah. Because TAXPAYER-1 was a Utah resident individual from DATE, 2015 to DATE, 2015, he was a Utah resident individual for 148 of the 365 days in 2015, which equates to %%%% of 2015. TAXPAYER-1's wages of $$$$$ multiplied by %%%%% equals $$$$$. To determine the amount of the Taxpayers' total wages taxable to Utah, TAXPAYER-2's wages of $$$$$ are added and the total wages taxable to Utah are then $$$$$. After deducting $$$$$ in educator expenses not in dispute, this results in $$$$$ of the Taxpayers' 2015 FAGI being subject to Utah taxation.

21. In addition to the few additional days of wages, at issue at the Formal Hearing was the Utah individual income tax the Division had assessed in its amended audit on the excess cash benefit payment paid to TAXPAYER-1 in the amount of $$$$$. The testimony at the hearing, which was unrefuted, indicated that this payment was paid to and received by TAXPAYER-1 on DATE, 2015. Therefore, this payment was received during the period when the Taxpayers were nonresident individuals.

22. The excess cash benefit payment related to compensation for services that TAXPAYER-1 earned outside of the State of Utah, as it related to his employment in STATE-1. TAXPAYER-1 explained at the hearing that as a (X) for NAME OF COMPANY, he benefits from a profit sharing program. He explained his understanding of the program to be that when the COMPANY earn a profit, it is distributed into the employees' retirement accounts, but if the amount exceeds the federal limit for retirement contributions for that year, the excess is paid out as a cash distribution to the employee. It was TAXPAYER-1's position that the distribution is earned and received the date it was paid. He testified that had he quit his job or had he no longer been employed by NAME OF COMPANY, on DATE, he would not have received this payment. During the hearing, the Taxpayer submitted an email regarding the Profit Sharing Plan from a representative in NAME OF COMPANY human resource department. This document was received into the record in this matter. The email explained that the excess profit sharing was paid out in cash because the Taxpayer had reached the IRS limit. The email explained that under IRS rules, the taxation of this fund is based on when the employees are paid, so the tax status of the payment was based on TAXPAYER-1's tax status when he received the funds. From this explanation, which was unrefuted by the Division, the fact that the funds were paid out instead of deposited into TAXPAYER-1's retirement account was not related to a specific pay period, but instead to the fact that TAXPAYER-1 had hit the IRS 415 limit. Therefore the funds were earned at the time they were received. As explained further in the Conclusions of Law, the excess cash benefit payment paid to TAXPAYER-1 in the amount of $$$$$ on DATE, 2015 is not subject to Utah income tax.

23. Therefore, $$$$$ of the Taxpayers' 2015 FAGI is subject to Utah taxation. This amount is less than the FAGI the division found subject to Utah taxation in its amended audit, which had been . The Division shall adjust its audit accordingly.

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Subsection 59-10-104(1) as follows:

> . . . . a tax is imposed on the state taxable income of a resident individual as provided in this section . . . .

"Resident individual" is defined in Utah Code Subsection 59-10-103(1)(q) as follows:

> (q)(i) "Resident individual" means:
> (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
> (B) an individual who is not domiciled in this state but: (I) maintains a place of abode in this state; and (II) spends in the aggregate 183 or more days of the taxable year in this state.

Beginning with the 2012 tax year, Utah Code §59-10-136 was adopted regarding what constitutes domicile in the State of Utah. This was a substantial change in which Utah enacted a statute 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 year at issue in this appeal. Utah Code §59-10-136 as in effect for the 2015 tax year 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 Code §59-1-1417 provides guidance concerning which party has the burden of proof and in regards to statutory construction, 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.

> (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.

Utah Code §59-10-120 provides for taxation when a taxpayer changes status from resident to nonresident during the year as follows in relevant part:

> (1) If an individual changes the individual's status during the taxable year from resident to nonresident or from nonresident to resident . . . .
> (2) The taxable income of the individual described in Subsection (1) shall be determined as provided in this chapter for residents and for nonresidents as if the individual's taxable year for federal income tax purposes were limited to the period of the individual's resident and nonresident status respectively.

Utah Code §59-10-116(1) imposes Utah individual income tax on a nonresident individual as follows:

> (1) Except as provided in Subsection (2), a tax is imposed on a nonresident individual in an amount equal to the product of the (a) nonresident individual's state taxable income; and (b) percentage listed in Subsection 59-10-104(2).

"State taxable income" for a nonresident individual is defined at Utah Code §59-10-103(1)(w) as follows in relevant part:

> "Taxable income" or "state taxable income:" . . . .(ii) for a nonresident individual, is an amount calculated by:
> (A) determining the nonresident individual's adjusted gross income for the taxable year, after making the: (I) additions and subtractions required by Section 59-10-114; and (II) adjustments required by Section 59-10-115; and
> (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117.

