

APPEAL #: 20-598

TAX TYPE: INCOME TAX

TAX YEAR: 2012 AND 2013

DATE SIGNED: 7/18/2023

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 20-598 Account No: ##### Tax Type: Income Tax Tax Years: 2012 and 2013</p> <p>Judge: Marshall</p>
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Presiding:

Michael J. Cragun, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP -1, Representative
TAXPAYER
For Respondent: RESPONDENT'S REP -1, Tax Examiner Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 25, 2023, in accordance with Utah Code Ann. §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. Petitioner ("Taxpayer") timely appealed the Respondent's ("Division's) audit assessments for the 2012 and 2013 tax years.
2. For the 2012 tax year, the Taxpayer filed his federal income tax return with a filing status of single. He did not claim any dependent exemptions. (Exhibits P-4 and R-1, pages 22-27).
3. For the 2012 tax year, the Taxpayer did not file a Utah individual income tax return. (RESPONDENT'S REP-1 Testimony).

4. For the 2012 tax year, the Taxpayer filed a STATE-1 income tax return. It appears that the return was filed as a resident, as there was no non-resident schedule included with the return. (Exhibits P-6 and R-1, pages 32-34).
5. For the 2013 tax year, the Taxpayer filed his federal income tax return with a filing status of single. He did not claim any dependent exemptions. (Exhibit R-1, pages 28-31).
6. For the 2013 tax year, the Taxpayer did not file a Utah individual income tax return. (RESPONDENT'S REP-1 Testimony).
7. For the 2013 tax year, the Taxpayer filed a STATE-1 income tax return. The return includes Schedule ND-R, with the residency status marked as full-year non-resident, and lists Utah as the state of residence. (Exhibit R-1, pages 37-40).
8. For the 2013 tax year, the Taxpayer filed an STATE-2 income tax return as a non-resident, and lists the Taxpayer's current state of residence as Utah. (Exhibit R-1, pages 35-36).
9. On DATE, the Division issued a Notice of Deficiency for the 2012 tax year. The Division assessed audit tax of \$\$\$\$\$, 10% late filing and 10% late payment penalties totaling \$\$\$\$\$, and interest of \$\$\$\$\$ through DATE.¹ The Division did not have record of a return, and estimated the Taxpayer's tax liability using information from the IRS and other sources, as follows (Exhibit R-1, pages 1-4):

REDACTED TABLE

10. On DATE, the Division issued an amended Notice of Deficiency and Estimated Income Tax for the 2012 tax year. The Division assessed audit tax of \$\$\$\$\$, 10% late filing and 10% late payment penalties totaling \$\$\$\$\$, and interest of \$\$\$\$\$ through DATE.² The Division amended its DATE audit to allow a credit for taxes paid to another state in the amount of \$\$\$\$\$. (Exhibit R-1, pages 9-12).
11. On DATE, the Division issued a Notice of Deficiency for the 2013 tax year. The Division assessed audit tax of \$\$\$\$\$, 10% late filing and 10% late payment penalties totaling \$\$\$\$\$, and interest of \$\$\$\$\$ through DATE.³ The Division did not have record of a return, and estimated the Taxpayer's tax liability using information from the IRS and other sources, as follows (Exhibit R-1, pages 5-8):

REDACTED TABLE

12. On DATE, the Division issued an amended Notice of Deficiency and Estimated Income Tax for the 2013 tax year. The Division assessed audit tax of \$\$\$\$\$, 10% late filing and 10% late

¹ Interest continues to accrue on any unpaid balance.

² Interest continues to accrue on any unpaid balance.

³ Interest continues to accrue on any unpaid balance.

payment penalties totaling \$\$\$\$\$, and interest of \$\$\$\$\$ through DATE.⁴ The Division amended its DATE audit to allow a credit for taxes paid to another state in the amount of \$\$\$\$\$. (Exhibit R-1, pages 13-16).

