

18-1875

TAX TYPE: INCOME TAX

TAX YEAR: 2015

DATE SIGNED: 12/17/2019

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

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER-1, AND TAXPAYER-2,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 18-1875</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2015</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1

For Respondent: RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, 2019 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The matter before the Commission is Petitioners’ (“Taxpayers”) appeal filed under Utah Code §59-1-501 of a Utah individual income tax audit deficiency for tax year 2015. Respondent (“Division”) had issued the Notice of Deficiency and Audit Change on DATE, 2018, on the basis that the Taxpayers were full-year Utah resident individuals for all of 2015. The Taxpayers claimed that they were part-year Utah residents in 2015 and had filed a part-year Utah Individual Income Tax Return for that year. No penalties were issued with the audit. The amount of additional tax and interest due as of the date the Notice of Deficiency was issued is as follows:

	<u>Tax</u>	<u>Interest¹</u>	<u>Penalties</u>	<u>Total as of Notice Date</u>
2015	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

¹ Interest continues to accrue on the unpaid balance until paid in full.

APPLICABLE LAW

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

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

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

(q)(i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(B) an individual who is not domiciled in this state but: (I) maintains a place of abode in this state; and (II) spends in the aggregate 183 or more days of the taxable year in this state.

Beginning with the 2012 tax year, a new law was adopted regarding what constituted domicile in the State of Utah. Utah Code §59-10-136 (2015)² 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 DATE 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

² Utah Code §59-10-136 was amended by the 2019 Utah Legislature and the changes made in that session became effective May 14, 2019, with retrospective application to tax years beginning with 2018. The 2019 revisions made changes to both Utah Code Subsections 59-10-136(2)(b) and 59-10-136(5). However, this decision cites to the code and applies the law that was in effect for the tax year at issue in this appeal.

- (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 DATE 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 DATE 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 DATE not be considered in determining domicile in this state.

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

DISCUSSION

Under Utah Code Sec. 59-10-104 a “resident individual” in the State of Utah is subject to Utah individual income tax on all taxable income regardless of where it was earned, subject to a credit for the individual income taxes paid to another state. In this case, the Taxpayers did pay individual income taxes to STATE-1 and the Division has allowed a credit for the taxes paid to STATE-1. “Resident individual” is defined at Utah Code Sec. 59-10-103 as an individual who is “domiciled” in Utah, or if not “domiciled” in Utah, is one who maintains a place of abode in Utah and spends in the aggregate 183 days or more per year in Utah. The Division argues that both Taxpayers were “domiciled” in Utah for all of 2015 pursuant to the provisions of Utah Code Sec. 59-10-136.

The Taxpayers had filed a part-year Utah resident return for 2015, on which they indicated that they were Utah residents from DATE, 2015 to DATE, 2015. It was the Taxpayers’ position at the hearing that they were residents of STATE-1 from DATE, 2015 through the end of the year and they had filed a STATE-1 Non or Part-Year Resident return consistent with this position on which they claimed the income they had earned while working in STATE-1 from DATE to the end of the year.

Utah Code Sec. 59-10-136 contains some very specific provisions on what constitutes being domiciled in Utah for individual income tax purposes. The Taxpayers filed their federal, Utah and STATE-1 part-year returns with the filing status of married filing joint. It was not an issue or disputed that the Taxpayers were considered to be spouses for purposes of the domicile provisions under Utah Code Subsection 59-10-136(5). The Taxpayers had no children in 2015 and claimed no dependents on their state and federal tax returns in 2015.

