19-1073
TAX TYPE: INCOME TAX
TAX YEAR: 2014, 2015, 2016 and 2017
DATE SIGNED: 5/5/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| TAXPAYER-1 & TAXPAYER-2,<br><br>Petitioners,<br><br>v.<br><br>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,<br><br>Respondent. | **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION**<br><br>Appeal No. 19-1073<br><br>Account No. #####<br>Tax Type: Income Tax<br>Tax Years: 2014, 2015, 2016 and 2017<br><br>Judge: Phan |

**Presiding:**
Lawrence C. Walters, Commissioner
Jane Phan, Administrative Law Judge

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

## STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on February 11, 2020, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

## FINDINGS OF FACT

1. Petitioners ("Taxpayers") had filed an appeal of audit deficiencies issued by Respondent ("Division") of Utah individual income tax and interest for tax years 2014 through 2017. The Division issued the Notice of Deficiency and Estimated Income Tax on DATE, 2019 for each tax year.[1] The Taxpayers timely appealed the notices under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

1 Respondent's Exhibits 1-4.

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

| Year | Tax | Penalties | Interest | Total as of Notice Date[3] |
|---|---|---|---|---|
| 2014 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2015 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2016 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2017 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |

3. The Division issued the audits on the basis that both of the Taxpayers were Utah resident individuals for income tax purposes for all of 2014 through 2017. Although the Taxpayers acknowledge that TAXPAYER-1 was a Utah resident for all of the tax years, it was their position that TAXPAYER-2 was not a Utah resident and was instead a resident of STATE-1. All the income that the Taxpayers claimed as received on their federal return was the wages from TAXPAYER-2's employment in STATE-1.

4. For all of the tax years 2014 through 2017 the Taxpayers, TAXPAYER-2 and TAXPAYER-1, were married. They were not divorced or legally separated during these years. The Taxpayers had filed their federal returns with the status of Married Filing Joint for the years 2014 through 2017.[4]

5. During all of the audit years, the Taxpayers had minor children which they had claimed as dependents on their federal income tax returns.[5]

6. During all of the audit years, the children that the Taxpayers had claimed as dependents were enrolled in a Utah public elementary or Utah public secondary school.[6]

7. The Taxpayers did not attend a Utah institution of higher education in 2014 through 2017.

8. The Taxpayers jointly owned a residence in Utah during all of the audit period and they were receiving the residential property tax exemption on that residence for all of the tax years. Furthermore, that residence was the Taxpayers' primary residence.[7]

9. During all of the audit years, TAXPAYER-1 was registered to vote in Utah. TAXPAYER-1 voted in Utah in the 2012 and 2016 elections.[8] The COUNTY Voter Registration office

2 Respondent's Exhibit 1-4.
3 Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on the unpaid balance.
4 Respondent's Exhibits 7-10.
5 Respondent's Exhibits 7-10.
6 Testimony of TAXPAYER-2.
7 Exhibit 12 & Testimony of TAXPAYER-2.
8 Respondent's Exhibit 14.

had changed TAXPAYER-2's voter registration status to "Made removable" in 2013. TAXPAYER-2 was not registered to vote in Utah during the audit years.[9] TAXPAYER-2 testified that he had registered to vote in STATE-1.

10. The Taxpayers did not file Utah individual income tax returns during the audit years. It was the Taxpayers' contention that all the income they had received during these years was earned by TAXPAYER-2 from his employment in STATE-1. TAXPAYER-2 worked for COMPANY-1 and from the Forms W-2 provided by the Taxpayers with their federal filing, TAXPAYER-2's wage income comprised the total of the Line 7 income claimed by the Taxpayers on their federal returns for each of the audit years.[10]

11. STATE-1 does not have a state individual income tax.

12. TAXPAYER-2 was working full time at his employment in STATE-1 during the audit years. While in STATE-1, he resided in a travel trailer and leased a space at an RV park in CITY-1. He had a Post Office Box in CITY-1, STATE-1 where he received his mail. He testified that he had obtained a STATE-1 Driver License in 2008 and has maintained that license since that time. The vehicles that he uses were registered in STATE-1 for all of the audit years. He testified that he had obtained STATE-1 resident fishing licenses in 2014 and 2015 and during the audit years, may have obtained Nonresident Utah fishing licenses.

