19-928
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 11/06/2020
COMMISSIONERS: J. VALENTINE, R. ROCKWELL, M. CRAGUN, 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.	**INITIAL HEARING ORDER** Appeal No. 19-928 Account No. ##### Tax Type: Income Tax Tax Year: 2015 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, CPA
TAXPAYER-1
TAXPAYER-2
For Respondent: RESPONDENT, Manager, Income Tax Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on July 13, 2020 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. On MONTH 20, 2019, Respondent ("Division") had issued a Notice of Deficiency and Audit Change for tax year 2015 on the basis that the Taxpayers were Utah resident individuals for all of 2015. The Taxpayers claim to be residents of STATE-1 and then STATE-2 for all of 2015. The amounts of additional tax, penalties and interest due as of the date the Notice of Deficiency was issued is as follows:

	Tax	Interest[1]	Penalties	Total as of Notice Date
2015	$$$$$	$$$$$	$0	$$$$$

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

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 tax year 2015 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 MONTH 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.
> . . .
> (5) (a) Except as provided in Subsection (5)(b)(ii), a residential exemption described in Subsection (2) is limited to one primary residence per household.
> . . . .

If a property owner no longer qualifies for the primary residential exemption on their residential property they are required to take the following steps pursuant to Utah Code Subsection 59-2-103.5(4) (2015) as follows:

> 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 that 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 that 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 that property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence.

Utah Code Ann. §20A-2-305 provides for removal of a voter's name from the official voter registry, as follows:

> (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
> (2) The county clerk shall remove a voter's name from the official register if:
> (a) the voter dies and the requirements of Subsection (3) are met;
> (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
> (c) the county clerk has:
> (i) obtained evidence that the voter's residence has changed;
> (ii) mailed notice to the voter as required by Section 20A-2-306;
> (iii) (A) received no response from the voter; or
> (B) not received information that confirms the voter's residence; and

(iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;

(d) the voter requests, in writing, that the voter's name be removed from the official register;

(e)[2] the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or

(f) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

(3) The county clerk shall remove a voter's name from the official register within five business days after the day on which the county clerk receives confirmation from the Department of Health's Bureau of Vital Records that the voter is deceased.

Utah Code Ann. §20A-2-306 addresses the removal of names from the official voter register where a change of residence occurs, as set forth below:

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:

(a) confirms in writing that the voter has changed residence to a place outside the county; or

(b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and

(ii) has failed to respond to the notice required by Subsection (3).

(2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:

(i) change the official register to show the voter's new address; and

(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

_____

2 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, this deletion does not affect the outcome of this decision.

Street City County State Zip
If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:
- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or
- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

_____
Signature of Voter"
"The portion of your voter registration form that lists your driver license or identification card number, social security number, email address, and the day of your month of birth is a private record. The portion of your voter registration form that lists your month and year of birth is a private record, the use of which is restricted to government officials, government employees, political parties, or certain other persons.
You may apply to the lieutenant governor or your county clerk to have your entire voter registration record classified as private."

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.
(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:
(i) the voter requests, in writing, that the voter's name be removed; or
(ii) the voter has died.
(c) (i) After a county clerk mails a notice as required in this section, the county clerk may list that voter as inactive.
(ii) If a county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter, the county clerk may list that voter as inactive.
(iii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.
(iv) A county is not required to send routine mailings to an inactive voter and is not required to count inactive voters when dividing precincts and preparing supplies.

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

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 penalties and 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.

DISCUSSION

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 all of tax year 2015. For the purposes of Utah individual income tax a "resident individual" is defined at Utah Code Subsection 59-10-103(1)(q)(i)(2015) to be, "(A) an individual who is domiciled in this state . . ." or in the alternative "(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 both Taxpayers were Utah "resident individuals" for all of 2015 because they were domiciled in Utah for all of 2015 pursuant to Utah Code Sec. 59-10-136. Utah Code Sec. 59-10-136 specifically addresses what constitutes having "domicile" in Utah.

The Taxpayers were married for all of tax year 2015, they were not legally separated or divorced and had filed a federal return with the filing status of married filing joint, so they are considered to be spouses for purposes of Utah Code Subsection 59-10-136(5).

The Taxpayers claimed two children as dependents on their 2015 federal return. However, the Taxpayers stated at the hearing that these two children were enrolled in a private on-line school and specifically stated that they did not attend a Utah public school at any time in 2015. The Division did not submit any evidence to the contrary.