TAXPAYER-1 explained at the hearing that he finished his Master’s Degree at UNIVERSITY in DATE 2015 and had a job lined up in CITY-1, STATE-1. TAXPAYER-2 was attending UNIVERSITY-2 and walked for the graduation ceremony in DATE 2015, but still had to complete three more credit hours through an internship over the summer semester. The internship was through UNIVERSITY-2 for which she received her last three credit hours, but located in CITY-1. TAXPAYER-2 did pay Utah resident tuition for the summer semester, which ended sometime in DATE. TAXPAYER-2 did not attend the hearing and TAXPAYER-1 was not sure of the exact date. Because TAXPAYER-2 was a student receiving resident tuition enrolled in a Utah institution of higher education until the summer semester was over in DATE 2015, both she and TAXPAYER-1 were domiciled in Utah under Utah Code Subsection 59-10-136(1) until the summer semester was over, regardless of the fact that they had both moved to STATE-1 in DATE 2015. Utah Code Subsection 59-10-136(1) provides, “An individual is considered to have

domicile in this state if: ... (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.” Based on this provision of Utah law, the Taxpayers were domiciled in Utah from DATE, 2015 through DATE 2015.³

TAXPAYER-1 did explain at the hearing that both he and TAXPAYER-2 moved to CITY-1 in DATE 2015, and that fact was not disputed by the Division. TAXPAYER-1 proffered that they packed up their stuff in a VEHICLE and moved it to an apartment they rented in STATE-1. He said their intent was that it was a permanent move. They did not own a home in Utah prior to the move, they were students and were renting while living in Utah. They did not maintain an apartment in Utah after the move to STATE-1. They rented an apartment in STATE-1 and that was where they resided until DATE 2016, when they moved back to Utah.⁴ TAXPAYER-1 explained that when they left Utah and moved to STATE-1 they did intend a permanent move, but he had more contacts in Utah and received a better job offer in Utah so they moved back after a year.

TAXPAYER-1 obtained a STATE-1 Driver’s License and registered to vote in STATE-1. He proffered at the hearing that he thought TAXPAYER-2 did so as well, but they had no record of that and when they had contacted STATE-1 to obtain her voter registration, STATE-1 had no record of her registering to vote in that state. Additionally, they made a request to the STATE-1 Division of Motor Vehicles, which had no record of her applying for a STATE-1 Driver’s License.

It was the Division’s position that the Taxpayers remained domiciled in Utah for the remainder of tax year 2015, from the end of TAXPAYERS-2’s UNIVERSITY-2 semester in DATE 2015 through DATE, 2015, under the presumption of domicile at Subsection 59-10-136(2)(b) because TAXPAYER-2 remained registered to vote in Utah and the Taxpayers had not rebutted the presumption. The Division provided TAXPAYERS-2’s Utah Voter Records and voter history. TAXPAYER-2 had been registered to vote in Utah since 2011 and has remained registered to vote in Utah up through 2018. Utah Code Subsection 59-10-136(2)(b) provides “there is a rebuttable presumption that an individual is considered to have domicile in Utah” if “the individual or the individual’s spouse is registered to vote in this state.” TAXPAYER-2 was registered to vote in Utah in 2015, therefore both she and TAXPAYER-1 are presumed domiciled

³ The Taxpayers are also presumed domiciled in Utah from DATE, 2015 through DATE, 2015 under Subsection 59-10-136(2)(c), but the Taxpayers do not contest that they had domicile in Utah during this period.

⁴ Because the Taxpayers were absent from Utah only one year, they do not meet the exception for being absent from the state for at least 761 consecutive days, which is set out at Subsection 59-10-136(4).

in Utah. She did not cancel her Utah voter registration and was not able to provide evidence that she had registered to vote in STATE-1. She had not voted in Utah in 2015. However, based on the law in effect in 2015, not voting during the audit year was not sufficient to rebut this presumption. See *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720 (5/6/16)*.⁵

The Tax Commission has considered the presumption of Utah domicile based on Utah voter registration in many appeal decisions after Utah Code Sec. 59-10-136 was adopted and became effective beginning in tax year 2012 and concluded if someone registered to vote in the new state or could show that they had attempted to cancel their Utah voter registration, then the presumption would be rebutted. *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624 (11/15/2019)* provides a review of what factors the Tax Commission has considered to have rebutted this presumption and what has not rebutted this presumption. The Taxpayers' have the burden of proof in this proceeding under Utah Code Sec. 59-1-1417 and have not rebutted this presumption.