13. It is the Division's position that the Taxpayer was domiciled in Utah during the 2012 and 2013 tax years. It is the Taxpayer's position that he was a resident of STATE-1, and that his income should not be subject to Utah tax. (TAXPAYER Testimony and RESPONDENT'S REP-1 Testimony).
14. Prior to the audit period, the Taxpayer lived and worked in Utah. In DATE, the Taxpayer moved to STATE-1. He explained that the economy in Utah was bad, and he wanted to earn more money. The Taxpayer accepted a job in STATE-1 as a mechanic and truck driver. (TAXPAYER Testimony).
15. The Taxpayer is an enrolled member of the Navajo tribe. (TAXPAYER Testimony).
16. The Taxpayer stated that in STATE-1 he worked on the LOCATION-1. He provided maps showing the location of the LOCATION-1 as well as oil fields in the area. (TAXPAYER Testimony and Exhibit P-1).
17. The Taxpayer provided a letter from his employer dated DATE. The letter was signed by PERSON-1, the owner of BUSINESS-1. The letter stated (Exhibit P-3):

To Whom It May Concern,
TAXPAYER worked for us under our company BUSINESS-2 from 2012 to 2013. TAXPAYER worked as a mechanic and hauled crude oil for us. He often worked on the LOCATION-1. He was expected to be available six days a week, as such we provided housing for him at ADDRESS-1. He lived in STATE-1 for the duration of the time he worked for us.

18. The Taxpayer provided information on the income taxation of Native Americans in STATE-1.⁵ The information provided indicates that a Native American is exempt from STATE-1 income tax if the following criteria apply: 1) the person is enrolled as a member of an Indian tribe; 2) the person lives on any Indian reservation located in STATE-1; and 3) the person's income is derived from sources on any Indian reservation located in STATE-1. (Exhibit P-2).
19. The Taxpayer was married when he left Utah. He believes that the divorce was finalized in Utah in DATE. (TAXPAYER Testimony).
20. The Taxpayer had a daughter who was thirteen or fourteen years old during the audit period. She lived in Utah with her mother. His daughter was enrolled in Utah public schools. The Taxpayer explained that under the custody agreement, he could see his daughter whenever he wanted. He stated that he generally worked for a month straight, and then flew to Utah where he would stay

⁴ Interest continues to accrue on any unpaid balance.

⁵ The information appears to have been obtained from the website for the STATE-1 Office of State Tax Commissioner.

for about five days at a time, totaling approximately 60 days per year. The Taxpayer stated that he would stay in hotels when he was in Utah, and noted that he had provided receipts to the Division. (TAXPAYER Testimony).

21. The Taxpayer did not attend a Utah institution of higher education in 2012 or 2013. (TAXPAYER Testimony).
22. The Taxpayer did not own property in Utah. The Taxpayer lived in a trailer in STATE-1 that his employer provided as part of his employment contract. (TAXPAYER Testimony).
23. The Taxpayer registered to vote in Utah on DATE. His voting history shows that the Taxpayer only voted in the 2008 general election. On DATE, the Taxpayer's voting status was changed from active to inactive, and on DATE, his status was changed from inactive to removable. RESPONDENT'S REP-1 explained that an inactive voter can still vote in Utah, but that when a status is changed to removable, the individual is not eligible to vote in Utah. (RESPONDENT'S REP-1 Testimony and Exhibit R-1, pages 17-19).
24. The Taxpayer did not ask to have his name removed from the voter registry in Utah. The Taxpayer did not register to vote in, or vote in, STATE-1.⁶ (TAXPAYER Testimony).
25. The Taxpayer held a Utah driver license in 2012 and 2013. The Division provided information from the Utah Criminal Justice Information System on the Taxpayer's Driver license. The Division's representative noted that the license was issued on DATE as a renewal. The Division's representative stated that a renewal would indicate that the Taxpayer held a Utah driver license dating back at least as far as 2010. The address listed on the driver license was ADDRESS-2. The Taxpayer stated that the address is his brother's home, and that he lived at the address around 2009-2010. (TAXPAYER Testimony, RESPONDENT'S REP-1 Testimony, and Exhibit R-1, pages 20-22).
26. The Taxpayer did not own a vehicle in 2012 or 2013. When he moved to STATE-1, he sold his vehicle. He stated that he had the use of a company vehicle. (TAXPAYER Testimony).
27. The Taxpayer maintained a P.O. Box in Utah. He stated that having the P.O. Box made it easier to pay bills related to his daughter. The Utah P.O. Box was the address used on the Taxpayer's federal income tax returns for the 2012 and 2013 tax years. The Utah P.O. Box was the address used on the Taxpayer's STATE-1 income tax returns for the 2012 and 2013 tax years, and for the Taxpayer's STATE-2 income tax return for the 2013 tax year. The Taxpayer testified that he also received mail at the STATE-1 address. (TAXPAYER Testimony and Exhibit R-1, pages 23-40).