The Taxpayers also stated that they themselves did not attend a Utah institution of higher education during 2015.

The Taxpayers had been Utah residents for many years. They had registered to vote in Utah and had voted in Utah elections from 2006 through 2012. Both Taxpayers were still registered to vote in Utah for all of 2015, although neither had voted in Utah after the 2012 election. TAXPAYER-2 address was updated on the voter registration records, however, on September 24, 2014, from an address in CITY-1 to the address of the couple's residence at ADDRESS-1, CITY-2, Utah. Neither Taxpayer had registered to vote in STATE-1 or STATE-2

by the end of 2015 or shortly thereafter. The Taxpayers explained that in 2015 they were too busy to even think about voting or registering to vote.

The Taxpayers had purchased a residence at ADDRESS-1, CITY-2, Utah in 2010 and had used that as their primary residence. However, by DATE 2013, TAXPAYER-1, who was a PILOT, had changed his employment to a job flying out of CITY-3, STATE-1. Instead of selling their Utah residence at this point, they leased it to a tenant and ON DATE, 2013 moved into a guest house on the property of TAXPAYER-1's parents in CITY-3, STATE-1.

It was not clear how long in 2014 that TAXPAYER-2 and the couple's two daughters remained in STATE-1, but by the end of 2014, TAXPAYER-2 and the children returned to Utah. TAXPAYER-2 explained in a letter dated DATE, 2020, that towards the end of 2014 her mother had been diagnosed with A SERIOUS ILLNESS (WORDS REMOVED). Her mother had been caring for her father who had MENTAL ILLNESS and her parents lived in CITY-1. She and the children had moved back to Utah so she could care for her parents. She explained that her mother passed away on DATE, 2015. After that, TAXPAYER-2 explained that she had to take care of her father and the estate issues until she moved her father to STATE-2 towards the end of 2015.

It was the Taxpayers' statements at the hearing that the tenants had vacated their Utah residence by about MONTH 2015. The Taxpayers stated they needed to fix it up prior to listing it for sale. They stated that they did stay in the residence some while fixing it up from about MONTH to early MONTH 2015. They listed the residence for sale in early MONTH 2015, it went under contract quickly and was sold on DATE, 2015. The residence did receive the primary residential exemption for 2015. After the residence was sold on DATE, 2015, the Taxpayers no longer owned or maintained their own residence in Utah. TAXPAYER-2 and the children did continue to stay in Utah. However, they resided with TAXPAYER-2 parents after this time.

TAXPAYER-1 had remained employed and working out of STATE-1 until July 2015. It was the Taxpayers' statements that he continued to reside and work in STATE-1 until he was able to get a job in STATE-2. TAXPAYER-1 moved to STATE-2 in July 2015. TAXPAYER-2 and the children moved there with him after TAXPAYER-2 got her father settled in STATE-2.

The factual issue on which the Taxpayers were unclear at the hearing, was when, exactly, TAXPAYER-2 and the children moved from Utah to STATE-2. In her written letter of explanation dated June 29, 2020, TAXPAYER-2 had stated that she "cared for my father until October" of 2015. During the hearing she had said it was September to October, but when asked specifically at the hearing, had said at one point late fall early winter 2015 and at a second point she answered at the end of 2015. The Taxpayers have the burden of proof in this matter. Therefore, considering the burden of proof, for purposes of this decision, the period that she

remained in Utah lasted until the end of 2015, meaning the date that she moved from Utah is considered to be DATE, 2015.

The Taxpayers had filed a part-year Utah return in 2015 and a nonresident STATE-2 return in 2015. On the STATE-2 return, they had claimed the income that TAXPAYER-1 earned from his employment in STATE-2. They had provided a copy of their STATE-2 return to the Division prior to the Division issuing the audit, so the Division had given the Taxpayers a credit of $$$$$, which was the full amount of the taxes that they had paid to STATE-2. On the Utah return, however, the Taxpayers' listed on Form TC-40B that they were part-year residents of Utah from DATE, 2015 to DATE, 2015. However, on that return the only Utah income they claimed was a very small loss of $$$$$ and a $$$$$ gain. The loss was from a small home business TAXPAYER-2 had tried during the year. The gain was from the sale of their Utah residence, which they were required to recognize because they had rented the residence for a time before they sold it and they did correctly claim the gain as Utah income. Although they had listed that they were Utah residents on Form TC-40B from DATE, 2015 to DATE, 2015, they did not claim as taxable to Utah any of the wage income that TAXPAYER-1 had earned either in STATE-1 or STATE-2. TAXPAYER-1 had no Utah wage income or other Utah source income other than the gain from the sale of their Utah residence. The explanation they provided at the hearing regarding listing that they were Utah residents from DATE, 2015 to DATE, 2015 was that this was just an error or outright mistake.

