

16-1458
TAX TYPE: INCOME TAX
TAX YEAR: 2012 & 2013
DATE SIGNED: 2/8/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent. | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 16-1458 Account No. ##### Tax Type: Individual Income Tax Tax Years: 2012 & 2013 Judge: Chapman |
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Presiding:

Michael J. Cragun, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Assistant Attorney General
 REPRESENTATIVE FOR RESPONDENT-2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 7, 2019.

Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is Utah individual income tax.
2. The tax years at issue are 2012 and 2013.
3. TAXPAYER-1 and TAXPAYER-2 (“Petitioners” or “taxpayers”) have appealed the Auditing Division’s (“Respondent” or “Division”) assessments of Utah individual income taxes for the 2012 and 2013 tax years.

4. On August 26, 2016, the Division issued Notices of Deficiency and Estimated Income Tax (“First Statutory Notices”) to TAXPAYER-2 alone, in which it imposed additional taxes, 10% failure to timely file penalties, 10% failure to timely pay penalties, and interest (calculated as of September 25, 2016), as follows:

| <u>Year</u> | <u>Tax</u> | <u>Penalties</u> | <u>Interest</u> | <u>Total</u> |
|-------------|------------|------------------|-----------------|--------------|
| 2012 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |
| 2013 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |

In the First Statutory Notices, the Division assessed TAXPAYER-2 using a single filing status, and it allowed him one exemption.¹

5. On September 25, 2016, TAXPAYER-2 filed an appeal to contest the First Statutory Notices.²

6. After TAXPAYER-2 filed his appeal, the Division obtained account transcripts from the Internal Revenue Service (“IRS”), which show that TAXPAYER-2 and TAXPAYER-1 filed 2012 and 2013 federal returns on which they claimed married filing jointly filing status. These transcripts also show that the taxpayers claimed six exemptions for the 2012 tax year and seven exemptions for the 2013 tax year, but they do not show the names of the individuals for whom the taxpayers claimed these exemptions.³

7. After reviewing the IRS information, the Division determined that it needed to revise the 2012 and 2013 assessments it had issued to TAXPAYER-2 alone. On November 9, 2016, the Division issued Notices of Deficiency and Estimated Income Tax (“Second Statutory Notices”) to TAXPAYER-2 and TAXPAYER-1 together, in which it imposed additional taxes, 10% failure to timely file penalties, 10% failure to timely pay penalties, and interest (calculated as of December 9, 2016), as follows:

| <u>Year</u> | <u>Tax</u> | <u>Penalties</u> | <u>Interest</u> | <u>Total</u> |
|-------------|------------|------------------|-----------------|--------------|
| 2012 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |
| 2013 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |

1 Respondent’s Exhibit 2. Interest continues to accrue until any tax liability is paid.

2 Respondent’s Exhibit 3 (at AUD 26-27).

3 Respondent’s Exhibit 4 (at AUD 39-40); and Respondent’s Exhibit 6 (at AUD 64-65).

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In the Second Statutory Notices, the Division assessed the taxpayers using a married filing jointly filing status, and it allowed them six exemptions for 2012 and seven exemptions for 2013.⁴

8. On January 17, 2017, the Division submitted a request for TAXPAYER-1 to be added as a Petitioner in this matter, which was granted.

9. On January 30, 2017, the Division again revised its 2012 and 2013 assessments by issuing Notices of Deficiency and Estimated Income Tax (“Third Statutory Notices”) to TAXPAYER-2 and TAXPAYER-1 together, in which it determined that the taxpayers did not owe any 2013 tax liability and, for 2012, imposed additional taxes, a 10% failure to timely file penalty, a 10% failure to timely pay penalty, and interest (calculated as of March 1, 2017), as follows:

| <u>Year</u> | <u>Tax</u> | <u>Penalties</u> | <u>Interest</u> | <u>Total</u> |
|-------------|------------|------------------|-----------------|--------------|
| 2012 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |
| 2013 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |

In the Third Statutory Notice concerning the 2012 tax year, the Division assessed the taxpayers using a married filing jointly filing status, and it allowed them six exemptions.⁵ At the Formal Hearing, neither party discussed why the Division determined that the taxpayers owed less tax liability (as reflected in the Third Statutory Notices) than it had previously imposed in the Second Statutory Notices.

10. It appears that the Division subsequently determined that its Third Statutory Notices were incorrect. On May 3, 2017, the Division issued Notices of Deficiency and Estimated Income Tax (“Fourth Statutory Notices”) to TAXPAYER-2 and TAXPAYER-1 together, in which it imposed additional taxes, 10% failure to timely file penalties, 10% failure to timely pay penalties, and interest (calculated as of June 2, 2017), as follows:

4 Respondent’s Exhibit 3 (at AUD 29-32). Again, interest continues to accrue until any tax liability is paid.

5 Respondent’s Exhibit 4 (at AUD 35-38). Again, interest continues to accrue until any tax liability is paid.

| <u>Year</u> | <u>Tax</u> | <u>Penalties</u> | <u>Interest</u> | <u>Total</u> |
|-------------|------------|------------------|-----------------|--------------|
| 2012 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |
| 2013 | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ | \$\$\$\$\$ |

In the Fourth Statutory Notices, the Division again assessed the taxpayers using a married filing jointly filing status, and it allowed them six exemptions for 2012 and seven exemptions for 2013.⁶ The Fourth Statutory Notices are identical to the Second Statutory Notices, except for updated interest amounts.

11. On September 7, 2017, the Commission held an Initial Hearing in this matter, and it issued its Initial Hearing Order on January 30, 2018. The taxpayers subsequently requested to proceed to a Formal Hearing.⁷

12. The taxpayers married prior to the 2011 tax year, and they remained married until September 13, 2018, when a decree of divorce was signed by a judge in STATE-1.⁸ The taxpayers are not considered to be divorced for any portion of the 2012 and 2013 tax years.