⁶ The Commission notes that STATE-1 does not require voter registration prior to voting.

28. For the 2012 tax year, the Taxpayer received W-2s from BUSINESS-2 and BUSINESS-3. Both W-2s were sent to ADDRESS-2. The BUSINESS-2 W-2 sourced all wages, \$\$\$\$\$, to STATE-1. The BUSINESS-3 W-2 sourced all wages, \$\$\$\$\$, to Utah. (Exhibit R-1, pages 41-42).
29. The Taxpayer did not explain the Utah wages, indicating that he had worked in STATE-1 for all of 2012. (TAXPAYER Testimony).
30. A Form 1099 for interest income was issued to the Taxpayer for the 2012 tax year at the Utah P.O. Box address. (Exhibit R-1, page 43).
31. The Taxpayer's 2013 W-2s from BUSINESS-2, BUSINESS-4, and BUSINESS-5 were sent to the Utah P.O. Box address. The BUSINESS-2 W-2 sourced all income, \$32,465.95, to STATE-1. The BUSINESS-4 sourced all income, \$5,553.50, to STATE-2. The BUSINESS-5 W-2s sourced all income, \$\$\$\$\$, to STATE-2. (Exhibit R-1, pages 44-46).
32. The Taxpayer testified that he filed an STATE-2 return because the business was based in STATE-2. He stated that he was not living in STATE-2, but was driving a truck from STATE-1 to STATE-2. (TAXPAYER Testimony).
33. The Division's representative stated that the Division is not opposed to the waiver of penalties on the audit assessment, but asked that the amended audit tax and interest be upheld. (RESPONDENT'S REP-1 Testimony).
34. The Division's representative stated that for the 2012 tax year, the federal adjusted gross income shown on line 37 is \$\$\$\$\$, while the Notice of Deficiency was calculated based on federal adjusted gross income of \$\$\$\$\$. He explained that the amount shown on the federal return failed to include the W-2 from BUSINESS-3 in the amount of \$\$\$\$\$, which was sourced to Utah. The Division's representative included the income from BUSINESS-3, and allowed the withholding credit shown on the W-2. Additionally, the Division allowed a credit for taxes paid to STATE-1 in the amount of \$\$\$\$\$. (RESPONDENT'S REP-1 Testimony).
35. The Division's representative stated that for the 2013 tax year, the federal adjusted gross income amount shown on the Taxpayer's federal return matches the figure used for the Division's audit. He explained that the Division allowed a credit for taxes paid to STATE-1 and STATE-2. The Division's representative stated that the Taxpayer's 2013 STATE-1 tax liability was \$\$\$\$\$. He noted that the credit for STATE-2 was limited to \$\$\$\$\$, because the total STATE-2 liability included a \$\$\$\$\$ permanent building fund liability, which is not an income tax. (RESPONDENT'S REP-1 Testimony).
36. The Division's representative stated that Utah law appears to differ from STATE-1 law with regard to the taxation of Native Americans. He stated that under Utah Code Ann. § 59-10-114(2)(b) and (e), there is a subtraction for certain income of certain enrolled members of a

tribe in Utah. The Division's representative stated that the Navajo Nation is in southeastern Utah, but that the Taxpayer was not living and working on those lands. He stated that it is the Division's position that the Taxpayer does not qualify for a subtraction from income under these provisions. (RESPONDENT'S REP-1 Testimony).