Utah Code §59-10-117 provides guidance as to which items of federal adjusted gross income are considered to be derived from Utah sources and, as a result, are included in the Utah state taxable income of a nonresident individual, as follows in pertinent part:

> (1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes those items includable in state taxable income attributable to or resulting from:
> . . .
> (b) the carrying on of a business, trade, profession, or occupation in this state;
> . . . .
> (2) For the purposes of Subsection (1):
> . . . .
> (c) a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources;
> . . . .

The Tax Commission adopted Utah Admin. Rule R865-9I-7 ("Rule 7") which defines the term "part-year resident" and gives guidance concerning the taxation of a "part-year resident" individual, as follows in pertinent part:

> (1) Definitions.
> (a) "AGI" means adjusted gross income, as defined by Section 59-10-103.
> (b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.
> . . . .
> (3) The Utah portion of a part-year resident's AGI shall be determined as follows:
> (a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total AGI shall be included in the Utah portion of the AGI.
> . . . .
> (d) All AGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of AGI.
> . . . .
> (8) Other income, losses or adjustments applicable in determining total AGI may be allowed or included in the Utah portion of AGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the commission.

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of interest, as follows in pertinent part:

> (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

CONCLUSIONS OF LAW

1. The Taxpayers were legally married during all of 2015. They were not divorced or legally separated at any point during 2015. They had filed their 2015 federal return with the filing status of "married filing joint." The Taxpayers are considered to be spouses for purposes of Utah Code Sec. 59-10-136(5).

2. Having found that two of the Taxpayers' children were enrolled in a Utah public secondary school from DATE, 2015 to DATE, 2015, and that the Taxpayers had claimed these children as dependents on their married filing joint 2015 federal individual income tax return, both Taxpayers were domiciled in Utah for that period of time pursuant to Utah Code Subsection 59-10-136(1). Under

Subsection (1) an individual is domiciled in Utah if the individual or the individual's spouse has "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" who is enrolled in a public kindergarten, public elementary school, or public secondary school in Utah. The Taxpayers did claim their children as dependents on their federal return for 2015 and two of the children were enrolled in a public secondary school in Utah. If an individual is domiciled in Utah pursuant to Subsection 59-10-136(1) and does not meet the exception set out at Subsection 59-10-136(1)(b)[11] which does not apply in this matter, the individual is domiciled in Utah. Based on Subsection 59-10-136(1) both Taxpayers were domiciled in Utah from DATE, 2015 until DATE, 2015.

3. As the Commission finds that the Taxpayers were domiciled in Utah under Subsection (1) from DATE, 2015 through DATE, 2015, and the Taxpayers did not contest this except for only the period of the few days in May, the Commission need not analyze whether the Taxpayers would also be domiciled in Utah under Subsection 59-10-136(2)[12] or Subsection (3). However, some limited observations on these other subsections may be helpful in this matter. Because the Taxpayers owned a residence in Utah that was receiving the residential property tax exemption and TAXPAYER-2 was registered to vote in Utah in 2015, if they had not been considered domiciled in Utah under Subsection 59-10-136(1) they are both presumed to be domiciled in Utah under Subsection (2) for the entire amended audit period of DATE, 2015 to DATE, 2015, unless they rebut the presumptions.[13] They would also have been considered domiciled in Utah under Subsection (2)(c) for the period they had claimed to be Utah residents on their 2015 tax return, which was from DATE, 2015 to DATE, 2015, unless they rebut the presumption, but that portion of the audit period was not in dispute. After both Taxpayers moved from Utah, the Taxpayers stated that they did not return to Utah for more than a week per year. This may have begun a 761 period of absence for purposes of the Subsection 59-10-136(4) exception to domicile beginning on the date TAXPAYER-2 and the children moved to STATE-2; however, the Taxpayers did not argue that they were not domiciled in Utah under Subsection 59-10-136(4) and whether the Taxpayers

11 Subsection 59-10-136(1)(b) provides, "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 . . . ***and*** (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i)(emphasis added)."

12 Subsection 59-10-136(2) provides, "There is a rebuttable presumption that an individual is considered to have domicile in this state if: (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence . . . . (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or (c)the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter . . ."

13 Although the Taxpayers may have otherwise been found to be domiciled in Utah under Subsection 59-10-136(2)(a) and/or (2)(b) for a time period that is longer than DATE, 2015 to DATE, 2015, because the Division did not assert that the Taxpayers were domiciled in Utah for a time period other than DATE, 2015 to DATE, 2015, the Commission finds that the Taxpayers were domiciled in Utah only for the DATE, 2015 to DATE, 2015 period.

met the requirements for the Subsection 59-10-136(4) exception does not affect the outcome of this decision because the 761 day period would have begun after the audit period ended.

