17-1552
TAX TYPE: INCOME TAX
TAX YEAR: 2012
DATE SIGNED: 2/7/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 17-1552 Account No. ##### Tax Type: Income Tax Year: 2012 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER-1, Representative (by telephone)
REPRESENTATIVE FOR TAXPAYER-2, Representative (by telephone)
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 an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on December 18, 2018.

TAXPAYER ("Petitioner" or "taxpayer") is appealing Auditing Division's (the "Division") assessment of additional income taxes for the 2012 tax year. On September 1, 2017, the Division issued a Notice of Deficiency and Estimated Income Tax ("Statutory Notice") to the taxpayer, in which it imposed additional taxes, a 10% penalty for failure to timely file, a 10% penalty for failure to timely pay, and interest (calculated as of October 1, 2017),[1] as follows:

1 Interest continues to accrue until any tax liability is paid.

Year	Tax	Penalties	Interest	Total
2012	$$$$$	$$$$$	$$$$$	$$$$$

The taxpayer, who turned 22 years of age during 2012, was not a married individual during any portion of the 2012 tax year. Prior to 2012, the taxpayer had always lived in Utah. On January 15, 2012, the taxpayer moved from Utah to STATE-1, where he lived and worked until he moved back to Utah on December 24, 2012. While the taxpayer did not file a 2012 Utah income tax return, he did file a 2012 STATE-1 resident income tax return on which he reported all income that he earned during 2012.[2]

The Division, however, determined that the taxpayer was domiciled in Utah for all of the 2012 tax year and, thus, was a full-year 2012 Utah resident individual. The Division contends that the taxpayer was domiciled in Utah for the 2012 tax year because he was registered to vote in Utah throughout 2012 and was not registered to vote in a different state during 2012. For these reasons, the Division imposed Utah tax on all income that the taxpayer earned in STATE-1 during 2012 (subject to a credit for income taxes paid to STATE-1).[3] The Division asks the Commission to find that TAXPAYER is a Utah resident individual for all of 2012 and to sustain its assessment of additional taxes and interest. The Division stated that it would not oppose the Commission's waiving the penalties that it imposed.

The taxpayer, however, contends that he was not a resident of Utah during the January 15, 2012 to December 24, 2012 period that he lived and worked in STATE-1. The taxpayer admits that he was registered to vote in Utah and was not registered to vote in STATE-1 during 2012. The taxpayer, however, asks the Commission to consider that he could not have registered to vote in STATE-1 because STATE-1 is the only state in the United States without voter registration.[4] In addition, the taxpayer asks the Commission to consider

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2 STATE-1 was the only state in which the taxpayer earned any income during the 2012 tax year.

3 For a Utah resident individual, Utah Code Ann. §59-10-1003 (2012) provides a credit against a taxpayer's Utah income tax liability for income taxes imposed by another state. Because STATE-1 imposed $$$$$ of 2012 income taxes on the taxpayer, the Division allowed a credit based on this amount.

4 This assertion is supported by information found on https://vip.sos.nd.gov/pdfs/Portals/votereg.pdf,

that the State of Utah Voter Registration Form does not inform someone that they may be considered to be domiciled in Utah as long as they are registered to vote in Utah. Furthermore, the taxpayer's representatives proffer that they have spoken with the County Clerk of COUNTY, Utah (where the taxpayer lived prior to moving to STATE-1 and currently lives) and that the clerk indicated to them that she has never received any communications from anyone moving out of Utah about terminating their Utah voter registration.[5] For these reasons and because he did not earn any income in Utah during 2012, the taxpayer asks the Commission to find that he was not domiciled in Utah while he lived and worked in STATE-1 during 2012 and that none of his 2012 income is subject to Utah taxation. As a result, the taxpayer asks the Commission to reverse the Division's assessment in its entirety.

APPLICABLE LAW

1. Utah Code Ann. §59-10-104(1)[6] (2012) provides that "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:

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which provides that "STATE-1 is the only state without voter registration[, having] abolished it in 1951. It is also worth noting that STATE-1 law still provides cities with the ability to register voters for city elections." *See also* https://www.dmv.org/nd-north-dakota/voter-registration.php, which provides that "STATE-1 bears the unique distinction that it does not require voters to register prior to Election Day. You may simply bring acceptable proof of ID and residency to the polls in order to vote. . . ."