37. The Division's representative argued that the Taxpayer has not rebutted the presumption of domicile found in Subsection (2)(b) of Utah Code Ann. §59-10-136. He argued that there are more factors that point to domicile in Utah, and not many factors that indicate domicile in STATE-1 or another state. The Division's representative noted that while the Taxpayer earned income in STATE-1, the Taxpayer was registered to vote in Utah, held a Utah driver license, and his federal and state returns used a Utah mailing address. (RESPONDENT'S REP-1 Testimony).

APPLICABLE LAW

Under Utah Code Ann. §59-10-104(1), tax is imposed on the state taxable income of a resident individual.

The term "state taxable income" is defined in Utah Code Ann. §59-10-103(1)(w), below in pertinent part:

- (i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
 - (A) additions and subtractions required by Section 59-10-114; and
 - (B) adjustments required by Section 59-10-115...

For the years at issue, "resident individual" is defined in Utah Code Ann. §59-10-103(1)(q), as follows:

- (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.

The factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136, as set forth below:

- (1) (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.

- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
 - (i) is the noncustodial parent of a dependent:
 - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
 - (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
 - (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).
- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
 - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
 - (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
 - (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
- (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
 - (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
 - (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.
- (b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:
 - (i) whether the individual or the individual's spouse has a driver license in this state;
 - (ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;
 - (iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;
 - (iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;
 - (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

- (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
 - (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
 - (viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
 - (ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
 - (x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
 - (xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or
 - (xii) whether the individual is an individual described in Subsection (1)(b).
- (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
- (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
 - (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
 - (A) return to this state for more than 30 days in a calendar year;
 - (B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
 - (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
 - (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
 - (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
- (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
- (c) For purposes of Subsection (4)(a), an absence from the state:
- (i) begins on the later of the date:
 - (A) the individual leaves this state; or
 - (B) the individual's spouse leaves this state; and

- (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.
- (d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
 - (i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.
- (e)
 - (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
 - (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
 - (A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).
- (5)
 - (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.
 - (b) For purposes of this section, an individual is not considered to have a spouse if:
 - (i) the individual is legally separated or divorced from the spouse; or
 - (ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
 - (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
- (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

Utah Code 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)⁷ 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.

⁷ Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute.

- (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
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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.

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 Utah Administrative Code R861-1A-42 to provide additional guidance on the waiver of penalties and interest, as follows in pertinent part:

- (1) 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.
- (2) 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:
 - (i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.
 - (ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.
 - (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 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.

Under Utah Code Ann. §59-1-1417(1), the burden of proof is generally upon the petitioner in proceedings before the commission, as follows:

- (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following in which the burden of proof is on the commission:
 - (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
 - (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
 - (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income;
 - (i) required to be reported; and
 - (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

CONCLUSIONS OF LAW

- A. The Taxpayer has the burden of proof in this matter under Utah Code Ann. §59-1-1417.
- B. For the 2012 and 2013 tax years, Utah Code Ann. §59-10-103(1)(q)(i) provided that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the “domicile test”); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the “183 day test”). The Division contends that the Taxpayer is domiciled in Utah for both 2012 and 2013. Accordingly, the Commission must apply the facts to the Utah income tax domicile law that is applicable for the years in question to determine whether the Taxpayer is considered to be domiciled in Utah for each of those years. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. It contains four subsections addressing when a taxpayer is considered to have domicile in Utah and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah.
- C. The Taxpayer had a spouse from DATE through DATE, but is not considered to have a spouse from DATE through DATE. §59-10-136(5)(a) provides that 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. Subsection (5)(b) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have a spouse if the individual is legally separated or divorced from the spouse, or the individual and individual’s spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. The

