

15-1063

TAX TYPE: INCOME TAX

TAX YEAR: 2010, 2011, 2012, 2013

DATE SIGNED: 8-26-2016

COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2,

Petitioners,

v.

AUDITING DIVISION OF THE UTAH  
STATE TAX COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 15-1063

Account No. #####

Tax Type: Income Tax

Tax Year: 2010, 2011, 2012 and 2013

Judge: Phan

**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER’S, CPA

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT-1, Manager, Income Tax Auditing  
RESPONDENT-2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 2, 2016 for an Initial Hearing in accordance with Utah Code §§59-1-501 & 59-1-502.5. Petitioners (“Taxpayers”) are appealing audit deficiencies for tax years 2010 through 2013. The Notices of Deficiency and Audit Change for each year had been issued by Respondent (“Division”) on April 28, 2015. No penalties were assessed with the audit. The audit tax and interest calculated to the notice date for each year is as follows:

Year	Tax	Interest	Audit Total Due <sup>1</sup>
2010	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2011	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$
2012	\$\$\$\$\$	\$\$\$\$\$	\$\$\$\$\$

<sup>1</sup> This is the total balance as of the date the Audit Notices were issued. Interest continues to accrue on any unpaid balance until paid in full.

2013                \$\$\$\$\$                \$\$\$\$\$                \$\$\$\$\$

APPLICABLE LAW

For all four tax years at issue, Utah Code §59-10-104(1) provides that “a tax is imposed on the state taxable income of a resident individual.”

For all four tax years at issue and for purposes of Utah income taxation, a “resident individual” is defined in Utah Code §59-10-103(1)(q), as follows in pertinent part:

- (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.

**Domicile Law for the 2010 and 2011 Tax Years.**

4. For the 2010 and 2011 tax years only, Utah Admin. Rule R865-9I-2 (“Rule 2”) provides guidance concerning the determination of “domicile,” as follows in pertinent part:<sup>2</sup>

- A. Domicile.
  - 1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.
  - 2. For purposes of establishing domicile, an individual’s intent will not be determined by the individual’s statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.
    - a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.
    - b) Domicile applies equally to a permanent home within and without the United States.
  - 3. A domicile, once established, is not lost until there is a concurrence of the following three elements:
    - a) a specific intent to abandon the former domicile;

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<sup>2</sup> Effective January 1, 2012, Utah law concerning “domicile” was substantively amended. The Rule 2 definition of “domicile” in effect for 2010 and 2011 was repealed beginning with tax year 2012 and new criteria concerning “domicile” were enacted in UCA §59-10-136. As a result, the Rule 2 definition of domicile in effect for 2010 and 2011 will be used to determine the taxpayers’ domicile during 2010 and 2011, but Section 59-10-136 will be used to determine domicile during 2012 and 2013.

- b) the actual physical presence in a new domicile; and
  - c) the intent to remain in the new domicile permanently.
4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

....

For the 2010 and 2011 tax years, Utah Admin. Rule R884-24P-52 (“Rule 52”) sets forth a non-exhaustive list of factors or objective evidence that may be determinative of domicile, as follows:<sup>3</sup>

....

- (5) Factors or objective evidence determinative of domicile include:
- (a) whether or not the individual voted in the place he claims to be domiciled;
  - (b) the length of any continuous residency in the location claimed as domicile;
  - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
  - (d) the presence of family members in a given location;
  - (e) the place of residency of the individual’s spouse or the state of any divorce of the individual and his spouse;
  - (f) the physical location of the individual’s place of business or sources of income;
  - (g) the use of local bank facilities or foreign bank institutions;
  - (h) the location of registration of vehicles, boats, and RVs;
  - (i) membership in clubs, churches, and other social organizations;
  - (j) the addresses used by the individual on such things as:
    - (i) telephone listings;
    - (ii) mail;
    - (iii) state and federal tax returns;
    - (iv) listings in official government publications or other correspondence;
    - (v) driver’s license;
    - (vi) voter registration; and
    - (vii) tax rolls;
  - (k) location of public schools attended by the individual or the individual’s dependents;
  - (l) the nature and payment of taxes in other states;
  - (m) declarations of the individual:
    - (i) communicated to third parties;
    - (ii) contained in deeds;

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<sup>3</sup> Rule 52 is referenced in the version of Rule 2 that was in effect for 2010 and 2011. As a result, Rule 52 is applicable when determining the taxpayers’ 2010 and 2011 domicile, but not 2012 and 2013 domicile.