Instead, the Taxpayer argued at the hearing that the Utah resident tuition at a state institution of higher education or voter registration are not the factors that should be controlling. It was his argument that the factor that the Tax Commission should consider in determining domicile was that they had actually moved from Utah in DATE 2015 to STATE-1. They had obtained a job and internship in STATE-1, rented an apartment and moved all of their belongings to STATE-1 in DATE 2015. TAXPAYER-1 obtained a STATE-1 Driver's License and registered to vote in that state. For the rest of the year they lived, worked full time in STATE-1, and did not maintain an apartment in Utah. These were the facts that the Taxpayer argued should be considered for determining domicile.

The Taxpayers' factors are the type of factors found in Utah Code Subsection 59-10-136(3). However, the Subsection 136(3) factors are not applicable if an individual is domiciled in Utah under Subsections 136(1) or 136(2). Subsection 59-10-136(3)(a) states, "if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if . . ." and then goes on in Subsection 136(3)(b) to list twelve factors. Other individuals have argued that if a preponderance of, or more than a preponderance of, the twelve factors indicate domicile in a state other than Utah, that should be sufficient to rebut the presumption of domicile that arises under Utah Code Subsection 59-10-136(2). The Tax Commission has considered this argument and concluded it would not be appropriate. In *Appeal No. 17-1624*, pgs. 23-24, the Tax Commission held:

⁵ This and other Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

20. Moreover, relying on the limited and exhaustive list of 12 factors described in Subsection 59-10-136(3)(b) to rebut a Subsection 59-10-136(2) presumption would: 1) be contrary to the express language of Subsection 59-10-136(3)(a), which provides that the Subsection 59-10-136(3)(b) factors should be used to determine domicile only “if the requirements of Subsection (1) or (2) are not met[;]” and 2) be contrary to the plain meaning of Section 59-10-136 as a whole by allowing the hierarchy of factors set forth in Subsection 59-10-136(2) to be rebutted by satisfying a list of factors set forth in Subsection 59-10-136(3) that are lower in the hierarchy of domicile factors established by the Legislature.

21. As a result, when a Subsection 59-10-136(2) presumption is considered in concert with Section 59-10-136 as a whole, the Commission has generally looked to actions or inactions related to the specific factor described in the presumption to determine whether an individual has rebutted the presumption or not. For example, if an individual is registered to vote in Utah, the Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted by showing that the individual registered to vote in the state to which they moved relatively soon after moving there.⁶

Based on the applicable law, both Taxpayers remained domiciled in Utah for all of 2015 and the Division’s audit should be upheld. The Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) because of TAXPAYERS-2’s Utah voter registration. They did not rebut this presumption by showing that TAXPAYER-2 had attempted to cancel her Utah voter registration or registered to vote in STATE-1.

As the Taxpayers were both domiciled in Utah for all of tax year 2015, up until DATE 2015 under Subsections 59-10-136(1) and for the entire year under Subsection (2)(b) they were Utah resident individuals. As Utah resident individuals they are subject to Utah individual income tax pursuant to Utah Code Subsection 59-10-104(1) on all of their income regardless of where it was earned or received, subject to a credit for individual income taxes paid to another state. In this case, the Division has allowed the credit for taxes paid to STATE-1 in the audit. The audit deficiency as to the tax should be upheld.

No penalties were assessed with this audit. Interest has been assessed under Utah Code Sec. 59-1-402. Utah Admin. Rule R861-1A-42(2) provides that interest is waived only if the taxpayer proves that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error. The Taxpayers have not demonstrated Tax Commission error in this matter and the interest should be upheld as well as the tax.

Jane Phan
Administrative Law Judge

⁶ See *Initial Hearing Order, Appeal No. 15-720 (3/6/2016)*.

DECISION AND ORDER

Based on the foregoing, the Commission finds that both Taxpayers were domiciled in Utah for all of tax year 2015 and upholds the Utah individual income tax audit deficiency as to the tax and interest for that year. It is so ordered.

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

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

or emailed to:
taxappeals@utah.gov

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

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of 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 applied.