Taxpayer did not provide any documentation showing that he and his spouse were legally separated. However, the Taxpayer and his spouse divorced during May 2012. It goes beyond the plain language of the statute to find that the Taxpayer did not have a spouse for all of 2012; however, the issue of whether his spouse was a Utah resident individual is not at issue in this matter.⁸

- D. The Taxpayer does not have a spouse for the 2013 tax year. Utah Code Ann. §59-10-136(5)(a) provides that 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. Subsection (5)(b) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have a spouse if the individual is legally separated or divorced from the spouse, or the individual and individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. In this case, the Taxpayer divorced in DATE and submitted a federal return with a filing status of single for the 2013 tax year.
- E. Utah Code Ann. §59-10-136(4) provides that an individual is not considered to have domicile in the State of Utah under Subsection 59-10-136(1), (2), or (3) if the Taxpayer was absent from the state for at least 761 consecutive days and certain other qualifications are met. The Taxpayer does not meet the qualifications of Subsection (4) because he returned to Utah for more than 30 days in 2012 and 2013. He testified that he returned to Utah approximately 5 days a month, which would total about 60 days per year. Thus, the Taxpayer does not qualify under Subsection 59-10-136(4) as being considered not domiciled in the State of Utah.
- F. The Taxpayer is not domiciled in Utah under Utah Code Ann. §59-10-136(1) for the 2012 or 2013 tax year. If a dependent claimed on the individual's or individual's spouse's federal return is enrolled in a Utah public kindergarten, elementary, or secondary school, the individual is considered domiciled in Utah. Although the Taxpayer had a daughter who was enrolled in a Utah public school during the years in question, he did not claim his daughter as a dependent on his federal returns during the tax years at issue. Additionally, Subsection (1) provides that if an individual or individual's spouse is a resident student enrolled in an institution of higher education in Utah, the individual is considered domiciled in Utah. The Taxpayer asserted he was not enrolled as a resident student in a Utah institution of higher education in 2012 or 2013.
- G. Subsection (2) of Utah Code Ann. §59-10-136 sets forth three circumstances that create a rebuttable presumption of domicile in Utah. The Legislature did not provide what circumstances are sufficient or are not sufficient to rebut the presumptions in Utah Code Ann. §59-10-136(2), leaving it to the Courts and the Commission to determine which circumstances are sufficient or

⁸ The Commission notes that the statutory language does not address the factual circumstance of this case.

not sufficient to rebut the presumptions of domicile found in Subsection 59-10-136(2). The Commission has considered grounds for rebuttal in numerous prior decisions, which will be discussed below. In addition, the Utah Supreme Court held in *Buck v. Tax Comm'n*, 2022 UT 11 (February 24, 2022) that "...the presumption of domicile that results from claiming a primary residential property tax exemption is rebuttable. And...taxpayers are not statutorily barred from having a meaningful opportunity to rebut the presumption." Furthermore, the Utah Supreme Court noted that "in applying these rather orthodox principles of domicile, courts look to a multiplicity of factors including, but most certainly not limited to 'the places where the [individual] exercises civil and political rights, pays taxes, owns real and personal property, has driver's and other licenses, maintains bank accounts, belongs to clubs and churches, has places of business or employment, and maintains a home for his [or her] family,'" (citing *Coury v. Prot*, 85 F. 3d 244, 251 (5th Cir. 1996)) and noted "[n]o single factor is determinative." (Internal citations omitted). Thus, the Commission will also consider additional circumstances for rebuttal of a Subsection (2) presumption, as described by the Court in *Buck*.

- H. The Taxpayer is not presumed domiciled in Utah under Utah Code Ann. §59-10-136(2)(a), which provides as follows:

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...

