

17-858  
TAX TYPE: INCOME TAX  
TAX YEAR: 2013 & 2014  
DATE SIGNED: 03/25/2019  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS,  Petitioners,  v.  AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,  Respondent.	<b>INITIAL HEARING ORDER</b>  Appeal No. 17-858  Account No. ##### Tax Type: Income Tax Tax Years: 2013 and 2014  Judge: Phan
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: TAXPAYER-1, By Telephone  
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Manager, Income Tax Auditing  
REPRESENTATIVE FOR RESPONDENT-2, Senior Auditor

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 6, 2018 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Respondent (“Division”) had issued Notices of Deficiency and Audit Change on April 13, 2017 to the Petitioners (“Taxpayers”) for tax years 2013 and 2014 on the basis that both Taxpayers were Utah resident individuals. The Taxpayers timely appealed under Utah Code §59-1-501, contesting the Utah individual income tax audit deficiencies. The amounts of additional tax and interest due as of the date the Notices of Deficiency were issued are as follows:

	<u>Tax</u>	<u>Interest</u> <sup>1</sup>	<u>Penalties</u>	<u>Total as of Notice Date</u>
2013	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$
2014	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$

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<sup>1</sup> Interest continues to accrue on the unpaid balance until paid in full.

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Subsection 59-10-104(1) as follows:

. . . . a tax is imposed on the state taxable income of a resident individual as provided in this section . . . .

Resident individual is defined in Utah Code Subsection 59-10-103(1)(q) as follows:

(q)(i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(B) an individual who is not domiciled in this state but: (I) maintains a place of abode in this state; and (II) spends in the aggregate 183 or more days of the taxable year in this state.

Beginning with the 2012 tax year, a new law was adopted regarding what constituted domicile in the state of Utah. Utah Code §59-10-136 provides as follows:

(1) (a) An individual is considered to have domicile in this state if:

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

(b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

- (i) is the noncustodial parent of a dependent:
  - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
  - (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
- (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

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

- (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
- (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
- (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-

year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

- (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
- (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
  - (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.
- (b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:
- (i) whether the individual or the individual's spouse has a driver license in this state;
  - (ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;
  - (iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;
  - (iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;
  - (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;
  - (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
  - (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
  - (viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
  - (ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
  - (x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
  - (xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

- (xii) whether the individual is an individual described in Subsection (1)(b).
- (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
- (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
  - (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
    - (A) return to this state for more than 30 days in a calendar year;
    - (B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
    - (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
    - (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
    - (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
- (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
- (c) For purposes of Subsection (4)(a), an absence from the state:
- (i) begins on the later of the date:
    - (A) the individual leaves this state; or
    - (B) the individual's spouse leaves this state; and
  - (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.
- (d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
- (i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
  - (ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.
- (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty

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

The Commission has been granted the discretion to waive penalties and interest. Utah Code §59-1-401(14) provides, “Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of interest, as follows in pertinent part:

...

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

Utah Code Ann. §59-1-1417 provides, “[i]n a proceeding before the commission, the burden of proof is on the petitioner...”

### DISCUSSION

The Division based its audit on the assertion that both Taxpayers were Utah resident individuals for income tax purposes for all of 2013 and for part of 2014 based on the law in effect for those years. Under Utah Code Sec. 59-10-104, a “resident individual” in the State of Utah is subject to Utah individual income tax on all taxable income. “Resident individual” is defined at Utah Code Sec. 59-10-103 as an individual who is “domiciled” in Utah, or if not “domiciled” in Utah, is one who maintains a place of abode in Utah and spends in the aggregate 183 days or more per year in Utah. The Division argues that both Taxpayers were domiciled in Utah during all of 2013 and from January 1, 2014 to June 28, 2014, at which point the Division agreed the Taxpayers moved from Utah. What constitutes being “domiciled” in Utah is specifically set out at Utah Code Section 59-10-136.

The Taxpayer participated in the hearing by telephone. The Taxpayer had not submitted any documentation to the Appeals Unit for the hearing as evidence in this matter and neither did the Division, except for the Notices of Deficiency.<sup>2</sup> This decision is made based on the verbal proffers of the parties at the hearing. The Taxpayer, TAXPAYER-1, had explained at the hearing that he and TAXPAYER-2 and their adult son had been residing in Utah, owned a residence, and held Utah Driver Licenses up until May 2013. The Division points out that they were both registered to vote in Utah, although the last time TAXPAYER-1 had voted in Utah was in 2011 and the last time TAXPAYER-2 had voted in Utah was 2006. In May 2013, they lost their home in Utah. They moved into their motorhome and filed for bankruptcy in June 2013. In June 2013, TAXPAYER-2 took the motorhome and moved to CITY-1, STATE-1 to look after her elderly father who was ill. The couple’s adult son who was their dependent and disabled moved to STATE-1 with TAXPAYER-2. TAXPAYER-2 was not employed in STATE-1. TAXPAYER-1 states he thinks she obtained a STATE-1 Driver License and registered to vote in STATE-1 shortly after moving up there but did not provide documentation showing if or when exactly this had occurred. He states the motorhome was permanently parked on property in STATE-1, so they did not register it in STATE-1 or any other state.

TAXPAYER-1 was working in Utah in 2013 at the time TAXPAYER-2 moved and he remained in Utah until June 28, 2014. He was renting a room in his friend’s house in CITY-1 and was working in Utah. Although the only income received in 2013 was TAXPAYER-1’s income from his employment in Utah, and he remained in Utah for all of 2013, he had filed a Part-Year

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<sup>2</sup> If the Taxpayer had submitted evidence or answered interrogatories or questions from the Auditing Division during the course of the audit or while the appeal was proceeding, the Auditing Division did not submit that at the hearing and so it was not available to the Commission in issuing this decision.

