TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: JULY 10, 2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER 1 AND TAXPAYER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 19-1218 Account No. ###### Tax Type: Income Tax Tax Year: 2015 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER 1
For Respondent: RESPONDANT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE for an Initial Hearing in accordance with Utah Code §59-1-502.5. The matter before the Commission is Petitioners' ("Taxpayers") appeal filed under Utah Code §59-1-501 of a Utah individual income tax audit deficiency for tax year 2015. Respondent ("Division") had issued the Notice of Deficiency and Audit Change on DATE, on the basis that the Taxpayers were Utah resident individuals for all of 2015. The Taxpayers claimed that they were not Utah residents in 2015 and, instead, residents of the state of STATE 1. The Taxpayers had filed a Utah non-resident return in 2015 on which they claimed Utah source losses. No penalties were assessed with the audit. The amount of additional tax 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	$$$$$$	$$$$$$	$$$$$$	$$$$$$

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 years at issue in this appeal. Utah Code §59-10-136 as in effect for the 2015 tax year provides as follows:

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

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

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
  (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
  (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

  (b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:
    (i) whether the individual or the individual's spouse has a driver license in this state;
    (ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;
    (iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;
    (iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;
    (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;
    (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
    (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
    (viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) begins on the later of the date:

(A) the individual leaves this state; or

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

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

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

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

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

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

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

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

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

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

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

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

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

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

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

Utah 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. §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. With respect to interest, R861-1A-42(3) reads as follows in pertinent part:

> (3) 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 tax year 2015. It was the Taxpayer's argument at the Initial Hearing that he and his spouse TAXPAYER 2 were residents of STATE 1 for 2015.

The Taxpayers had been married prior to 2015 and during all of 2015 they remained married and were not divorced or legally separated. The Taxpayers had filed a married filing joint federal tax return in 2015. Therefore, the Taxpayers are considered to be "spouses" pursuant to Utah Code Subsection 59-10-136(5).

For tax year 2015, the Taxpayers had claimed ###### children as dependents on their federal and Utah non-resident tax returns. The Taxpayer stated at the hearing that none of their children had ever attended public school or a university in Utah. In their response to the Domicile Survey, the Taxpayers had explained that in 2015 all ###### of their children were attending schools or universities in FOREIGN COUNTRY 1. The Taxpayers also state that neither of the Taxpayers attended a Utah institution of higher education in 2015.

The Taxpayer explained at the hearing that he was an employee of the COMPANY and generally was assigned to work in foreign countries. He also states that the Taxpayers have maintained a residence in the State of STATE 1 since DATE, their Driver Licenses were always issued by the State of STATE 1 and they were registered to vote in STATE 1 since DATE. From DATE to DATE, he states he was given a temporary assignment in CITY 1, Utah. He states that in DATE they purchased a condominium residence for their use in CITY 2, Utah, where they resided for the time he was stationed in Utah. At that time of purchase, the Taxpayer filled out and signed the Signed Statement of Primary Residence, which he had submitted to COUNTY 1. COUNTY 1 granted the property tax exemption based on that application. The Taxpayer explained that he had added a statement to the application to better explain his position and he provided a copy at the hearing of the Signed Statement that he had submitted to COUNTY 1. Printed on that document just above the property owner's signature line is the statement, "And the above described property is my permanent, full time residence and that I have no other permanent residence either in the State of Utah or any other state." On his statement, the Taxpayer had crossed through the words "or any other state" and had handwritten in the following statement above his signature. "CAREER TITLE, I am currently serving a two year assignment to Utah and live full-time at this

address. I am a resident of CITY 1, STATE 2. At the conclusion of my assignment this property will be sold or become a second home."

However, after the two years TAXPAYER 1 had noted on his application regarding his assignment in Utah, the property continued to receive the primary residential exemption, although the Taxpayers never notified the County again that the property no longer qualified. The Taxpayer stated that for several years after moving from the property, they had leased the property to long-term tenants and the property may have qualified for the residential exemption for those years based on the tenants' use, but by DATE, the property was being used as a nightly or short-term rental and was being leased out by a management company for that purpose. In addition, the Taxpayers did not check the box on their Utah nonresident tax return that this property no longer qualified for the exemption.