13. TAXPAYER-2 acknowledged through his testimony that TAXPAYER-1 had a Utah Driver License and the vehicle she drove was registered in Utah. TAXPAYER-2 testified that he had no family in CITY-1, STATE-1 and he would return to Utah to stay with TAXPAYER-1 and the children most weekends and the times he was off from work. He explained he had a modified work schedule and would work five long hour days and have four days off generally during this time period. Because TAXPAYER-2 returned to Utah most of the days he was off from work, he would have been in Utah more than 30 days each calendar year.

14. The Taxpayers have been the subject of audits for two prior audit periods. For those prior audit periods the Taxpayers had appealed the audits and claimed that TAXPAYER-2 was not a Utah resident individual for income tax purposes, although acknowledging TAXPAYER-1 was a Utah resident. These were assigned Appeal Nos. 12-889 and 15-1985. In both of those appeals, after a hearing, the Tax Commission found that TAXPAYER-2 was, in fact, a Utah resident individual for income tax purposes and assessed Utah individual income taxes on all of his wages that were earned out of state. See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 12-889* (5/30/2014) and *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-1985*

9 Respondent's Exhibit 13.
10 Respondent's Exhibits 6-10.

(8/22/2017). *Appeal No. 15-1985* involved tax years 2010 through 2013, all the years immediately preceding the subject audit. The Taxpayer acknowledged at the subject Formal Hearing that there had not been any substantial changes in the facts of his and his family's situation from the years at issue in *Appeal No. 15-1985* and the current audit period, which was for tax years 2014 through 2017.

15. The Taxpayers were both clearly domiciled in Utah for all of 2014 through 2017 under a number of the subsections of Utah Code Sec. 59-10-136, and are, therefore, Utah resident individuals for individual income tax purposes.

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, 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 years at issue in this appeal. Utah Code §59-10-136 as in effect for tax years from 2012 through 2017 provides as follows:

> (1) (a) An individual is considered to have domicile in this state if:
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
> (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
> (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
> (i) is the noncustodial parent of a dependent:

(A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and

(B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

(ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

(2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:

(a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;

(b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:

(i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in

this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's

belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

(b) For purposes of this section, an individual is not considered to have a spouse if:

(i) the individual is legally separated or divorced from the spouse; or

(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

(6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

Utah provides for property tax assessment for all tangible property located within Utah, but it also allows for a residential exemption on a property that is used as an individual's primary residence at Utah Code Sec. 59-2-103 as follows:

(1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located with the state is allowed a residential exemption equal to a 45% reduction in the value of the property.

> . . .
> (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 (6), 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 register, as follows:

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

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

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

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

Utah Code Ann. §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?

_____

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.
>
> (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
>
> (a) Timely Mailing . . .
>
> (b) Wrong Filing Place . . .
>
> (c) Death or Serious Illness . . .
>
> (d) Unavoidable Absence . . .
>
> (e) Disaster Relief . . .

(f) Reliance on Erroneous Tax Commission Information . . .
(g) Tax Commission Office Visit . . .
(h) Unobtainable Records . . .
(i) Reliance on Competent Tax Advisor . . .
(j) First Time Filer . . .
(k) Bank Error . . .
(l) Compliance History . . .
(m) Employee Embezzlement . . .
(n) Recent Tax Law Change . . .

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) Whether the commission had to take legal means to collect the taxes;
(ii) If the error is caught and corrected by the taxpayer;
(iii) The length of time between the event cited and the filing date;
(iv) Typographical or other written errors; and
(v) Other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for a waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

## CONCLUSIONS OF LAW

1. The issue in this appeal is whether the Taxpayers were "resident individuals" in the State of Utah for the purposes of Utah Code Sec. 59-10-104, for tax years 2014 through 2017. It was not in dispute that TAXPAYER-1 was a Utah resident for all of the tax years at issue. For the purposes of Utah individual income tax a "resident individual" is defined at Utah Code Subsection 59-10-103(1)(q)(i) to be, "(A) an individual who is domiciled in this state . . . or (B) an individual who is not domiciled in this state but: (I) maintains a place of abode in this state; and (II) spends in the aggregate 183 or more days of the taxable year in this state." It was the Division's position, that both TAXPAYER-2 and TAXPAYER-1 were Utah "resident individuals" under Subsection 59-10-103(1)(q)(i)(A) for all of 2014 through 2017, because they were domiciled in Utah during this period.