Utah resident return.<sup>3</sup> He attributed on that return a portion of their income to STATE-1 on the theory that STATE-1 was a community property state, so that his wife was entitled to claim her portion of the income as STATE-1 income from the time she moved to STATE-1 in June 2013. The Taxpayers had claimed on their Utah return the disabled exemption for their son and the Division had disallowed that exemption. At the hearing, the Division indicated that they now agreed the Taxpayers should have received this exemption for their son.

For tax year 2014, TAXPAYER-1 filed a part-year return. He states TAXPAYER-2 was not employed in 2014. He worked in Utah until June 2014 and he moved to CITY on June 28, 2014. He stated at the hearing that he obtained a STATE-1 Driver License shortly after moving to STATE-1. It is not clear when or whether he registered to vote in STATE-1, but the Taxpayers never moved back to Utah and were absent from Utah more than the 761 days. Therefore, the Division concluded they qualified for the domicile exception under Utah Code Subsection 59-10-136(4). The Division agrees that the TAXPAYERS were no longer domiciled in Utah after TAXPAYER-1 left on June 28, 2014.

The Taxpayers had filed married filing joint federal returns and Utah returns for the years 2013 and 2014. They were married during these years and not legally separated or divorced. At the hearing, TAXPAYER-1 argued that they had established that TAXPAYER-2 had moved from Utah in June of 2013 and it was out of the ordinary that she would still be considered a resident of Utah after she had moved from the state. However, considering that the Taxpayers have the burden of proof in this matter, it was not really clear when TAXPAYER-2 moved from Utah, or when she obtained a STATE-1 Driver License or registered to vote in STATE-1. Regardless, it is clear from Utah law that TAXPAYER-2 remained domiciled under Utah Code Sec. 59-10-136 until TAXPAYER-1 also moved from Utah and changed his domicile on June 28, 2014. The Tax Commission applies the Utah law as it is written to determine whether an individual is domiciled in Utah for income tax purposes.

Under Utah Code Subsection 59-10-136(2)(b), there is a rebuttable presumption that an individual is considered to have domicile in Utah if the individual or the individual's spouse is registered to vote in this state. TAXPAYER-1 did not refute he was registered to vote in Utah or, in fact, that he was living and working in Utah until June 28, 2014. He did not provide a basis to rebut the presumption arising from the voter registration in Utah. Because he is domiciled in Utah under Subsection 59-10-136(2)(b), the statute is clear that TAXPAYER-2 is presumed domiciled in Utah since her spouse is registered to vote in Utah. Subsection 59-10-136(5) also

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<sup>3</sup> Neither side submitted the Utah returns for tax years 2013 and 2014 so they were not available to review for purposes of making this decision.

makes this clear. In prior decisions, other taxpayers have argued that they did not have knowledge of the provisions of the law regarding the rebuttable presumptions at Utah Code Subsection 59-10-136(2) and the Tax Commission has concluded that ignorance of the law is not sufficient to abate the tax or rebut these presumptions.<sup>4</sup> Because TAXPAYER-1 was domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) until June 28, 2014, TAXPAYER-2 is also domiciled in Utah until June 28, 2014, regardless of moving from the state a year earlier.

The Taxpayer did offer another argument at the hearing. After receiving the Audit Deficiencies, which were mailed on April 13, 2017, he had received from WORDS REMOVED a demand letter dated July 3, 2018. This letter stated that he owed the Utah State Tax Commission \$\$\$\$\$. The letter stated, “Your delinquent account with the Utah State Tax Commission has been referred to us for collection.” The letter does not indicate what tax year, or even what tax type has been unpaid. The Taxpayer argued that this collection notice was an offer to resolve the audit deficiencies by paying this much lower amount than the amounts indicated in the audit deficiencies. However, based on Utah Code Sec. 59-1-1408, the audit deficiencies, if timely appealed as these audits were, are not assessed until thirty-days after the Tax Commission issues its decision. The 2013 and 2014 individual income tax audit deficiencies have not yet been assessed and are therefore not the subject of the collection action. The demand letter is not an offer from the Tax Commission to accept a lower amount to resolve the audit deficiencies for the 2013 and 2014 tax years at issue in this appeal.

The Division did not assess penalties with the audit. Interest was assessed pursuant to Utah Code Sec. 59-1-402 from the date the taxes were due for each tax year. Utah Admin. Rule R861-1A-42(2) provides that interest is waived only if a taxpayer proves that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error. The Taxpayers have not demonstrated Tax Commission error in this matter.

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<sup>4</sup> See *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30* (9/2/2015); *Initial Hearing Orders, Appeal No. 15-1154* (2/1/16); *Appeal No. 16-117* (1/18/17); and *Appeal No. 16-792* (8/16/2017).

In the audits, the Division had disallowed the disabled exemption for both tax years. The Division has now agreed to allow this exemption and the audit deficiencies need to be revised to allow the exemption for both years and to be consistent with a part year resident return for tax year 2014 that indicates the Taxpayers were Utah residents up through June 28, 2014.

Jane Phan  
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that both Taxpayers were domiciled in Utah for all of 2013 and from January 1, 2014 to June 28, 2014. The Commission also finds the audits should be amended to allow the disabled exemption for both tax years. The Division is to amend the 2013 and 2014 audits 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 \_\_\_\_\_, 2019.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner

**Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**