The Taxpayers had moved from the CITY 2 residence, by at least DATE. The Taxpayer provided information that in DATE he was transferred to a post in CITY 1, FOREIGN COUNTRY 2 and then later to a post in FOREIGN COUNTRY 1, which is where the Taxpayers and their children were living in DATE. After moving from the CITY 2 property, the Taxpayer explained that they did visit the property and they stayed at the property to check on it from time to time. He said they had kept it as an investment property.

It was the Division's position that the Taxpayers were domiciled in Utah during DATE because they owned the residence in CITY 2, Utah that was receiving the primary residential property tax exemption in 2015. 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 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 days of the table year in this state." It was the Division's position, that the Taxpayers were Utah "resident individuals" because they were domiciled in Utah during the audit period. There was no information presented that they would have been a resident based on Subsection (B). Utah Code Sec. 59-10-136 specifically addresses what constitutes having "domicile" in Utah. The Division argues that the Taxpayers were domiciled in Utah under Subsection 59-10-136(2)(a).[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

2 The Taxpayers were not domiciled in Utah during 2015 under Subsection 59-10-136(1) because they had no dependents enrolled in a Utah K-12 public school and the Taxpayers were not attending a Utah institution of higher education during the tax year at issue.

primary residence . . . . " For this presumption to arise, two elements must exist. First, the taxpayer must have claimed the residential exemption on his Utah home. Second, the Utah home on which the taxpayer claimed the residential exemption must be considered the "primary residence" of the taxpayer 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 the 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. COUNTY 1 requires the application and the Taxpayers did sign and submit an application to the County, although specifically noting on that application that after two years the "property will be sold or become a second home." In the counties that require the application, receiving the residential exemption after filing the application constitutes a claim to 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, the Taxpayers are considered to have claimed the exemption for their Utah residence.

For purposes of determining if the second element of whether the residence is the individual'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. It is clear that the Taxpayers did not take both of these steps. They did not check the box on their Utah nonresident individual income tax return. However, the Taxpayers did notify the County in advance that they would be using the property as their primary residence only for a two year period. Because of this advance notice, this appeal does present a unique set of facts to the Commission, but because they failed to take both steps they are presumed domiciled in Utah under Subsection 59-10-136(2)(a).

This presumption of domicile under Utah Code Subsection 59-10-136(2)(a) is, however, a rebuttable presumption. The Commission has previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual has asked a county to remove the residential

exemption, and the county failed to implement the individual's request.[3] In the subject appeal, the Taxpayers did notify the county, although in advance, that they would qualify only for a period of two years. Instead of denying the exemption, the County accepted the application and granted the exemption regardless of the limitation that the Taxpayer had written on the application, but then took no action later based on the Taxpayer's written statement on the application. Therefore, the County was notified that the property would not qualify for the exemption after the initial two years, but failed to take any action. Thus, Taxpayers have rebutted this presumption. 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 and if the taxpayer is not able to rebut the presumption, the taxpayer is found domiciled in Utah. The Division had argued the Taxpayers were domiciled only under 59-10-136(2)(a) and not under any of the other Subsections of 136(2). As the Taxpayers were never registered to vote in Utah and had filed a nonresident return in tax year 2015, they were not domiciled in Utah under Subsections 136(2)(b) or (c).