4. As the Taxpayers were domiciled in Utah for the entire amended audit period under Subsection 59-10-136(1), Subsection 59-10-136(3) does not apply. Subsection (3) provides "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" based on "the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances . . ." The facts and circumstances are twelve factors that are listed at Subsection (3)(b). However, the Taxpayers were both domiciled in Utah for the entire amended audit period under Subsection (1) so the Subsection (3) factors are inapplicable to this matter.

5. The primary issue that the parties addressed at the Formal Hearing was whether the $$$$$ excess benefit payment that TAXPAYER-1 received on DATE, 2015, was subject to Utah individual income tax. The Division claims that this payment is subject to Utah taxation because the payment relates to TAXPAYER-1's employment during the period he was a Utah resident individual, therefore it was earned while TAXPAYER-1 was a Utah resident. TAXPAYER-1 argues that none of the $$$$$ of excess benefits payment is subject to Utah taxation because this payment was both earned and received on DATE, 2015, after he was no longer a Utah resident. Furthermore, this payment was related to his employment in STATE-1. In its argument in regards to taxation of an amount received by a nonresident of Utah, the Division is dealing with a tax imposition statute. Pursuant to Utah Code Subsection 59-1-1417(2) a tax imposition statute is to be construed strictly in favor of the Taxpayer.

6. Utah Code Subsection 59-10-120(2) provides that a part-year resident individual's taxable income is determined as if the individual's taxable year for federal purposes were limited to the period of the individual's resident and nonresident status respectively. For the period of the year when the individual is a nonresident, Utah Code Sec. 59-10-116 imposes a tax on a nonresident individual's "state taxable income." The "state taxable of a nonresident individual" is defined at Utah Code Subsection 59-10-103(1)(w)(ii) which requires calculating the portion of the amount the individual received that is derived from Utah sources in accordance with Section 59-10-117.

7. Utah Code Section 59-10-117 provides guidance as to which items of federal adjusted gross income are considered to be derived from Utah sources and, as a result, are included in the Utah state taxable income of a nonresident individual. In the Findings of Fact above, the findings are that that TAXPAYER-1 was a nonresident individual at the time he received the $$$$$ excess benefit payment and also that the payment was earned when it was received. Therefore, Sections 59-10-116 and 59-10-117 are considered to determine if the income is from Utah sources. Subsection 59-10-117(2) provides that for a nonresident individual "(c) a salary, wage, commission, or compensation for personal services

rendered outside this state may not be considered to be derived from Utah sources . . .” The $$$$$ excess benefit payment related to compensation for TAXPAYER-1’s personal services rendered outside of Utah. It was clearly not derived from Utah sources pursuant to Subsection 59-10-117(2)(c). The Division had pointed to Utah Admin. Rule R865-9I-7 which provides guidance for part-year resident individuals and states at (3)(a) that the Utah portion of a part-year resident's AGI includes, “Income from wages, salaries, tips and other compensation earned or received while in a resident status,” but the Tax Commission’s conclusion based on the facts presented was that this income was both earned and received after TAXPAYER-1 was no longer a Utah resident. Based on the provisions of law, the $$$$$ excess benefit payment is not taxable to Utah.

5. As the Taxpayers were domiciled in Utah throughout the amended audit period, they were both Utah resident individuals for this period and subject to Utah individual income tax on all their income during the period of domicile, including TAXPAYER-1’s wage income for that period which he earned in STATE-1 and STATE-2, subject to a credit for the individual income taxes imposed by another state. As neither STATE-1 nor STATE-2 impose an individual income tax, there is not a credit available to the Taxpayers. As noted in the findings above, the amount of the Taxpayers’ income that is taxable to Utah for the DATE, 2015 to DATE, 2015 is $$$$$ and the audit shall be adjusted accordingly.

6. No penalties were assessed with the audit. Interest was assessed pursuant to Utah Code Sections 59-1-402. Utah Code Subsection 59-1-401(14) does provide that the Commission may waive, reduce or compromise penalties or interest upon a showing of reasonable cause. Utah Admin. Rule R861-1A-42 sets out what constitutes reasonable cause for waiver of interest. However, under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove “that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayer has not asserted a basis for waiver of interest.

After consideration of the Findings of Fact and Conclusions of Law in this matter, the Taxpayers were domiciled in Utah for the period of DATE, 2015 to DATE, 2015, the $$$$$ excess benefit payment was not taxable to Utah, and the Taxpayers’ income that is taxable to Utah for 2015 is $$$$$. The tax deficiency should be adjusted according to these findings.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the Taxpayers were domiciled in Utah from DATE, 2015 to DATE, 2015 and, therefore, are Utah resident individuals for that period. However, as noted in the Findings of Fact and Conclusions of Law above, the Tax Commission finds that the audit deficiency should be adjusted to a Utah adjusted gross income of $$$$$ on the Taxpayers' part-year return. 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.