13. Prior to 2011, the taxpayers and their children all lived in Utah. Sometime in 2011, TAXPAYER-2 moved outside of Utah, but TAXPAYER-1 and the taxpayers' children continued to live in Utah. TAXPAYER-1 and the taxpayers' children continued to live in Utah (including all of the 2012 and 2013 tax years at issue) until 2017, when they moved to STATE-1. During all of 2012 and 2013, TAXPAYER-2 lived and/or worked in the states of STATE-2 and STATE-3.⁹ TAXPAYER-1 did not work

6 Respondent's Exhibit 1. Again, interest continues to accrue until any tax liability is paid.

7 Although the taxpayers' request to proceed to a Formal Hearing was submitted more than 30 days after the date that the Initial Hearing Order was issued, the taxpayers' request for a Formal Hearing was granted because the Commission did not send a copy of the Initial Hearing Order to TAXPAYER-1 at the new address that she had provided at the Initial Hearing.

8 Testimony of TAXPAYER-1. TAXPAYER-1, who stated that she has memory loss because of a medical condition, could not remember exactly when she and TAXPAYER-2 married.

9 If the taxpayers are both deemed to be Utah resident individuals for all of 2012 and 2013, they would be entitled to claim a credit against their Utah tax liability for income taxes imposed for these years by another state, pursuant to Utah Code Ann. §59-10-1003 (2012-2013). However, because TAXPAYER-2 worked in STATE-2 and/or STATE-3 during these years and because neither of these states imposes a state income tax, it

during the 2012 and 2013 tax years.¹⁰ It is unclear whether TAXPAYER-2 was present in Utah for any days in 2012 and 2013 and, if so, how many days he was present in Utah for each year.

14. TAXPAYER-1 indicated that once TAXPAYER-2 moved outside of Utah in 2011, she considered herself and TAXPAYER-2 to be separated and that they had no plans to reunite. TAXPAYER-1 testified that, initially, she and TAXPAYER-2 decided not to divorce because of TAXPAYER-2's religious beliefs. Instead, in December 2012, the taxpayers entered into a "Stipulation for Separate Maintenance" ("Stipulation") that both of the taxpayers signed on December 5, 2012.¹¹

15. On December 10, 2012, a Utah judge signed a "Decree of Separate Maintenance" ("Decree") that was based on the Stipulation that both taxpayers had signed. In paragraph 1 of the Decree, it was ordered that "[t]he Decree will become final upon entry by the Clerk of the Court." Because a "stamp" on the Decree shows that it was "filed" by the Utah Second District Court on December 11, 2012,¹² the Commission finds that the taxpayers were "legally separated" as of December 11, 2012. Accordingly, for the 2012 and 2013 tax years at issue, the taxpayers are not considered to be legally separated from January 1, 2012 to December 10, 2012, but they are considered to be legally separated for the December 11, 2012 to December 31, 2012 portion of the 2012 tax year and for all of the 2013 tax year.

16. In paragraph 2 of the Decree, TAXPAYER-1 was "awarded sole physical custody of the parties' minor children, CHILD-1, born April 2001; CHILD-2, born June 2005; and CHILD-3, born July 2007." In this paragraph, it was also ordered that:¹³

Parent-time will be as the parties' (sic) mutually agree and will likely take place during breaks from [TAXPAYER-2's] employment. Rather than transport the children between parents, the parties' CITY-1 home [in Utah] will be traded off during parent-time such that [TAXPAYER-2] may live in and have access to the marital real property during all agreed-upon parent-times

does not appear that this credit would be applicable to the taxpayers' circumstances. The taxpayers did not argue otherwise.

10 Testimony of TAXPAYER-1.

11 Respondent's Exhibit 4 (at AUD 44-52).

12 Respondent's Exhibit 4 (at AUD 53-58).

13 Respondent's Exhibit 4 (at AUD 53-54).

. . . [TAXPAYER-1] and [TAXPAYER-2] are each awarded joint legal custody of their children”

Pursuant to the Decree, TAXPAYER-1 became the “custodial parent” of the taxpayers’ three children on December 11, 2012, while TAXPAYER-2 became the “noncustodial parent” of the three children on this date.

17. In paragraph 7 of the Decree, it was ordered that “[t]he parties will jointly and mutually decide how to file their 2012 state and federal income taxes, and subsequent taxes thereafter, so that a maximum benefit is realized. [TAXPAYER-2] may claim all children for purposes of tax exemptions.”¹⁴

18. For the 2012 and 2013 tax years, neither taxpayer filed a return with any state, including Utah. As explained earlier, however, the taxpayers filed 2012 and 2013 federal returns with a status of married filing jointly, on which they claimed six exemptions for 2012 and seven exemptions for 2013.¹⁵

19. Neither party submitted documentary evidence to show the names of the individuals for whom the taxpayers claimed exemptions on their 2012 and 2013 federal returns. Nevertheless, the Commission finds that for each of the 2012 and 2013 tax years, the personal exemptions the taxpayers claimed on their federal returns included their claiming as dependents the three children who are identified in paragraph 2 of the Decree (who were born in 2001, 2005, and 2007). The taxpayers have the burden of proof in this matter and have not shown otherwise.

20. TAXPAYER-1 testified that at least one of the taxpayers’ two children who were born in 2005 and 2007 (i.e., two of the three children identified in paragraph 2 of the Decree) attended a Utah public school throughout the 2012 and 2013 tax years. For this reason and because the two children born in 2005 and 2007 would have turned seven and five years of age, respectively, during 2012, the Commission finds at least one of the taxpayers’ two dependent children was enrolled in a Utah public kindergarten, elementary, and/or secondary school throughout the 2012 and 2013 tax years at issue.