The Taxpayers did not meet all of the requirements to not be considered domiciled in Utah in 2015 under the 761 day exception to domicile provided at Utah Code Subsection 59-10-136(4) because the COUNTY 1 Utah property was still receiving the residential property tax exemption in 2015. Utah Code Subsection 59-10-136(4) does provide an exception to being considered domiciled in Utah if the individual and the individual's spouse are absent from the state for at least 761 consecutive days and some additional criteria are met including that neither the individual nor the individual's spouse return to Utah for more than 30 days in a calendar year or claim a residential exemption on a Utah residence. Since the Taxpayers are considered to have claimed the exemption on their Utah residence they do not meet the criteria for the 761 day exception to domicile, as this factor is not rebuttable in regards to Subsection 59-10-136(4). In addition, the Taxpayers did not

3 See Utah State Tax Commission Initial Hearing Order, Appeal No. 17-758 (1/26/2018). The Commission previously found to rebut the presumption 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). S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-812* (3/13/2018). 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). S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1332* (6/27/2016). Further, the presumption 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). These and other prior Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decision

show that they had not spent more than 30 days in Utah per calendar year for a 761 day period encompassing tax year 2015.

The Division did not argue that the Taxpayers were considered domiciled in Utah under Subsection 59-10-136(3). However, because this decision has found that the Taxpayers were not domiciled in Utah under Subsections 59-10-136(1) or 136(2) the Tax Commission must consider Subsection 59-10-136(3). Subsection (3) provides "if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile" based on "the preponderance of the evidence, taking into considerations the totality of the following facts and circumstances . . ." The facts and circumstances are twelve factors that are listed at Subsection (3)(b). In looking at each of the twelve factors, the preponderance of the evidence does not support Utah domicile. The twelve factors at Subsection 59-10-136(3) and whether they indicated domicile in Utah are the following:

1. Neither Taxpayer had a Utah Driver License in 2015. This factor does not support Utah domicile.

2. The Taxpayers did not have dependents who were enrolled in a Utah institution of higher education. This factor does not support Utah domicile.

3. The Taxpayers did own a condominium residence in CITY 2, Utah in 2015. They also owned a residence in the state of STATE 1 in 2015. They were, however, living at a third residence, in FOREIGN COUNTRY 1 in 2015. There was no information to indicate that the nature and quality of their Utah residence was superior or inferior to their living accommodations in these other locations. However, the evidence did indicate that the Taxpayers were not maintaining their Utah residence solely for their own personal use. They had turned it over to a management company for use as nightly or short term rentals. They were living full time at their residence in FOREIGN COUNTRY 1. For this reason this factor is at the most neutral in regards to Utah domicile.

4. Both Taxpayers and their dependents were all residing in FOREIGN COUNTRY 1 in 2015. This factor does not support Utah domicile.

5. The physical location of where the Taxpayers earned their earned income was in FOREIGN COUNTRY 1. This factor does not support Utah domicile.

6. The Taxpayers did not have motor vehicles registered in Utah. This factor does not support Utah domicile.

7. The Taxpayers did not establish that they were not members of a church, club, or other similar organization in Utah. This factor is unknown because it was not addressed at the hearing.

8. The Taxpayers did not use their Utah address for mail, correspondence, as a listing in a government publication, or for other purposes. This factor does not support Utah domicile.

9. The Taxpayers did not list their Utah address on their federal, Utah nonresident or other tax returns. This factor does not support Utah domicile.

10. The Taxpayers did not assert residency on a document filed with a court or other governmental agency. This factor does not support Utah domicile.

11. There was no indication that the Taxpayers had failed to acquire a permit or license in the state of STATE 1 where they were claiming to be domiciled. This factor does not support Utah domicile.

12. Neither Taxpayer was a noncustodial parent described in Subsection 59-10-136(1)(b), so this factor is not applicable.

It is clear from the review of the information that was submitted in this matter that the Taxpayers did not meet a preponderance of the Subsection (3) factors. Therefore, the Taxpayers are not considered to be domiciled in Utah under Subsection (3), and are not domiciled in Utah under Utah Code Sec. 59-10-136. As the Taxpayers were not domiciled in Utah during 2015, they are not Utah resident individuals. The audit should be abated.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the Taxpayers were not domiciled in Utah or Utah resident individuals in 2015 and abates the Division's audit deficiency in its entirety. It is so ordered.

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

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

or emailed to:
taxappeals@utah.gov

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

DATED this _____day of _____, 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.