- (iii) contained in insurance policies;
- (iv) contained in wills;
- (v) contained in letters;
- (vi) contained in registers;
- (vii) contained in mortgages; and
- (viii) contained in leases.
- (n) the exercise of civil or political rights in a given location;
- (o) any failure to obtain permits and licenses normally required of a resident;
- (p) the purchase of a burial plot in a particular location;
- (q) the acquisition of a new residence in a different location.

....

**Domicile Law for the 2012 and 2013 Tax Years.**

For the 2012 and 2013 tax years, Utah Code §59-10-136 provides guidance concerning the determination of “domicile,” 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 Code §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

#### DISCUSSION

The Taxpayers had been residents of Utah for many years prior to the tax years at issue. They had built a residence in CITY-1, Utah in 1983 and lived there until June 28, 2010. The Taxpayers owned in trust with other family members approximately #####-acres of farmland around this residence which they had used as a hay farm. TAXPAYER-1 had retired in 2010. He was called to be a mission president for his church, which position was located in CITY-2, STATE-1. The Taxpayers moved to CITY-2, STATE-1 on June 28, 2010 and lived there while on their mission until July 3, 2013. While serving on the mission, the Taxpayers did not return to Utah with the exception of TAXPAYER-1 who returned to Utah for approximately 24 hours due to a medical issue.

At this time the Taxpayers did not have any minor children. Their children were all independent and moved out of the Taxpayers' home. The Taxpayers had Utah Driver Licenses and were registered to vote in Utah.

The Taxpayers did not sell their residence in CITY-1 prior to leaving on the mission. The family trust leased the #####-acre farm to NAME-1, who farmed the land while the Taxpayers were in STATE-1. The Taxpayers arranged with a “family in need” to live in their CITY-1

residence. The Taxpayers felt that they needed someone to stay at the property to prevent theft or vandalism, to maintain the residence and keep an eye on the land. They did not charge this family a dollar amount for rent, but the arrangement was that the family would pay the utilities and maintain the property. The representative for the Taxpayers asserted that the Taxpayers' CITY-1 residence was the primary and only residence for this "family in need" during the period of time the Taxpayers were on their mission. The Taxpayers' CITY-1 residence did receive the primary residential exemption for all of the tax years at issue.

The Taxpayers never returned to their CITY-1 residence. When their mission was over on July 3, 2013, the Taxpayers returned to Utah, but they sold their CITY-1 residence and purchased a new residence in CITY-3, Utah. It was the Taxpayers' position that they were part-year residents of Utah in 2010 prior to leaving on their mission and part-year residents in 2013 for the period after they returned to Utah on July 3, 2013.

While in STATE-1, the Taxpayers resided in a home provided by their church. They drove a car provided by their church which was also insured by their church. They did not obtain STATE-1 Driver Licenses or register to vote in that state. Most of their medical care was in STATE-1. They did use a Utah accountant, however, to file their tax returns. They did not use personal credit cards and continued to use the same bank they had in Utah.

The Commission agrees with the Division's position that under the old law, effective for tax years 2010 and 2011, it was clear that the Taxpayers would have retained their Utah domicile and were, therefore, residents of Utah for individual income tax purposes for those years. The Taxpayers had clearly established a Utah domicile prior to their 2010 mission. Under the law in effect for 2010 and 2011, once domicile in Utah had been established the Taxpayers would have to show three elements before domicile for tax purposes would be considered to have changed to a new state. Utah Admin. Rule R865-9I-2(1)(c) provides, "A domicile, once established, is not lost until there is a concurrence of the following three elements: (i) a specific intent to abandon the former domicile; (ii) the actual physical presence in a new domicile; and (iii) the intent to remain in the new domicile permanently." Under these provisions, it is clear that the Taxpayers did not abandon their Utah domicile and establish domicile in STATE-1. They met only (ii) having a physical presence in STATE-1. They did not establish that they had the intent to remain in STATE-1 permanently, nor demonstrate intent to abandon their Utah domicile.