2. Utah Code Sec. 59-10-136 specifically addresses what constitutes having "domicile" in Utah. For all of the tax years at issue in this appeal, the Taxpayers were married, not divorced and not legally separated. They had filed federal individual income tax returns with the filing status of married filing joint. They are spouses for purposes of Utah Code Subsection

59-10-136(5). Utah Code Subsection 59-10-136(5)(2017) provides, "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." In this appeal the Taxpayers were not contesting that TAXPAYER-1 was domiciled in Utah for all of the tax years at issue. Therefore, even if TAXPAYER-2 were not domiciled in Utah on his own accord under several subsections of 59-10-136, that fact that TAXPAYER-1 was domiciled in Utah under Section 59-10-136 means that TAXPAYER-2 is also domiciled in Utah.

3. The Taxpayers did not meet the exception to domicile provided at Utah Code Subsection 59-10-136(4). Under that subsection there is an exception if the individual **and** the individual's spouse have been absent from Utah for at least 761 consecutive days and if other factors have been met. TAXPAYER-1 was not absent from Utah for at least 761 days and they failed to meet the other factors. TAXPAYER-2 returned to Utah to visit for more than 30 days per calendar year. The Taxpayers claimed a personal exemption on their federal individual income tax return with respect to dependents enrolled in a Utah public school and they claimed a residential exemption for their primary residence.

4. Both Taxpayers are clearly domiciled in Utah under Subsection 59-10-136(1)(a). This subsection provides that an individual is domiciled in Utah if "a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state." The Taxpayers' children, which they had claimed as dependents on their federal individual income tax returns for all of the audit years, were enrolled in Utah public schools for all of the audit years. Both Taxpayers were domiciled in Utah under this subsection. If this one factor is met, the Taxpayers are unequivocally domiciled in Utah. This is not a rebuttable presumption and there is no further weighing of other domicile factors that can outweigh this one factor based on the express provisions of Section 59-10-136.

5. Although both Taxpayers were domiciled in Utah under Subsection 59-10-136(1)(a), both Taxpayers were also domiciled in Utah for the audit period under Utah Code Subsection 59-10-136(2). Subsection 59-10-136(2) provides, "There is a rebuttable presumption that an individual is considered to have domicile in this state if: (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration . . . ; ***or*** (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return (emphasis added). . . . " If the individual met any one of these provisions, the individual is presumed domiciled in Utah. The Division argued that in addition to being domiciled in Utah under Subsection 59-10-136(1)(a),

both Taxpayers were domiciled in Utah for all of the audit period under Subsection 59-10-136(2)(a) and (2)(b) because they owned a residence in Utah that received the residential property tax exemption and TAXPAYER-1 was registered to vote in Utah. There was no assertion from the Division and no factual information that indicated Subsection 136(2)(c) applied to the Taxpayers' situation in this appeal.

6. Utah Code Subsection 59-10-136(2)(a) provides that there is a rebuttable presumption that an individual is considered to have domicile in Utah if "the individual *or* the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's *or* individual's spouse's primary residence." For this presumption to arise, two elements must exist. First, the taxpayer or the taxpayer's spouse must have claimed the residential exemption on their Utah home. Second, the Utah home on which the taxpayer claimed the residential exemption must be considered the "primary residence" of one or both of the taxpayers in accordance with the guidance provided in Subsection 59-2-103.5(4). 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, 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.[11] For purposes of determining if the second element of whether the residence is the individual or the individual's spouse's primary residence, when Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; *and* 2) declare on the property owner's Utah individual income tax return for the taxable year

11 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.

that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence. The Taxpayers did not take either of these steps, and, in fact, TAXPAYER-1 and the children were living in this residence. Under Subsection 59-10-136(2)(a), both Taxpayers are presumed domiciled in Utah for the audit period.

7. Unlike the Subsection 59-10-136(1) factors, Subsection 59-10-136(2) factors are rebuttable presumptions. The Commission has considered what rebuts the Subsection 59-10-136(2)(a) presumption of domicile in numerous decisions and there was no information presented by the Taxpayers in this matter that supported rebuttal of this presumption. TAXPAYER-1 and the children were, in fact, residing in this residence on a full time basis and TAXPAYER-2 was also residing in this residence when he was not working out of state. Factors the Commission has found to rebut the presumption were 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).[12] In addition, 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)[13] and that it could be rebutted for that period that a home was listed for rent, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for rent) and if the home would continue to qualify for the residential exemption by being rented to tenants who would use the home as the tenants' primary residence (i.e., not being rented to tenants who would not use the home as their primary residence, such as a short-term rental). S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-758* (1/26/2018). The Taxpayers have not demonstrated any of these type of factors to rebut the Subsection 59-10-136(2)(a) presumption.