21. Because the taxpayers both claimed, on their 2012 and 2013 federal joint returns, at least one

14 Respondent’s Exhibit 4 (at AUD 56).

personal exemption for a dependent who attended a Utah public kindergarten, elementary, or secondary school throughout these years, the Division contends that each taxpayer is considered to be domiciled in Utah for all of 2012 and 2013 pursuant to Utah Code Ann. §59-10-136(1)(a) (2012-2013), unless they can show that they meet an exception provided in Subsection 59-10-136(1)(b). The Division did not rely on any other subsection of Section 59-10-136 to show that either taxpayer was domiciled in Utah for the 2012 or 2013 tax year.

22. The Division contends that neither of the taxpayers meets the exception provided in Subsection 59-10-136(1)(b) for any portion of the 2012 and 2013 tax years because they were not divorced during these years, regardless of whether they are or are not considered to have a spouse for purposes of Section 59-10-136 for these years or whether one of them was a noncustodial parent for a portion of these years. As a result, the Division contends that both taxpayers are considered to be domiciled in Utah for all of the 2012 and 2013 tax years at issue. For these reasons, the Division asks the Commission to sustain its 2012 and 2013 assessments, as reflected in the Fourth Statutory Notices. The Division, however, stated, that it would not object to the Commission's waiving the penalties that it imposed in these notices.

23. The taxpayers concede that TAXPAYER-1 was domiciled in Utah for all of 2012 and 2013, but contend that TAXPAYER-2 was not domiciled in Utah for any portion of these years. The taxpayers contend that TAXPAYER-2 is not domiciled in Utah for 2012 and 2013 because the taxpayers obtained the Decree of Separate Maintenance in 2012 and because obtaining such a decree has "a parallel legal effect on the rights and obligations of the parties" as obtaining a divorce.¹⁶ As a result, the taxpayers contend that TAXPAYER-2 has met all conditions necessary to satisfy the Subsection 59-10-136(1)(b) exception and not be considered to be domiciled in Utah under Subsection 59-10-136(1)(a).

24. Furthermore, the taxpayers argue that even if TAXPAYER-2 has not met all conditions necessary to satisfy the Subsection 59-10-136(1)(b) exception and, thus, satisfies the domicile provisions of

15 Respondent's Exhibit 4 (at AUD 39-40); and Respondent's Exhibit 6 (at AUD 64-65).

16 Petitioner's Exhibit 1.

Subsection 59-10-136(1)(a), the Division has not shown that he is considered to be domiciled in Utah under any other subsection of Section 59-10-136. As a result, the taxpayers contend that TAXPAYER-2 is not considered to be domiciled in Utah for the 2012 and 2013 tax years under Section 59-10-136.¹⁷

25. In addition, the taxpayers contend that the Tax Commission did not comply with the three-year statute of limitations to issue an audit, as found in Utah Code Ann. §59-1-1410 (2012-2013). While the taxpayers concede that the “audit may have been commenced within the three years,” the taxpayers point out that the original audits for 2012 and 2013 were sent in 2016 only to TAXPAYER-2. Because TAXPAYER-1 did not receive notice of the audits until 2017, which the taxpayers contend to be “clearly outside the statute of limitations[,]” they argue that TAXPAYER-1 cannot be assessed any additional liability for the 2012 and 2013 tax years.¹⁸

26. The taxpayers further argue that when they were deciding how to file their taxes for the 2012 and 2013 tax years, they relied on what they believe to be erroneous “residency and domicile” information found on the Tax Commission’s website. The taxpayers submitted “residency and domicile” information that TAXPAYER-1 indicated that she obtained from the Tax Commission’s website.¹⁹ TAXPAYER-1 could not remember when she obtained this information from the Tax Commission’s website. However, she testified that she believes that this information is the same as or similar to information that she would have reviewed on the website when the taxpayers decided in 2013 and 2014 not to file 2012 and 2013 Utah returns. In part, the information the taxpayers submitted reads, as follows (emphases in original):

....
Definition of Domicile

17 Petitioner’s Exhibit 1.

18 Petitioner’s Exhibit 1.

19 Petitioner’s Exhibit 2. This exhibit does not show the address of the website from which this information was obtained. However, the Commission notes that income tax information is available for review on the Commission’s website at <https://incometax.utah.gov/instructions>. In addition, the exhibit is missing certain words and/or portions of words that were not printed along the right-hand margin of the document. The Commission has used brackets to identify the probable words that were missing.

....

You are also considered to have Utah domicile if you are married to someone with Utah domicile, unless you and [your] spouse:

- A. file a married-filing-separate federal income tax return; or
- B. are legally separated or divorced before the end of the tax year.

Utah uses the following three “tests” to determine if you have a Utah domicile for tax purposes. . . .

- 1. You are considered to be domiciled in Utah, regardless of any other evidence, if:
 - A. You or your spouse have claimed a dependent on your federal income tax return who is enrolled in a Utah [public] K-12 school (unless you or your spouse are the noncustodial parent and are divorced from the custodial [parent]). . . .

....

No Utah Domicile

You do not have a Utah domicile if you are absent from Utah for at least 761 consecutive days and during this time [you or] your spouse:

- 1. does not return to Utah for more than 30 days in a calendar year,
- 2. does not claim an exemption on their federal tax return for a dependent who is enrolled in a Utah public K-12 [school] (unless you are the noncustodial parent),
- 3. is not enrolled in a Utah state institution of higher education as a resident student,
- 4. does not claim the residential exemption for property tax on your primary residence in Utah, or
- 5. does not claim Utah as your home for federal tax purposes.

....

If you do not have Utah domicile you may choose to be considered as having a Utah domicile by filing a Utah [resident] income tax return.

If you are considered to have domicile in Utah, your spouse is also considered to have domicile in Utah. This rule [does not] apply if you are legally separated or divorced, or you file your federal returns as married filing separately.

....

This website is provided for general guidance only. It does not contain all tax laws or rules.