As noted by the Division in its Prehearing Brief, the Utah State Tax Commission has previously considered the question of domicile for persons serving church missions under the law in effect for 2010 and 2011 and found the taxpayers remained domiciled in Utah because they did not have the intent to make the location where they were serving their mission their permanent

residence, but were instead there for a temporary purpose. The Division cites to *Utah State Tax Comm'n Appeal No. 11-103* (Initial Hearing Order July 12, 2012) and *Utah State Tax Comm'n Appeal Nos. 01-1398, 01-1447, 02-0262* (Findings of Fact, Conclusions of Law, and Final Decision January 21, 2003).<sup>4</sup>

Effective for the 2012 and 2013 tax year, what constituted domicile changed substantially with the adoption of Utah Code §59-10-136. Utah Code §59-10-136(4) provides an exception for persons who are absent from the state for 761 consecutive days if some additional criteria are met which are the following:

(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.

The Taxpayers represent that they did not return to Utah for more than 30 days during a calendar year, it was just the one day that TAXPAYER-1 had returned to Utah during the entire period they were serving their mission. They did not claim a personal exemption for anyone enrolled in public school and they themselves were not enrolled in an institution of higher education. They did not provide copies of the federal returns, but the Division did not assert that they had used a Utah address on the returns.

The issue raised by the Division was that the Taxpayers had received the primary residential exemption on their CITY-1 residence. An exception is provided at Utah Code Subsection 59-10-136(6) which states “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.” Therefore, the issue in this matter is

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<sup>4</sup> These and other Tax Commission Decisions are published in a redacted format at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

whether the Taxpayers are claiming a property tax residential exemption for residential property “that is the primary residence of a tenant.” “Tenant” is not defined at Utah Code Section 59-10-136 and the Division indicated it was unable to find a definition for “tenant” in the Utah Tax Code. From the information proffered at this hearing, the Taxpayers’ CITY-1 residence was the primary residence for another family. This family did not pay traditional rent, but they provided services like maintaining the property and being on site to prevent theft or vandalism.

The Division argues to qualify as a “tenant” this other family would have to pay rent and points to a definition of “tenant” provided in the Utah Uniform Assignments of Rent Act, which is found in Title 57- Real Estate, of the Utah Code. This definition provides, ““Tenant” means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.” See Utah Code Subsection 57-26-102(19). This definition is, however, specialized for the purposes of that act because if there was no “sums” paid to use the property, there would be nothing to assign and it would not be relevant to the Uniform Assignments of Rent Act. A general definition of “tenant” is provided in Black’s Law Dictionary as follows:

In the broadest sense, one who holds or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise. In a more restricted sense, one who holds lands of another; one who has the temporary use and occupation of real property owned by another person (called the “landlord”), the duration and terms of his tenancy being usually fixed by an instrument called a “lease.” One who occupies another’s land or premises in subordination to such other’s title and with his assent, express or implied. One renting land and paying for it either in money or part of crop or equivalent.<sup>5</sup>

Under the broader definition a tenant has the right to possess property. In the more restricted sense, it seems the right to use or occupy a property is the key factor of being a tenant. The family residing in the Taxpayers’ CITY-1 residence are tenants because they had the temporary use and occupation of the property. Further, even if rent were required, which is only limited to one sentence in the Black’s Law Dictionary definition regarding renting land, it could be paid in “money or part of crop or equivalent.” There is certainly no indication that full market value rent is required. In this case the family living in the residence was providing services in exchange for the use of the property and should be considered “tenants” for purposes of Utah Code Subsection 59-10-136(6) regardless of the fact that they were not paying money as rent. Therefore, because the property was the primary residence of “tenants,” the fact that it received the primary residential exemption does not preclude the Taxpayers from qualifying under the 761 day exception set out at Utah Code Subsection 59-10-136(4).

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<sup>5</sup> *Black’s Law Dictionary*, 6<sup>th</sup> Edition, 1981.

At the hearing the representative for the Taxpayers had argued that tax and interest should be abated for tax years 2010 and 2011 because information published on the Tax Commission's website had been unclear. He did not provide an argument based on the statutory provisions or prior decisions to support his contention that the tax should be abated for 2010 and 2011. Because, as noted previously, the statute, administrative rule and prior case law made it clear for the 2010 and 2011 tax years that the Taxpayers remained domiciled in Utah and statute and rule have precedence, there is no basis under this argument to abate the tax portion for those years. However, if in fact the Tax Commission had published erroneous information, it would be a basis for waiver of interest under Utah Admin. Rule 861-1A-42(2). So the argument from the representative is scrutinized for purposes of determining if there is a basis for waiver of interest.