8. In addition to being domiciled in Utah under Subsection 59-10-136(1) and 136(2)(a) both Taxpayers are presumed domiciled in Utah because TAXPAYER-1 was registered to vote in Utah for all of the audit years. Subsection 136(2)(b) provides an individual is domiciled in Utah if "the individual or the individual's spouse is registered to vote in this state . . . ." Even though TAXPAYER-2 was not registered to vote and had registered to vote in STATE-1 , he is still presumed domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) because of TAXPAYER-1's voter registration. She has not offered information to rebut the presumption that arises from her being registered to vote in Utah. She did, in fact, vote in Utah in the 2016 election and she considered herself to be a Utah resident individual.

12 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-812* (3/13/2018). These and other prior Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decision.
13 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1332* (6/27/2016). In another decision, the Commission found that the Subsection 59-10-136(2)(a) presumption would be rebutted for that period that a home was under its initial construction (not a remodel) and until it received a certificate of occupancy, if the home would be used as a primary residence upon its completion. *See Appeal No. 15-1582*.

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). 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.[14] In this case, TAXPAYER-1 did not move and did not register to vote in STATE-1. 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 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.[15] TAXPAYER-1 did not take these actions. In addition, 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.[16] In this case, TAXPAYER-1 was never made removable from the Utah voter registration records. In addition, the Commission 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 the tax year at issue. See *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720* (5/6/16).[17] TAXPAYER-1 did vote during one of the audit years. The Taxpayers did not rebut the presumption that arises from TAXPAYER-1 being registered to vote in Utah and because she is TAXPAYER-2's spouse, he is also domiciled under this provision and it is not rebutted.[18]

9. Many individuals have argued ignorance of the law in regards to voter registration or other of the Subsection 59-10-136(2) presumptions as a basis for rebutting the 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). This appeal is different from most that come before the Tax Commission

14 *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720* (3/6/2016).
15 *Utah State Tax Commission Initial Hearing Order Appeal No. 18-793* (2/22/2019).
16 *Utah State Tax Commission Initial Hearing Order Appeal No. 18-539* (4/30/2019). 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. *Utah State Tax Commission Initial Hearing Order Appeal No. 17-1552* (2/7/2019).
17 In 2019 the Utah Legislature did specifically revise the Subsection 59-10-136(2)(b) presumption from being registered to vote in Utah to actually voting in Utah during the tax year, but did not make that change retrospective to tax years prior to 2018.
18 Furthermore, because the Taxpayers are spouses pursuant to Subsection 59-10-136(5) if a presumption under Subsection 59-10-136(2)(a) or (b) arises for one Taxpayer it arises for both Taxpayers. If a Subsection 136(2)(a) or (b) presumption has arisen then for both Taxpayers, the presumption would have to be rebutted for both Taxpayers.

because it is the third appeal that the Taxpayers have filed asserting that TAXPAYER-2 was not domiciled in Utah and for both prior appeals the Tax Commission found him domiciled in Utah. Regarding tax years prior to the statutory revision of domicile that occurred beginning with tax year 2012, the Commission had issued its decision in *Appeal No. 12-889* on May 30, 2014. The second appeal did involve tax years 2012 and 2013, after the effective date of the statutory revisions. However, the final decision in that appeal, *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 15-1985* was not issued until DATE, 2017, after most of the returns for the tax years at issue in this appeal were already past due. After the issuance of the final decision in *Appeal No. 15-1985*, the Taxpayers were aware of the domicile law that applied in the subject appeal and the Taxpayer admitted at the hearing that his and his family's facts and circumstances had not changed from the prior tax years.