27. Lastly, the taxpayers do not believe that Utah should tax income that TAXPAYER-2 earned outside of Utah during 2012 and 2013. For these reasons, the taxpayers ask the Commission to find that neither of them owes any Utah income taxes for the 2012 or 2013 tax year and to reverse all assessments that the Division has imposed on them for these years.

28. For reasons to be explained in more detail later in the decision, both taxpayers are considered

to be domiciled in Utah for all of the 2012 and 2013 tax years. As a result, both taxpayers are Utah resident individuals for all of 2012 and 2013.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2013)²⁰, “a tax is imposed on the state taxable income of a resident individual[.]”

2. For purposes of Utah income taxation, a “resident individual” is defined in UCA §59-10-103(1)(q)(i), 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.

....

3. Effective for tax year 2012, UCA §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).

²⁰ All substantive law citations are to the 2013 version of Utah law, unless otherwise indicated. The 2012 and 2013 versions of the substantive Utah law are the same.

- (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.

4. UCA §59-1-1410 addresses the timeframes within which the Commission can issue an audit

deficiency, as follows in pertinent part:²¹

- (1) (a) Except as provided in Subsections (3) through (7) and Sections 59-5-114, 59-7-519, 59-10-536, and 59-11-113, the commission shall assess a tax, fee, or charge within three years after the day on which a person files a return.
- (b) Except as provided in Subsections (3) through (7), if the commission does not assess a tax, fee, or charge within the three-year period provided in Subsection (1)(a), the commission may not commence a proceeding to collect the tax, fee, or charge.
-
- (3) The commission may assess a tax, fee, or charge or commence a proceeding for the collection of a tax, fee, or charge at any time if:
 - (a) a person:
 -
 - (ii) fails to file a return . . .
-

21 The cited portions of Section 59-1-1410 have not been amended since sometime prior to 2012.

5. UCA §59-1-401(14) (2019) provides that “[u]pon 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.”

6. Utah Admin. Rule R861-1A-42 (“Rule 42”) (2019) provides guidance concerning the waiver of penalties and interest, as follows:

....

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

- (a) Timely Mailing...
 - (b) Wrong Filing Place...
 - (c) Death or Serious Illness...
 - (d) Unavoidable Absence...
 - (e) Disaster Relief...
 - (f) Reliance on Erroneous Tax Commission Information...
 - (g) Tax Commission Office Visit...
 - (h) Unobtainable Records...
 - (i) Reliance on Competent Tax Advisor...
 - (j) First Time Filer...
 - (k) Bank Error...
 - (l) Compliance History. . . .
 - (m) Employee Embezzlement...
 - (n) Recent Tax Law Change...
- (4) Other Considerations for Determining Reasonable Cause.
- (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
 - (i) whether the commission had to take legal means to collect the taxes;
 - (ii) if the error is caught and corrected by the taxpayer;
 - (iii) the length of time between the event cited and the filing date;
 - (iv) typographical or other written errors; and
 - (v) other factors the commission deems appropriate.
 - (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
 - (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for 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.

7. For the instant matter, UCA §59-1-1417(1) (2019) provides guidance concerning which party has the burden of proof, 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.

....

DISCUSSION

I. Burden of Proof.

Subsection 59-1-1417(1) provides that in a proceeding before the Commission, the burden of proof is on the petitioner, with three exceptions. The two exceptions found in Subsection 59-1-1417(1)(a) and (1)(b) are clearly not applicable to this appeal. The third exception, as found in Subsection 59-1-1417(1)(c), provides that the burden of proof is on the Division (i.e., not the taxpayers) if the Division asserts that the taxpayers are liable for an increase in a deficiency and if the increase is asserted initially after a notice of deficiency is mailed and a petition is filed (unless the increase is due because of circumstances not applicable to this case).

The deficiencies asserted in the Fourth Statutory Notices (which the Division asks the Commission to sustain) are higher than the deficiencies asserted in the Third Statutory Notices. However, the deficiencies asserted in the Fourth Statutory Notices are not increases that were asserted *initially* after notices of deficiency were mailed and an appeal filed. In fact, the deficiencies asserted in the Fourth Statutory Notices are less than the deficiencies *initially* asserted in the First Statutory Notices that were mailed shortly before the appeal was

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filed. As a result, the burden of proof exception found in Subsection 59-1-1417(1)(c) is also not applicable to this appeal. Accordingly, the taxpayers bear the burden of proof in this matter.

II. Statute of Limitations to Issue an Assessment.

For the 2012 and 2013 tax years at issue, the taxpayers contend that the Tax Commission did not assess TAXPAYER-1 in a timely manner. It appears that the taxpayers are contending that the Commission did not assess TAXPAYER-1 within the three-year statute of limitations described in Subsection 59-1-1410(1). However, Subsection 59-1-1410(1) only applies to a taxpayer who has submitted a Utah return, specifically providing that once a taxpayer submits a return, the Tax Commission has three years from the date the return was submitted to impose an assessment in regards to that return. In the instant case, neither of the taxpayers submitted a Utah return for the 2012 or 2013 tax year. As a result, the statute applicable to both of the taxpayers' circumstances for the 2012 and 2013 tax years is Subsection 59-1-1410(3), which provides that the Tax Commission can assess a taxpayer "at any time" if the taxpayer has not submitted a Utah return. Because neither taxpayer submitted a Utah return for 2012 or 2013, the Tax Commission has timely imposed its assessments for these years not only on TAXPAYER-2, but also on TAXPAYER-1.

III. Are the Taxpayers Considered to be Domiciled in Utah During 2012 and 2013?

The taxpayers admit that TAXPAYER-1 was a Utah resident individual for the 2012 and 2013 tax years. The parties, however, disagree on whether TAXPAYER-2 was a Utah resident individual for the 2012 and 2013 tax years. The Division contends that TAXPAYER-2 was a Utah resident individual for these years, while the taxpayers contend that he was not. For the two years at issue, Subsection 59-10-103(1)(q)(i) provides 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 taxpayers concede that TAXPAYER-1 is considered to be domiciled in Utah for the 2012 and 2013 tax years. Accordingly, she is a Utah resident individual for these years. As to TAXPAYER-2, the Division does not assert that he is a Utah resident individual for 2012 or 2013 under the 183 day test. Instead, the Division contends that he is a Utah resident individual for these years under the domicile test. For the 2012 and 2013 tax years, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).²² The Commission will refer to these subsections when determining whether TAXPAYER-2 is considered to be domiciled in Utah for 2012.