After TAXPAYER-2 moved from Utah, which as noted above was found to occur on DATE, 2015, the Taxpayers did not return to Utah for more than thirty days per year in 2016, 2017 or 2018 and have continued to reside in STATE-2. They pointed out that by the time TAXPAYER-2 moved to STATE-2, her elderly father was living in STATE-2. They stated that they returned to Utah for a weekend wedding in August 2016, but not in 2017 or 2018. Thus once TAXPAYER-2 moved from Utah at the end of 2015, the 761 day exception period provided at Utah Code Subsection 59-10-136(4) commenced and the Taxpayers met all the criteria for the exception to domicile set out at Subsection 59-10-136(4). They have been gone from Utah considerably more than 761 consecutive days. Neither TAXPAYER-1 nor TAXPAYER-2 had returned to Utah for more than 30 days per calendar year in 2016, 2017 or 2018. Their children were not attending public school in Utah , the taxpayers were not attending a Utah institution of higher education, they had sold their Utah residence so were not claiming a primary residential exemption after the end of 2015 and they were not asserting Utah as their tax home for federal individual income tax purposes. However, because this 761-day period started on MONTH, 2016,

after TAXPAYER-2 moved by DATE, 2015, it has no effect on the audit period as the audit period ended on DATE, 2015.[3]

The Division argues that the Taxpayers were domiciled in Utah for all of 2015 under Subsection 59-10-136(2).[4] Subsection 59-10-136(2)(2015) 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 souse is registered to vote in this state. . . ;[5] ***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 (emphasis added)." The Division primarily asserted that the Taxpayers were domiciled in Utah under Subsection 59-10-136(2)(b) for the entire 2015 tax year, but the Division did point out the Taxpayers were domiciled in Utah for a few months under Subsection (2)(a).

An individual is domiciled in Utah if any one of the three Subsection 59-10-136(2) presumptions arise and are not rebutted. Based on the facts submitted, each of the Subsection (2)(a), (2)(b), and (2)(c) presumptions have arisen during 2015, at least for various times during the year, and all three should therefore, be considered.

Subsection 59-10-136(2)(a) provides that there is a rebuttable presumption that an individual is considered to have domicile in this state if "the individual or the individual's spouse claims a residential exemption . . . ." The Taxpayers' owned a residence in Utah until DATE, 2015, which received that exemption for tax year 2015. For this presumption to arise, two elements must exist. First, the individual or the individual's spouse must have claimed the

3 The Division pointed out that because the Division has allowed a credit for all the taxes paid to STATE-3 and the Taxpayers' only income in the latter half of the year came from TAXPAYER-1's employment in STATE-3, if the Taxpayers had established that TAXPAYER-2 had moved from Utah in September or October it would have had little effect on the actual tax deficiency because it would both reduce the amount of the Utah taxable income and reduce the amount of the credit for taxes paid to STATE-3.

4 The Division does not argue that the Taxpayers were domiciled in Utah during 2015 under Subsection 59-10-136(1) because the Taxpayers have represented that they had no dependents enrolled in a Utah public school and they themselves did not attend a Utah institution of higher education during the tax year at issue. Consequently, the Commission finds that the Taxpayers were not domiciled in Utah during 2015 under Subsection 59-10-136(1).

5 During the hearing, the representative for the Taxpayers referred to the current version of Utah Code Sec. 59-10-136. There was a 2019 revision to Subsection 59-10-136(2)(b) effective for a taxable year beginning on or after January 1, 2018, which provides that the presumption arises only when the individual or the individual's spouse actually voted in Utah during the tax year. However, when making this revision, the Utah Legislature specifically did not make the change retrospective to the tax year at issue in this appeal.

residential exemption on the Utah home. Second, the Utah home must be considered the "primary residence" of the individual or the individual's spouse in accordance with the guidance provided in Subsection 59-2-103.5(4).