10. TAXPAYER-2 argued at the hearing that the fact that all their income came from his employment while working in STATE-1 should be the controlling consideration. He resided in STATE-1 during the work week in a travel trailer on a rented RV site. He registered his vehicle there and obtained a STATE-1 Driver License. He had a post office box in STATE-1 where he received his mail. TAXPAYER-2's arguments are contrary to the express provisions of Utah Code Sec. 59-10-136. Utah Code Sec. 59-10-136 provides a very specific hierarchy of factors that establish domicile. If an individual meets any one of the factors in Subsection 136(1), they are domiciled in Utah. The Taxpayers are domiciled in Utah under Subsection 136(1)(a). The Tax Commission need not look any further than that. If the Taxpayers meet any one of the factors in Subsection 136(2), they are presumed domiciled in Utah and if they do not rebut any one of these presumptions they are domiciled in Utah. The Taxpayers are also domiciled in Utah under Subsection 136(2). The Taxpayers' argument that other factors should be given more weight than the Subsection (1) or Subsection (2) factors is contrary to the express provisions of the statue. In *Appeal No. 17-1624, Conclusions of Law No. 18*, the Commission explained:

> Prior to Section 59-10-136 becoming effective for tax year 2012, the three factors that the Utah Legislature described and set forth as rebuttable presumptions in Subsection 59-10-136(2) (as well as the two education factors described in Subsection 59-10-136(1)) had been among the numerous and non-exhaustive list of factors that the Commission had used to determine income tax domicile for years prior to 2012 (as set forth in Rule 2 [R865-9I-2]and/or Rule 52[R884-24P-52]). In Section 59-10-136, however, the Utah Legislature established a hierarchy of specific factors described in Subsections 59-10-136(1) and (2) to establish income tax domicile, with the education factors creating an absolute indication of domicile and the three Subsection 59-10-136(2) factors creating rebuttable presumptions of domicile. Thus, each of the factors described in Subsections 59-10-136(1) and (2) were given greater import than they had received in establishing income tax domicile for years prior to 2012 (when each of these factors was merely one of the many factors with which domicile was determined).[19]

19 Almost all of the factors that were given greater import in Subsections 59-10-136(1) and (2) are based on an individual or individual's spouse availing themselves of certain benefits of being a resident of Utah, such as

11. As the Taxpayers were both domiciled in Utah for all of tax years 2014 through 2017, they were both Utah resident individuals. Under Utah Code Sec. 59-10-104, a "resident individual" in the State of Utah is subject to Utah individual income tax on all taxable income regardless of where it was earned, subject to a credit for the individual income taxes paid to another state. In this case, STATE-1 has no state individual income tax so there was no credit available on the income the Taxpayer earned in STATE-1 .

12. Penalties for failure to timely file a tax return and for failure to timely pay the tax when due, along with the interest that has accrued on the balance were assessed in the audit pursuant to Utah Code Sections 59-1-401 & 59-1-402. Utah Code Subsection 59-1-401(14) does provide that the Commission may waive, reduce or compromise penalties and interest upon a showing of reasonable cause. Utah Admin. Rule R861-1A-42 sets out what constitutes reasonable cause for waiver of penalties, and separately what constitutes reasonable cause for waiver of interest. The Tax Commission has often waived penalties where the issue is domicile based on the complicated nature of the law and equitable provisions for waiver set out at Utah Admin. Rule R861-1A-42(4). In this matter the Taxpayers did become aware in *Appeal No. 15-1985* of the new domicile law and that under the new law, the Tax Commission had found that their facts and circumstances indicated they were both Utah resident individuals. However, the Tax Commission's final decision in *Appeal No. 15-1985* was not issued until after the tax return due dates for tax years 2014 through 2016. The Tax Commission finds there is cause to waive the penalties assessed for 2014 through 2016. These facts change regarding tax year 2017. The final decision in *Appeal No. 15-1985* was issued prior to when the Taxpayers 2017 tax return was due and the Taxpayer acknowledged at the hearing that the facts of his and his family's situation were substantially the same as in *Appeal No. 15-1985*, so there is not reasonable cause for waiver of the 2017 penalties .

13. 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, both Taxpayers were domiciled in Utah for all of tax years 2014 through 2017 and the audit tax and interest

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having their dependent attend a Utah public school, being enrolled as a resident student at a Utah institution of higher education, receiving a property tax benefit in the form of a residential exemption, or being able to register to vote in Utah.

should be sustained for all audit years. There is reasonable cause, however, for waiver of the penalties for tax years 2014 through 2016, although the penalties for tax year 2017 should be upheld.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that both Taxpayers were domiciled in Utah for all of 2014 through 2017. The Commission sustains the Division's audit deficiency as to the tax and interest for all tax years. The Tax Commission finds that there is reasonable cause for waiver of the penalties for tax years 2014 through 2016. The Tax Commission finds there in not reasonable cause for waiver of the penalties issued with the audit for tax year 2017. 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.