5 The information that the taxpayer's representatives proffer that they received from the COUNTY Clerk is hearsay. Utah Code Ann. §63G-4-206(1)(c) provides that in proceedings such as those held by the Tax Commission, evidence may not be excluded solely because it is hearsay. However, UCA §63G-4-208(3) provides that "[a] finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence." Utah Admin. Rule R861-1A-28(2)(b) further provides that hearsay evidence may be admitted at Tax Commission proceedings, but that no decision of the Commission will be based solely on hearsay evidence. For purposes of this decision, the Commission will consider the hearsay evidence that the taxpayer's representatives proffer that they received from the COUNTY Clerk, under the assumption that they would submit a letter or other evidence from the clerk if there were to be a Formal Hearing in this matter.

6 All substantive law citations are to the 2012 version of Utah law, unless otherwise indicated.

(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 the 2012 tax year at issue, Utah Code Ann. §59-10-136 provides guidance concerning the determination of "domicile," as follows:

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

(i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or

(ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.

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

(i) is the noncustodial parent of a dependent:

(A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and

(B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

(ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

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

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

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

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:

(i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

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

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

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

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

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

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

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

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

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

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

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

(c) For purposes of Subsection (4)(a), an absence from the state:
(i) begins on the later of the date:
(A) the individual leaves this state; or
(B) the individual's spouse leaves this state; and
(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

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

(b) For purposes of this section, an individual is not considered to have a spouse if:
(i) the individual is legally separated or divorced from the spouse; or
(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

> (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
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> (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. For the January 1, 2012 to May 7, 2012 portion of 2012, Utah Code Ann. §20A-2-305 provided for names to be removed or not be removed from the official voter register, as follows in pertinent part:

> (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
>
> (2) The county clerk may remove a voter's name from the official register only when:
>
> (a) the voter dies and the requirements of Subsection (3) are met;
>
> (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
>
> (c) the county clerk has obtained evidence that the voter's residence has changed, has mailed notice to the voter as required by Section 20A-2-306 and received no response from the voter, and the voter has failed to vote or appear to vote in either of the next two regular general elections following the date of the notice;
>
> (d) the voter requests, in writing, that the voter's name be removed from the official register; or
>
> (e) the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter.
>
> . . . .

5. Effective May 8, 2012, Section 20A-2-305 was amended. For the May 8, 2012 to December 31, 2012 portion of 2012, Section 20A-2-305 provided for names to be removed or not be removed from the official voter register, as follows in pertinent part:

> (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
>
> (2) The county clerk shall remove a voter's name from the official register if:
>
> (a) the voter dies and the requirements of Subsection (3) are met;
>
> (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
>
> (c) the county clerk has:
>
> (i) obtained evidence that the voter's residence has changed;
>
> (ii) mailed notice to the voter as required by Section 20A-2-306;

(iii) (A) received no response from the voter; or
(B) not received information that confirms the voter's residence; and
(iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;
(d) the voter requests, in writing, that the voter's name be removed from the official register;
(e)[7] the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;
(f) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or
(g) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

. . . .

6. For the 2012 tax year, where a change of residence occurs, Utah Code Ann. §20A-2-306 provides for names to be removed or to not be removed from the official voter register, as follows in pertinent part:[8]

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:
(a) confirms in writing that the voter has changed residence to a place outside the county; or
(b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and
(ii) has failed to respond to the notice required by Subsection (3).
(2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:
(i) change the official register to show the voter's new address; and
(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

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7 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2012 versions of Section 20A-2-305 that are applicable to this appeal.

8 Subsequent to the 2012 tax year, Section 20A-2-306 has been amended. However, it is the 2012 version of the statute that is applicable to this appeal.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

_____

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

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Signature of Voter"

. . . .

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the county clerk may list that voter as inactive.

(ii) If a county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter, the county clerk may list that voter as inactive.

(iii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

(iv) A county is not required to send routine mailings to an inactive voter and is not required to count inactive voters when dividing precincts and preparing supplies.

7. UCA §59-1-401(14) (2018) 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."

8. Utah Admin. Rule R861-1A-42 ("Rule 42") (2018) provides guidance concerning the waiver of penalties and interest that is authorized under Section 59-1-401(14), 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.
> (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.

9. For the instant matter, UCA §59-1-1417(1) (2018) 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

Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter. At issue is whether the taxpayer was a Utah resident individual for the 2012 tax year. For 2012, 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 Division does not argue that the taxpayer qualifies as a Utah resident individual for 2012 under the 183 day test. Instead, the Division contends that the taxpayer was a Utah resident individual for 2012 under the domicile test. As a result, the Commission must apply the facts to the domicile law in effect for 2012 to determine whether the taxpayer is considered to be domiciled in Utah for 2012 (as the Division contends) or whether the taxpayer is not considered to be domiciled in Utah for 2012 (as the taxpayer contends).