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 received the primary residential exemption for this period. Subsection 59-2-103(2) generally provides that a Utah residential property will receive a 45% 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, for the tax year at issue in this appeal[6] simply owning a residential property in a Utah county, like COUNTY that does not require an application, generally asserts an enduring claim to the residential exemption, so the Taxpayers are considered to have claimed the exemption for their Utah residence until they sold their residence on DATE, 2015.[7]

For purposes of determining if the second element of whether the residence is the individual's or individual's spouse's primary residence is met, when Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual 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

6 As the Taxpayer had noted at the hearing, there was a revision to Utah law in regards to the residential property tax exemption, which requires Counties to mail a notification in 2020 regarding the primary residential exemption to certain property owners and requires the property owners to make a certification about receipt of the residential exemption. However, this revision does not apply to the tax year at issue in this appeal.

7 Furthermore, in those Utah counties that require an application, receiving the residential exemption after filing the application also constitutes a claim to the exemption. On the other hand, in a County that requires an application, receiving the residential exemption without filing an application does not constitute a claim to the exemption.

either of these steps. Therefore, the Taxpayers are presumed domiciled in Utah for the period from DATE, 2015 until DATE, 2015 under Subsection (2)(a) until they sold their residence.

This presumption of domicile under Utah Code Subsection 59-10-136(2)(a) is, however, a rebuttable presumption. Because Subsection 59-10-136(2) involves rebuttable presumptions of domicile, 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 in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2) presumptions. 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 these presumptions.

The Commission has considered what rebuts the Subsection 59-10-136(2)(a) presumption of domicile in numerous decisions. The Commission has found that the presumption can be rebutted for that 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).[8] In another case, the Commission found the presumption to be rebutted 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).[9] As prior decisions have noted, there may be other grounds for rebutting this presumption. The Taxpayers have the burden of proof in this matter. The Taxpayers have proffered at the hearing that the tenants had moved from this residence at the end of 2014. They had no tenants during 2015 in this residence and had stayed in this residence some from MONTH to MONTH 2015 while getting it ready to sell. The Taxpayers could not provide an exact date when they left the residence vacant and listed for sale, other than that had occurred at some point in MONTH 2015. Given what was presented at this hearing, the Taxpayers have rebutted the Subsection 59-10-136(2)(a) presumption of Utah domicile beginning on the date the Taxpayers listed the property for sale in MONTH 2015, for which the exact date was not provided at this hearing. The exact date does not affect the outcome of this decision, however, because the Taxpayers were domiciled in Utah for all of 2015 under another provision of Utah Code Subsection 59-10-136(2) as discussed later in this decision. After selling the house, the presumption no longer arose.

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8 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1332* (6/27/2016). Redacted copies of this and other selected Commission decisions can be reviewed on the Commission's website at https://tax.utah.gov/commission-office/decisions.

9 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-812* (3/13/2018).

Under Subsection 59-10-136(2), if a taxpayer meets the criteria of any one of Subsections 59-10-136(2)(a), (2)(b) or (2)(c) the taxpayer is presumed domiciled in Utah. At the hearing, the Division focused on the Subsection (2)(b) presumption because that presumption applied to the entire tax year as the Taxpayers were registered to vote in Utah throughout 2015. Subsection 136(2)(b), as in effect for tax year 2015, provided an individual is domiciled in Utah if "the individual or the individual's spouse is registered to vote in this state . . . ." The Taxpayers had been residents of Utah for many years prior to 2015 and had registered to vote in Utah years prior to 2015. They did not request removal from voter registration records at any point in 2015 so they remained registered to vote in Utah for the entire 2015 tax year.

The Tax Commission has considered what does rebut and what does not rebut the Subsection 59-10-136(2)(b) presumption of Utah domicile based on voter registration in many appeal decisions. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019). That decision noted that one of the factors found to rebut the presumption include a showing that the individual registered to vote in the state to which they moved relatively soon after moving there. In this appeal, the Taxpayers did not register to vote in STATE-1, nor did they register to vote in STATE-2 shortly after moving there. The Commission has also found that the Subsection 59-10-136(2)(b) presumption can be rebutted if the individual who is registered to vote in Utah requested for their name to be removed from the Utah voter registry and the local county clerk or other official who received the request did not remove the individual's name from the registry. The Commission found the presumption could be rebutted from the date that Utah voting laws provide for an individual's name to be removed from the Utah voter registry and a local county clerk does not immediately remove their name from the registry. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019).). [10] In addition, the Commission acknowledges that neither of the Taxpayers voted in Utah during the 2015 tax year. The Commission, however, has found that an individual cannot rebut the Subsection 59-10-136(2)(b) presumption by showing that they did not vote in Utah during tax year 2015. The Commission has reached this decision, at least in part, because the Utah Legislature elected to use voting