A. Subsection 59-10-136(5)(b). For a married individual, it is often necessary to first determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if: 1) the individual is legally separated or divorced from the individual's spouse; or 2) if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. The taxpayers filed their 2012 and 2013 federal income tax returns with a status of married filing jointly, not separately. As a result, each taxpayer will be considered to have a spouse for the 2012 and 2013 tax year, unless they were legally separated or divorced. Accordingly, the Commission must determine whether the taxpayers are considered to be "legally separated" or "divorced" during any portion of the years at issue.

Sometime in 2011, the taxpayers began living separately in different states, with TAXPAYER-1 living in Utah and TAXPAYER-2 living in STATE-2 and/or STATE-3. Neither of the taxpayers filed a petition for

²² Prior to tax year 2012, an individual's income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) ("Rule 2"), which provided, in part, criteria to be used when determining an individual's income tax domicile and which referred to a non-exhaustive list of domicile factors in Utah Admin. Rule R884-24P-52 (2011) ("Rule 52") (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile for the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

divorce during the 2012 and 2013 tax years at issue. In December 2012, however, the taxpayers signed and submitted a Stipulation for Separate Maintenance to the Utah Second District Court, after which a Utah judge signed a Decree for Separate Maintenance that was filed on December 11, 2012. Furthermore, the taxpayers remained married until September 13, 2018, when a decree of divorce was signed by a judge in STATE-1. Given these circumstances, the taxpayers contend that they should be considered to be divorced for all of 2012 and 2013 because obtaining a decree of separate maintenance has a “parallel effect on the rights and obligations of the parties” as obtaining a divorce. For reasons explained below, however, this argument is not convincing.

Utah divorce laws are found in Title 30, Chapter 3 of the Utah Code. Utah Code Ann. §30-3-1 provides that after a petition for divorce is filed, the court may issue a decree of divorce. In addition, Utah Code Ann. §30-3-4.5 provides that one party to a marriage “may file an action for a temporary separation order without filing a petition for divorce” and that “temporary orders are valid for one year from the date of the hearing, or until one of the following occurs: (a) a petition for divorce if filed and consolidated with the petition for temporary separation; or (b) the case is dismissed.”

Furthermore, Subsection 30-3-1(3)(j) provides that one of the grounds for divorce is “when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.” In Utah, laws concerning “separate maintenance” are found in Title 30, Chapter 4 of the Utah Code. Utah Code Ann. §30-4-1 provides that upon one party to a marriage filing a petition for separate maintenance, the court may enter a decree of separate maintenance.

As to divorce, an informational website about Utah courts indicates that once a petition for divorce is filed, “parties are not divorced until the judge signs the decree.”²³ The taxpayers did not file for divorce during the 2012 and 2013 tax years at issue, and no judge signed a decree of divorce until 2018. Accordingly, for

23 See <https://www.utcourts.gov/howto/divorce/>.

purposes of Subsection 59-10-136(5)(b), the taxpayers were not “divorced” at any point during the 2012 and 2013 tax years.

In addition, for reasons explained below, obtaining a decree of separate maintenance is sufficient to show that one is “legally separated;” however, it is insufficient to show that one is “divorced.” The term “legally separated” is not defined in Utah law. However, living separately does not constitute being “legally separated.” To interpret the term “legally separated” in this manner would impermissibly give no effect or meaning to the word “legally.”²⁴

Furthermore, another informational website about divorce and legal separation in Utah indicates that “[p]arties are legally separated only when a court enters a decree of separate maintenance. To obtain a decree of separate maintenance in Utah, the parties go through an action like a divorce.”²⁵ The taxpayers obtained a decree of separate maintenance on December 11, 2012, the date that a decree of separate maintenance signed by a Utah judge was filed in the Utah Second District Court. As a result, the taxpayers are considered to be “legally separated” from December 11, 2012 to December 31, 2012 of the 2012 tax year and for all of the 2013 tax year.²⁶ However, they are not considered to be “divorced” for any portion of 2012 or 2013.

24 In *Warne v. Warne*, 275 P.3d 238, 2012 UT 13 (Utah 2012), the Utah Supreme Court ruled that “[u]nder our rules of statutory construction, we must give effect to every provision of a statute and avoid an interpretation that will render portions of a statute inoperative” (citing *Hall v. Utah State Dep’t of Corr.*, 2001 UT 34, ¶ 15, 24 P.3d 958). In *Hall v. Utah State Dept. of Corrections*, 24 P.3d 958, 2001 UT 34 (Utah 2001), the Court also stated that “our primary goal when construing statutes is to evince ‘the true intent and purpose of the Legislature [as expressed through] the plain language of the Act.’” (citing *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984)). The Court further stated that “[i]n doing so, we seek ‘to render all parts thereof relevant and meaningful’ . . . and we accordingly avoid interpretations that will render portions of a statute superfluous or inoperative (citing *Millett v. Clark Clinic Corp.*, 609 P.2d 934, 936 (Utah 1980); *Platts v. Parents Helping Parents*, 947 P.2d 658, 662 (Utah 1997); *State v. Hunt*, 906 P.2d 311, 312 (Utah 1995)).

25 See <http://www.divorcesource.com/ds/utah/utah-legal-separation-5346.shtml>.

26 One might argue that the taxpayers became “legally separated” on the December 5, 2012 date that both taxpayers signed their Stipulation of Separate Maintenance or the December 10, 2012 date that the Utah judge signed the Decree of Separate Maintenance that was filed the next day. For reasons to be explained later in the decision, the taxpayers’ tax liability is not affected by which of these dates they are considered to be “legally separated.”