The Taxpayer did not own property in Utah during the audit period.

- I. The Taxpayer is presumed domiciled in Utah for all of the 2012 and 2013 tax years because he was registered to vote in Utah. Utah Code Ann. §59-10-136(2)(b), provided as follows for the 2012 and 2013 tax years:

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

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

The Taxpayer registered to vote in Utah on DATE, and remained registered to vote in Utah throughout the audit period.

In prior decisions, the Commission found that 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.⁹ The

⁹ See Appeal No. 17-1624.

Commission has also found that the Subsection (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 Taxpayer did not ask to have his name removed from the Utah voter registry. In Appeal No. 17-1624, the Commission found that the presumption of domicile could be rebutted if an individual shows that the individual registered to vote in the state to which they moved relatively soon after moving there.. The Taxpayer did not register to vote in another state. In Appeal No. 17-1552, the taxpayer had moved to STATE-1, the only state without voter registration. In that case, the Commission noted that the taxpayer may have been able to rebut the presumption of domicile by having actually voted in STATE-1, but failed to do so. Likewise, the Taxpayer in the instant case could have rebutted the presumption of domicile by actually voting in STATE-1, but the Taxpayer provided no evidence to show that he voted in STATE-1.

- J. The Taxpayer is not presumed domiciled in Utah under Utah Code Ann. §59-10-136(2)(c), which provides as follows:

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

(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.

The Taxpayer did not file a Utah individual income tax return for the 2012 or 2013 tax year, thus, he did not assert residency in this state.

- K. In this appeal, the Taxpayer argued that he was a resident of STATE-1. There are factors that support a finding of Utah domicile for the Taxpayer: he held a Utah driver license; he was registered to vote in Utah throughout the audit period; he received mail at a Utah P.O. Box; and he used a Utah mailing address for his tax documents and filing his returns. Additionally, the Commission notes that the Taxpayer reported that he was a resident of Utah on his STATE-1 and STATE-2 income tax returns. The Taxpayer also has factors that support his being a resident of STATE-1. The Taxpayer's only residence was in STATE-1. He received some mail in STATE-1, earned the majority of his income from working in STATE-1, and paid tax in STATE-1. Although the Taxpayer was registered to vote in Utah, the last time he voted in Utah was four years prior to the 2012 tax year. The Commission finds that, given the weight of the evidence, the Taxpayer has rebutted the presumption of domicile under Subsection 59-10-136(2)(b) for the 2012 and 2013 tax years.

- L. The Commission has determined that the Taxpayer has rebutted the presumption of domicile in Subsection 59-10-136(2)(b). Subsection 59-10-136(3)(a) provides, “[i]f 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...” certain requirements are met. For the 2012 and 2013 tax years, Subsection (3)(b) provided an exhaustive list of 12 facts and circumstances that the Commission shall consider in determining whether the Taxpayer is domiciled in Utah under Subsection (3). Of the twelve factors, seven of them are either not relevant, or there was no information provided at the hearing that would allow the Commission to make a determination. Specifically, those are Subsections (3)(b)(ii), (iv), (vi), (vii), (x), (xi), and (xii).¹⁰ Those factors will receive no weight in determining the Taxpayer’s domicile under Subsection (3).

For each of the years at issue, the factors that are relevant to the Taxpayer’s circumstances either indicate domicile in Utah, do not indicate domicile in Utah, or are neutral (do not indicate domicile in Utah over domicile not in Utah). The relevant factors that are neutral will be given little or no weight. Following is an analysis of the relevant factors:

Subsection (3)(b)(i): The first factor is “[w]hether the individual or the individual’s spouse has a driver license in this state[.]” In this case, the Taxpayer held a Utah driver license throughout the audit period. This factor indicates domicile in Utah from January 1, 2012 through December 31, 2013.