10 The Commission has also stated that it might find that the Subsection 59-10-136(2)(b) presumption is rebutted if an individual moves from Utah to a state that does not require voter registration prior to voting and if the individual eventually votes in that state. *See, e.g., USTC Appeal No. 17-1552* (Initial Hearing Order Feb. 7, 2019). In addition that Tax Commission has determined that a taxpayer did not rebut the presumption by showing that their Utah voter registration was changed to an "inactive" status because under Subsection 20A-2-306(4)(c), a Utah voter on "inactive" status is "allowed to vote, sign petitions, and have all other privileges of a registered voter[,]" but might not receive "routine mailings." See USTC Appeal 19-1919 (Initial Hearing Order August 14, 2020).

registration, not actual voting, as the criterion that could trigger domicile under the version of Subsection 59-10-136(2)(b) that applies to the 2015 tax year.[11] As a result, that neither Taxpayer voted during 2015 is insufficient to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the 2015 tax year. The Taxpayers have not shown factors to rebut the presumption of domicile that arises from being registered to vote in Utah. Therefore, the Taxpayers did not rebut the Utah voter registration presumption during 2015.

During the latter part of 2015, the Taxpayers are also presumed domiciled in Utah under Subsection 59-10-136(2)(c) because they stated on their 2015 part-year Utah income tax return that they were residents of Utah from DATE, 2015 to DATE, 2015. Subsection (2)(c) provides that an individual is domiciled in Utah if 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 (emphasis added)." The Taxpayers' representative who had prepared the Taxpayers' 2015 returns stated that this was just an outright error to list the Taxpayers as Utah residents from DATE, 2015 to DATE, 2015. He explained that they had filed the Utah return because they needed to claim the gain from the sale of their Utah residence on DATE, 2015, which was Utah source income taxable in Utah. Instead of filing as nonresidents and claiming the income on that basis, he stated that they had inadvertently listed they were part-year Utah residents from DATE, 2015 to DATE, 2015. The Taxpayers had stated at the hearing that TAXPAYER-1's employment had changed to STATE-2, he had moved there by DATE, 2015, and he worked only in STATE-2 from then until the end of the year. All income they had received after DATE, 2015 was from TAXPAYER-1's wages in STATE-2.

To determine if stating they were part-year residents of Utah on their 2015 Utah return was just as inadvertent error, the Taxpayers' 2015 STATE-2 return is given some consideration, because if the Taxpayers had also claimed to be residents of STATE-2 from DATE, 2015 to DATE, 2015, that would be supportive of an inadvertent error. However, the 2015 STATE-2 return is consistent with the 2015 Utah return that they had filed. On Form IA 126 of the STATE-2 return, the Taxpayers claimed to be nonresidents of STATE-2. They did claim on that return the wage income that TAXPAYER-1 had earned in STATE-2 as STATE-2 source income and calculated the tax on the basis of being nonresidents with STATE-2 source income. Therefore, the two returns are consistent and demonstrate a cohesive statement of domicile contemporaneous with the tax year at issue. The statement was that the Taxpayers were residents

11 *See, e.g., Appeal No 15-720.*

of Utah from DATE, 2015 to DATE, 2015 and not residents of STATE-2. Therefore, the Taxpayers have not rebutted the presumption of domicile that arises under Subsection 59-10-136(2)(c) and are domiciled in Utah from DATE, 2015 to DATE, 2015.

Many individuals have argued ignorance of the law as a basis for rebutting the Subsection 59-10-136(2) presumptions and the Tax Commission has concluded that ignorance of the law is not a sufficient basis to rebut the presumptions. 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).

As the Taxpayers were domiciled in Utah from DATE, 2015 to DATE, 2015 based on one of more of Subsections (2)(a), (2)(b), and (2)(c), the Commission does not consider the Subsection 59-10-136(3) factors that the Taxpayers had argued at the hearing. Utah Code Subsection 59-10-136(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 considerations the totality of the following facts and circumstances . . ." Subsection (3) then goes on to list twelve specific factors to consider. Because the Taxpayers were domiciled in Utah under Subsection (2), Subsection (3) is not applicable to the 2015 tax year.