In conclusion, for the January 1, 2012 to December 10, 2012 portion of 2012, each taxpayer is considered to have a spouse for purposes of Section 59-10-136 because they were not “legally separated or divorced” during this period and because they filed a 2012 federal return with a status of married filing jointly. On the other hand, for the December 11, 2012 to December 31, 2012 portion of 2012 and for all of 2013, the taxpayers are not considered to have a spouse for purposes of Section 59-10-136 because they were “legally separated.”

B. Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), (3), and (5)(a). Subsection 59-10-136(5)(a) provides that “[i]f 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.” The taxpayers admit that TAXPAYER-1 was domiciled in Utah during 2012 and 2013. However, for this subsection to apply, TAXPAYER-1 must be considered to have domicile in Utah “in accordance with this section” (i.e., in accordance with Section 59-10-136). For this reason and because each taxpayer is considered to have a “spouse” for purposes of Section 59-10-136 for the January 1, 2012 to December 10, 2012 portion of 2012, it may be useful to analyze whether *both* TAXPAYER-1 and TAXPAYER-2 are considered to have domicile in Utah under the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found in *any one* of these subsections, that individual is considered to be domiciled in Utah, even if the individual does not meet the criteria found in any of the other subsections.²⁷

The Division contends that TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for all of 2012 and 2013 under Subsection 59-10-136(1). Because neither taxpayer attended a Utah institution of higher education during 2012 or 2013, it is clear that neither taxpayer would be considered to be domiciled in Utah for any portion of these years under Subsection 59-10-136(1)(a)(ii). Under Subsection 59-

²⁷ The taxpayers contend that an individual would have to satisfy more than one of these subsections in order to be considered to be domiciled in Utah. This argument, however, is contrary to the language of Section 59-10-136 in effect for the 2012 and 2013 tax years.

10-136(1)(a)(i), however, an individual is also considered to be domiciled in Utah if a dependent with respect to whom the *individual or the individual's* spouse claims a personal exemption on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school, subject to an exception found in Subsection (1)(b).

On their joint 2012 and 2013 federal returns, both taxpayers claimed at least one personal exemption for a dependent who was enrolled in a Utah public kindergarten, elementary, or secondary school throughout the 2012 and 2013 tax years. As a result, each of the taxpayers is an *individual* who, for 2012 and 2013 federal tax purposes, claimed a personal exemption for a dependent who was enrolled in a Utah public kindergarten, elementary, or secondary school throughout 2012 and 2013.²⁸ Accordingly, pursuant to Subsection 59-10-136(1)(a)(i), each taxpayer will be considered to be domiciled in Utah for all of 2012 and 2013, unless that individual satisfies the exception found in Subsection 59-10-136(1)(b).

Subsection 59-10-136(1)(b) provides that the determination of whether an individual is considered to be domiciled in Utah may not be determined in accordance with Subsection 59-10-136(1)(a)(i) if certain conditions are met, specifically that: 1) the individual is the noncustodial parent of the dependent who was enrolled in a Utah public kindergarten, elementary, or secondary school and whom the individual claimed as a personal exemption for federal tax purposes; and 2) the individual is divorced from the custodial parent of this dependent.²⁹ As to TAXPAYER-1, she was not the noncustodial parent of the dependent who she claimed as a

28 In addition, for the January 1, 2012 to December 10, 2012 portion of 2012 that each taxpayer is considered to have a “spouse” for purposes of Section 59-10-136, each taxpayer is an individual with respect to whom the *individual's spouse* claimed at least one personal exemption for a dependent who was enrolled in a Utah public kindergarten, elementary, or secondary school during all of 2012 and 2013. Where each taxpayer, as an individual, claimed a personal exemption for this dependent, however, it is not critical in this case that each taxpayer's spouse also claimed a personal exemption for this dependent.

29 The Legislature used “legally separated or divorced” as one of the criteria in Subsection 59-10-136(5)(b) to determine whether an individual is considered to have a “spouse” for purposes of Section 59-10-136. However, it used “divorced” (not “legally separated or divorced”) as one of the criteria to determine whether an individual satisfies the exception found in Subsection 59-10-136(1)(b). As a result, an individual may, as in this case, be considered to be “legally separated or divorced” for purposes of Subsection 59-10-136(5)(b) without being considered to be “divorced” for purposes of Subsection 59-10-136(1)(b).

dependent and who was enrolled Utah public kindergarten, elementary, or secondary school throughout 2012 and 2013. As a result, she does not meet the criteria necessary to qualify for the exception found in Subsection 59-10-136(1)(b). Accordingly, TAXPAYER-1 is considered to be domiciled in Utah for all of 2012 and 2013 under Subsection 59-10-136(1)(a)(i).

As to TAXPAYER-2, it is clear that he is the noncustodial parent of the taxpayers' children as of December 11, 2012, when the Decree of Separate Maintenance was filed by the Utah Second District Court. However, even if TAXPAYER-2 was considered to be the noncustodial parent for all of 2012 and 2013, he would not meet all of the criteria necessary to qualify for the Subsection 59-10-136(1)(b) exception because he and TAXPAYER-1 were not "divorced" during 2012 or 2013. Accordingly, TAXPAYER-2 is also considered to be domiciled in Utah for all of 2012 and 2013 under Subsection 59-10-136(1)(a)(i).

C. Subsection 59-10-136(4). Each of the taxpayers is considered to be domiciled in Utah for all of 2012 and 2013 under Subsection 59-10-136(1)(a)(i). However, if an individual meets all of the conditions found in Subsection 59-10-136(4), that individual will *not* be considered to be domiciled in Utah. The taxpayers did not argue that either of them is not considered to be domiciled in Utah under Subsection 59-10-136(4). However, the Commission notes that neither taxpayer would meet all of the criteria necessary to qualify for the Subsection 59-10-136(4) exception because neither of them meets the Subsection 59-10-136(4)(a)(ii)(B) criterion, which provides that neither the individual nor the individual's spouse:

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)[.]