The Taxpayers' representative stated he had relied on information posted on the Tax Commission's website defining "nonresident" and that he felt the information was unclear or misleading. He provided a printout of the definition from [incometax.utah.gov/filing/nonresidents](http://incometax.utah.gov/filing/nonresidents) (1/12/2015). This definition stated, "A nonresident is a person who is not domiciled in Utah, does not maintain a place of abode in Utah, or does not spend more than 183 days during the taxable year in Utah. See *Residency and Domicile* for information." (Emphasis in the original.) This appeared to be the same definition published on the website in 2014 and years prior. He had a copy of an older definition from [incometax.utah.gov/2007/residency\\_nonresidents.php](http://incometax.utah.gov/2007/residency_nonresidents.php), which provided the definition for nonresident as, "A nonresident individual is one who was not in Utah or was in Utah for temporary purposes of less than 183 days during the taxable year." This definition predates the years at issue in this appeal. The Taxpayers' representative stated that after discussing his concerns regarding the lack of clarity in the information published on the website with the representative from the Division, this definition was changed immediately on the website.

The Division argued that the definition of "nonresident" should have been read in connection with the information provided for "domicile" and "Utah resident" and that made it clear. The Division provided copies of the information published on the website regarding "Domicile" and "Utah Resident" for each of the tax years. For 2011, <http://incometax.utah.gov/2011/residency/definitions> said:

You are a Utah resident if you:

1. Are domiciled in Utah for the entire year, even if temporarily outside of Utah for an extended period of time (years in certain situations);
2. Are domiciled in Utah for any period of time during the taxable year, but only for the duration of that period; or
3. Even though domiciled outside Utah, you maintained a place of abode in Utah and spent 183 or more days of the taxable year in Utah . . .

That same year “domicile” was defined on the same site as:

“Domicile” is the place where you have a permanent home and to where you have voluntarily fixed your habitation, not for a special or temporary purpose but with the intent of making a permanent home. A domicile, once established, is not lost until all of the following three conditions are met:

1. A specific intent to abandon the former domicile;
2. The actual physical presence in a new domicile; and
3. The intent to remain in the new domicile permanently.

Under Utah Admin. Rule R861-1A-42(2), interest may only be waived if the taxpayer shows “the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayers’ argument that the online instructions were misleading is not persuasive. The instructions relied on by the Taxpayers’ representative offered three factors a taxpayer would have to show to be a “nonresident” that were separated by the term “or,” which means that if the taxpayer failed any one of these alternatives, they would not qualify as a nonresident. The first factor stated was the one that applies here, “A nonresident is a person who is not domiciled in Utah . . .” The online instructions went on to state in the next sentence, “See *Residency and Domicile* for information.” Under the explanation of “domicile” provided for tax years 2010 and 2011<sup>6</sup> in the online instructions it was clear that the Taxpayers would have been domiciled in Utah during those years. There is no basis for waiver of interest for the 2010 and 2011 tax years.

After review of the facts and the law applicable for each tax year, the audit deficiencies of tax and interest should be upheld for tax years 2010 and 2011. The law changed substantially beginning in 2012 with the provisions set out at Utah Code Subsection 59-10-136(4) for individuals absent from the state for 761 consecutive days. The Taxpayers were absent from Utah more than 761 days and met the other criteria listed in the statute. They were not domiciled in Utah or residents of Utah for individual income tax purposes for all of 2012 and up through July 3, 2013, when they returned to Utah.

Jane Phan  
Administrative Law Judge

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<sup>6</sup> The online instructions were revised significantly for 2012 and 2013 to reflect the new law regarding domicile set out at Utah Code Sec. 59-10-136.

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayers were domiciled in Utah and, therefore, were Utah residents for Utah individual income tax purposes for all of tax years 2010 and 2011. The audit assessments of tax and interest are sustained for both those years. The Taxpayers were not resident individuals for individual income tax purposes for all of tax year 2012. For tax year 2013, the Taxpayers were part-year residents of Utah, not becoming Utah residents until July 3, 2013 when they returned to Utah. The audit assessments for 2012 and 2013 are to be adjusted accordingly. 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 \_\_\_\_\_, 2016.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Robert P. Pero  
Commissioner

Rebecca L. Rockwell  
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.**