Subsection (3)(b)(iii): The third factor is “[t]he nature and quality of the living accommodations that the individual or the individual’s spouse has in this state as compared to another state.” Throughout the audit period, the Taxpayer lived in a trailer in STATE-1 that his employer provided as part of his employment contract. When visiting his daughter in Utah, the

¹⁰ (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... (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... (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 claims a personal exemption on the individual’s or individual’s spouse’s federal individual income tax return... (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... (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)...

Taxpayer would stay in hotel rooms. The nature and quality of the living arrangements do not indicate domicile in Utah from January 1, 2012 through December 31, 2013.

Subsection (3)(b)(v): The fifth factor is “[t]he 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.” Under IRC §32(c)(2)(A), “earned income” is defined to mean:

- (i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus
- (ii) the amount of the taxpayer’s net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

The Taxpayer had W-2s that sourced income to STATE-2 and Utah during the audit period, in addition to STATE-1. The Taxpayer testified that he worked in STATE-1 throughout the audit period, with the company being based in STATE-2. The Commission notes that the income attributable to Utah in 2012 was minimal, compared to the income earned in STATE-1. This factor does not indicate domicile in Utah during the audit period.

Subsection (3)(b)(viii): The eighth factor is “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.” The Taxpayer maintained a P.O. Box in Utah, and all of his W-2s and the Form 1099 issued for the years at issue were sent to a Utah address. The Taxpayer testified that he also received mail at his STATE-1 address. This factor is neutral and does not indicate domicile in Utah or outside of Utah during the audit period.

Subsection (3)(b)(ix): The ninth factor is “whether the individual or the individual’s spouse lists an address in this state on a state or federal tax return.” The Taxpayer’s 2012 and 2013 federal tax returns were filed using a P.O. Box located in Utah. This factor supports a finding of domicile in Utah for the 2012 and 2013 tax years.

Two of the factors, holding a Utah driver license, and listing a Utah address on his federal income tax returns support a finding of domicile in Utah. The following two factors do not support a finding of domicile in Utah for the audit period: the nature and quality of living accommodations, and the physical location in which the Taxpayer earned income. The remaining factor, the Taxpayer’s mailing address, is neutral and does not support a finding of domicile in Utah or outside of Utah during the audit period. Under the specific facts and circumstances of this case, the Commission finds the Taxpayer was not domiciled in Utah under Subsection (3) from January 1, 2012 through December 31, 2013.

M. The Taxpayer's income earned in STATE-1 on the LOCATION-1 is not excluded from his taxable income. Utah Code Ann. § 59-10-114(2)(e) provides:

- (2) There shall be subtracted from adjusted gross income of a resident or nonresident individual...
 - (e) an amount:
 - (i) received by an enrolled member of an American Indian tribe; and
 - (ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:
 - (A) federal law;
 - (B) a treaty; or
 - (C) a final decision issued by a court of competent jurisdiction...

The Taxpayer is an enrolled member of an American Indian tribe. Neither party has provided a federal law, treaty, or final decision issued by a court of competent jurisdiction that would prevent the State of Utah from imposing a tax on that amount. The Tax Commission's website¹¹ provides that for a Native American individual to qualify for the income exclusion, the individual must: "1. be an enrolled member of a Native American tribe in Utah, 2. live on your tribe's reservation, and 3. earn the income on your tribe's reservation..." The Taxpayer does not meet these qualifications, as he did not live and earn money on the Navajo Nation reservation.

N. The Division imposed 10% penalties for the failure to timely file and failure to timely pay for the 2012 and 2013 tax years. Because the Commission has found that the Taxpayer was not domiciled in Utah during the audit period, the penalties should be abated.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the Taxpayer was not domiciled in Utah for the 2012 and 2013 tax years. The Commission hereby abates the Division's amended audit tax deficiency, penalties and interest assessed for the 2012 and 2013 tax years. It is so ordered.

¹¹ See incometax.utah.gov/subtractions/native-american-income.

DATED this _____ day of _____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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 applied. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.