For reasons already discussed, each of the taxpayers is an individual who, for 2012 and 2013 tax purposes, claimed a personal exemption for a dependent who was enrolled in a Utah public kindergarten, elementary, or secondary school throughout 2012 and 2013. In addition, each of the taxpayers is not an individual described in Subsection 59-10-136(1)(b) (i.e., neither of the taxpayers meets all of the criteria to satisfy Subsection 59-

10-136(1)(b)). Accordingly, neither taxpayer meets the Subsection 59-10-136(4)(a)(ii)(B) criterion and, thus, neither taxpayer is *not* considered to be domiciled in Utah under Subsection 59-10-136(4).³⁰

D. Domicile and Utah Residency. Because each taxpayer is considered to be domiciled in Utah for all of 2012 and 2013 under Subsection 59-10-136(1)(a)(i) and is not considered to *not* be domiciled in Utah for any portion of 2012 or 2013 under Subsection 59-10-136(4), each taxpayer is considered to be domiciled in Utah for all of 2012 and 2013. As a result, pursuant to Subsection 59-10-103(1)(q)(i)(A), each of the taxpayers is a Utah resident individual for all of the 2012 and 2013 tax years.

III. Taxpayers' Other Arguments.

A. Income Earned Outside of Utah. The taxpayers contend that the income that TAXPAYER-2 earned outside of Utah should not be subject to Utah taxation. The Commission, however, has found that TAXPAYER-2 is a Utah resident individual for all of 2012 and 2013. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that "a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]" However, in accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, Subsection 59-10-117(2)(c) only applies to a Utah *nonresident* individual. Because TAXPAYER-2 is a Utah *resident* individual for all of 2012 and 2013, Subsection 59-10-117(2)(c) does not apply to him for these years. Accordingly, all of the income that TAXPAYER-2 earned in 2012 and 2013 is subject to Utah taxation, even if it was earned outside of Utah. As explained earlier, any double taxation concerns are alleviated through the application of a credit for taxes paid to another state, pursuant to Subsection 59-10-1003(1).

³⁰ At the Formal Hearing, neither party discussed whether either of the taxpayers would meet the other criteria necessary to qualify for the Subsection 59-10-136(4) exception. However, it is clear that neither taxpayer meets *all* of the Subsection 59-10-136(4) criteria because neither of them meets the Subsection 59-10-136(4)(a)(ii)(B) criterion.

B. Tax Commission Website. The taxpayers submitted an undated copy of “residency and domicile” information that they printed off of the Tax Commission’s website. They contend that this information is the same as or similar to Tax Commission information that they would have reviewed when they decided, presumably in 2013 and 2014, how they were going to file their 2012 and 2013 taxes. For the following reasons, the Commission is not convinced that the taxpayers relied on any incorrect information from the Tax Commission’s website when they decided not to divorce in 2012 or 2013; or when they decided that they would file joint 2012 and 2013 federal tax returns on which both of them would claim a personal exemption for a dependent who attended a Utah public kindergarten, elementary, or secondary school throughout these years.

First, under the “Definition of Domicile” portion of the information the taxpayers submitted, one of the tests to determine if an individual is considered to have domicile in Utah is described, as follows:

1. You are considered to be domiciled in Utah, regardless of any other evidence, if:
 - A. You or your spouse have claimed a dependent on your federal income tax return who is enrolled in a Utah [public] K-12 school (unless you or your spouse are the noncustodial parent and are divorced from the custodial [parent]). . . .

. . . .

This information informs an individual that he or she will be considered to be domiciled in Utah if he or she claims a dependent who is enrolled in a Utah public kindergarten, elementary, or secondary school, unless the individual is a noncustodial parent who is divorced from the custodial parent. It is difficult to understand how the taxpayers could conclude from this information that TAXPAYER-2 would not be considered to be domiciled in Utah if he were to claim a dependent who attended a Utah public kindergarten, elementary, or secondary school without being divorced from the dependent’s custodial parent.

Second, the taxpayers do not claim that they decided not to get divorced after TAXPAYER-2 moved away from Utah in 2011 because of this “residency and domicile” information. Instead, TAXPAYER-1 testified that she and TAXPAYER-2 initially decided not to obtain a divorce because of TAXPAYER-2’s

religious beliefs.

Third, the Commission acknowledges that there is incorrect information under the “No Utah Domicile” portion of the “residency and domicile” information that the taxpayers submitted. This “No Utah Domicile” information describes the various criteria that must be met for an individual to *not* be considered to be domiciled in Utah pursuant to Subsection 59-10-136(4). Specifically, the second of the “No Utah Domicile” criteria that is listed misstates the Subsection 59-10-136(4)(a)(ii)(B) criterion by omitting the requirement that the noncustodial parent must be divorced from the custodial parent. However, the taxpayers did not even argue that TAXPAYER-2 would not be considered to be domiciled in Utah under Subsection 59-10-136(4) (i.e., the “No Utah Domicile” subsection), nor did they argue or show that he met all of the Subsection 59-10-136(4) criteria other than the Subsection 59-10-136(4)(a)(ii)(B) criterion. When this is considered in concert with TAXPAYER-1’s testimony that she and TAXPAYER-2 initially decided not to divorce because of TAXPAYER-2’s religious beliefs, the Commission is not convinced that the taxpayers made the choices they made between 2011 (when they separated) and 2014 (when they filed their 2013 federal return) because they thought that TAXPAYER-2 would meet all of the “No Utah Domicile” criteria listed on the Commission’s website during that period.