Regardless, the Taxpayers argued that more weight should be given to the factors listed in Subsection 59-10-136(3) or those factors should be considered to rebut the Subsection (2) presumptions including that TAXPAYER-1 was residing and working full time in STATE-1 and then STATE-2 and none of his wage income was earned in Utah and that TAXPAYER-2 was only in Utah for a temporary purpose, to care for her parents. They also argued that TAXPAYER-1 had registered his vehicle in STATE-1 and obtained a STATE-1 Driver License and seemed to be arguing that it was unfair to tax him on wages he earned in other states. The taxpayers contend that their intent and actions should be sufficient to rebut the Subsection 59-10-136(2) presumptions as was done under the domicile law in effect for tax years prior to 2012 and as is done under Subsection 59-10-136(3)(b) if an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1) or (2). The Commission has previously found that an individual has not rebutted a Subsection 59-10-136(2) presumption because he or she would not be considered to be domiciled in Utah under the law in effect for tax years prior to 2012 and it is arguable that using the "old" income tax domicile criteria found in the pre-2012 domicile law to determine an individual's income tax domicile for years when Section 59-10-136 is in effect

would be giving the Legislature's "new" law (i.e., the version of Section 59-10-136 that became effective for tax year 2012 and remained in effect for the 2015 tax year at issue) little or no effect, which the Commission declines to do.[12]

The Commission has found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[13] The Subsection 59-10-136(2) presumptions involve three specific factors: (1) claiming the residential exemption on a Utah residential property (the Subsection 59-10-136(2)(a) presumption); (2) being registered to vote in Utah (the Subsection 59-10-136(2)(b) presumption); and (3) asserting Utah residency on a Utah income tax return (the Subsection 59-10-136(2)(c) presumption). Prior to Section 59-10-136 becoming effective for tax year 2012, these three factors that the Utah Legislature 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.[14] 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

12 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016).

13 *See, e.g., Appeal No. 15-1857.* This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that an individual may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of the presumptions of Subsection 59-10-136(2) is met.

14 Prior to tax year 2012, Utah Admin. Rule R865-9I-2(1)(b) had provided that for purposes of determining income tax domicile, "an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation" and that Utah Admin. Rule R884-24P-52 "provides a *non-exhaustive* list of factors or objective evidence determinative of domicile" (emphasis added).

(when each of these factors was merely one of the many factors with which domicile was determined).[15]

As a result, it is clear that the Legislature intended that an individual meeting one of the factors described in Subsection 59-10-136(1) would, with limited exceptions, be considered to be domiciled in Utah; and that an individual meeting one of the factors described and set forth as a rebuttable presumption in Subsection 59-10-136(2) might be considered to be domiciled in Utah, regardless of whether that individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test. To find that a Subsection 59-10-136(2) presumption can be rebutted by showing that the individual would not be considered to be domiciled in Utah under some more traditional type of domicile test does not consider the Subsection 59-10-136(2) presumptions in concert with the structure and language of Section 59-10-136 as a whole and would frustrate the plain meaning of Section 59-10-136.[16]

The Taxpayers also seemed to be arguing at the hearing that the Utah domicile law was unfair because TAXPAYER-1 earned his income while he was living and working in other states. The Taxpayers may be suggesting Section 59-10-136, as currently written for the tax year 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.[17] That is the role of the Legislature.[18]

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15 The factors that were given greater import in Subsections 59-10-136(1) and (2) are generally 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 registered to vote in Utah.

16 For example, if the taxpayers' argument were to be accepted, it is arguable that an individual whose only contact with Utah was claiming the residential exemption on a vacation home located in Utah could continue to do so without any Utah income tax consequences if the individual showed that they would be considered to have domicile outside of Utah based on some sort of traditional income tax domicile criteria.

17 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 year 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. The Taxpayers may want to consider this in deciding whether to keep this appeal open by requesting a Formal Hearing.

18 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 year 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

As the Taxpayers were domiciled in Utah for all of tax year 2015, they were Utah resident individuals for the entire year. 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, 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 from STATE-1. The Division has allowed a credit for the taxes paid to STATE-2.

No penalties were assessed with the audit. 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 tax year 2015 and the audit assessment of additional tax and interest should be upheld for that year.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the Taxpayers were domiciled in Utah for all of 2015 and sustains the Division's 2015 audit deficiency as to the tax and interest. 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

Commission is not authorized to change the effective date of the bill and apply the SB 13 amendments to the tax year at issue in this appeal.

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

DATED this _____day of _____, 2020.

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.