Fourth, the “residency and domicile” information that the taxpayers provided specifically cautioned taxpayers that “[t]his website is provided for general guidance only. It does not contain all tax laws or rules” (emphasis in original). For these various reasons, the Commission finds that the taxpayers have not shown that the Division’s assessments should be reversed because of information on the Tax Commission’s website.³¹

31 The Commission notes the taxpayers have not shown when they printed out the Tax Commission website information that they submitted. As a result, it is unclear whether the incorrect information found on the taxpayer’s exhibit also existed on the Tax Commission’s website during the years at issue. Regardless, for the various reasons already discussed, even if the incorrect information existed on the Tax Commission’s website from 2012 onward, it would not warrant a reversal of the Division’s assessments.

C. Unfairness of Law. The taxpayers also suggest that Utah's domicile law (i.e., Section 59-10-136) may be unfair for taxpayers whose circumstances are like their own. While the Commission is tasked with the duty of implementing laws enacted by the Legislature, the Commission is not authorized to amend these laws to achieve what the taxpayers may consider to be a better tax policy. That is the role of the Legislature.

IV. Penalties and Interest.

For this case, the applicable law to determine whether the penalties and interest assessed to the taxpayers may be waived is found in Subsection 59-1-401(14) and Rule 42.³² In Subsection 59-1-401(14), the Commission is authorized to waive penalties and interest upon a showing of reasonable cause. The Commission has adopted Rule 42 to provide guidance as to when reasonable cause exists to waive penalties and interest. Rule 42(2) provides that interest is waived only if a taxpayer shows that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the taxpayer's error.³³ In the event that the Commission sustained all or part of the Division's assessments, the taxpayers did not ask the Commission to waive any interest that has accrued on their tax liability.³⁴

Pursuant to Subsection 59-1-401(14) and Rule 42, the Commission generally waives penalties in domicile cases because of the complexity of the issues and due to equitable considerations. In addition, the

32 Different criteria concerning the imposition and/or waiver of penalties and interest are provided in Subsections 59-10-136(4)(d) and (4)(e), which apply if an individual did not file a Utah return based on a belief that he or she was not considered to be domiciled in Utah under Subsection 59-10-136(4)(a). Because the limited circumstances described in Subsections 59-10-136(4)(d) and (4)(e) are not present in this case (i.e., because the taxpayers did not argue that either of them was not domiciled in Utah pursuant to Subsection 59-10-136(4)), these specific provisions are not applicable in determining whether the penalties and interest assessed to the taxpayers may be waived.

33 The Rule 42 criteria to waive interest are more stringent than the rule's criteria to waive penalties because a taxpayer has had use of money that should have been paid to the state and because of the time value of this money.

34 That being said, the Commission is not aware of any Tax Commission error except for the incorrect Tax Commission website information that exists on the taxpayers' exhibit. For reasons already discussed, however, the Commission is not convinced that the taxpayers' 2012 and 2013 tax liability is the result of this error.

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Division stated at the hearing that it would not object to the Commission waiving the penalties it imposed. Accordingly, reasonable cause exists to waive all penalties imposed for the 2012 and 2013 tax years.

V. Conclusion.

Both of the taxpayers are considered to be domiciled in Utah for all of 2012 and 2013 and, thus, are Utah resident individuals for all of 2012 and 2013. As a result, the Commission should sustain the Division's 2012 and 2013 assessments in their entireties (as reflected in the Fourth Statutory Notices), with one exception. The Commission should waive all penalties that the Division imposed.

CONCLUSIONS OF LAW

1. Pursuant to Subsection 59-1-1417(1), the taxpayers bear the burden of proof in this matter.
2. Pursuant to Section 59-1-1410, the Division timely imposed its 2012 and 2013 assessments not only on TAXPAYER-2, but also on TAXPAYER-1.
3. The taxpayers are not considered to be "divorced" for any portion of the 2012 and 2013 tax years. In addition, the taxpayers are considered to be "legally separated" from December 11, 2012 to December 31, 2012 and for all of 2013, but they are not considered to be "legally separated" from January 1, 2012 to December 10, 2012.
4. Pursuant to Subsection 59-10-136(5)(b), the taxpayers are considered to have a "spouse" for purposes of Section 59-10-136 from January 1, 2012 to December 10, 2012, but they are not considered to have a "spouse" for purposes of Section 59-10-136 from December 11, 2012 to December 31, 2012, or for any portion of 2013.
5. For all of 2012 and 2013, TAXPAYER-1 is an individual who meets the criteria of Subsection 59-10-136(1)(a)(i), but who does not meet the criteria of the Subsection 59-10-136(1)(b) exception. For these reasons and because TAXPAYER-1 does not meet the criteria of the Subsection 59-10-136(4) exception, she is considered to be domiciled in Utah for all of the 2012 and 2013 tax years.

6. For all of 2012 and 2013, TAXPAYER-2 is an individual who meets the criteria of Subsection 59-10-136(1)(a)(i), but who does not meet the criteria of the Subsection 59-10-136(1)(b) exception. For these reasons and because TAXPAYER-2 does not meet the criteria of the Subsection 59-10-136(4) exception, he is considered to be domiciled in Utah for all of the 2012 and 2013 tax years.

7. Because each of the taxpayers is considered to be domiciled in Utah for all of 2012 and 2013, each is also considered to be a Utah resident individual for all of 2012 and 2013, pursuant to Subsection 59-10-103(1)(q)(i)(A). As a result, any income that either taxpayer received in 2012 and 2013 is subject to Utah taxation.

8. Pursuant to Subsection 59-1-401(14) and Rule 42, reasonable cause exists to waive all penalties that the Division has imposed.

9. Based on the foregoing, the Commission should sustain the Division's assessments in their entireties (as reflected in the Fourth Statutory Notices), with one exception. The Commission should waive all penalties that the Division has imposed.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments in their entireties (as reflected in the Fourth Statutory Notices), with one exception. Specifically, the Commission waives all penalties that the Division has imposed. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 et seq. and 63G-4-401 et seq.