I. Additional Facts.

The taxpayer was born and raised in Utah, and he attended UNIVERSITY during 2011. However, the taxpayer did not attend any institution of higher education during the 2012 tax year at issue. During 2012, the taxpayer was not married and did not have children. The taxpayer filed his 2012 federal and STATE-1 returns with a filing status of single and did not claim any dependents on these returns.

From January 1, 2012 to January 14, 2012, the taxpayer was living in his parents' home in CITY-1, Utah. On January 15, 2012, the taxpayer's parents moved the taxpayer to STATE-1, where the taxpayer had obtained a truck driving job with BUSINESS (whose offices were in CITY-1, STATE-1).[9] The taxpayer's job in STATE-1 consisted of his delivering PRODUCT products to different locations within his employer's oilfields. The taxpayer worked for BUSINESS in STATE-1 until December 24, 2012, when the taxpayer's parents moved the taxpayer back to Utah (where the taxpayer again lived in his parents' home). Because of health issues within the taxpayer's family, the taxpayer remained in Utah for several months until he went back to STATE-1 for work in 2013. In 2014, the taxpayer again returned to Utah, where he has lived ever since.[10]

While the taxpayer worked in STATE-1 during the 2012 tax year, he lived in a "man camp" owned by his employer, where he rented a room.[11] During the portion of 2012 that the taxpayer was living and working in STATE-1, he visited his family in Utah several times for a total of approximately 70 days. Each of the 2012 Utah visits was for less than 30 days, and the taxpayer flew between STATE-1 and Utah for these visits. The taxpayer was not a member of a church, a club, or other similar organization during the 2012 tax year.

The taxpayer could not receive mail at the man camp at which he lived in STATE-1. As a result, during the 2012 tax year, the taxpayer would receive some of his mail at his employer's offices in CITY-1, STATE-1 that he would occasionally collect. However, he received "important" mail at his parents' Utah address. During 2012, the taxpayer also used his parents' Utah address to file his 2011 federal and Utah income tax returns. During 2013, the taxpayer again used his parents' Utah address to file his 2012 federal and

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9 The taxpayer's parents drove the taxpayer to STATE-1 because the taxpayer himself did not own a motor vehicle during the 2012 tax year at issue.

10 The 2013 and 2014 tax years are not at issue in this appeal.

11 While BUSINESS had offices in CITY-1, STATE-1, its PRODUCT operations primarily occurred in an unincorporated area of STATE-1 where it built a man camp to offer housing to its employees. The man camp consisted of many single-wide module buildings connected together to create a large housing complex that had individual rooms that employees could rent and communal baths for each "hall." The taxpayer rented a room in this housing complex while he worked for BUSINESS during the 2012 tax year. During 2012, the taxpayer did not own or rent any other real property.

STATE-1 income tax returns. However, during 2012, the taxpayer did not assert Utah residency on any document filed with or provided to a court or other governmental entity.

In September 2011 (prior to the 2012 tax year at issue), the taxpayer renewed his Utah driver's license, at which time he registered to vote in Utah. The taxpayer remained registered to vote in Utah throughout the 2012 tax year. However, the taxpayer has never voted in Utah. The taxpayer did not vote in STATE-1 in any election held in 2012 (which would have included the 2012 United States presidential election). In addition, no evidence was proffered to show that the taxpayer voted in STATE-1 during the 2013-2014 period he lived there. The taxpayer retained his Utah driver's license until March 2012, when he was able to obtain a commercial driver's license in STATE-1. In addition to obtaining a STATE-1 commercial driver's license, the taxpayer obtained a STATE-1 permit to transport hazardous materials in April 2012. The taxpayer retained his STATE-1 driver's license for the remainder of 2012.

On his STATE-1 driver's license, the taxpayer listed his address to be the address of his employer's offices in CITY-1, STATE-1 (which was not a residential street address). The man camp at which the taxpayer actually lived did not have an address. In addition, during 2012, a *residential* street address in STATE-1 for the taxpayer was not shown on a utility bill, a bank statement, a paycheck, or a check or other document issued by a government entity. Because the taxpayer was not required to pay any utilities associated with his renting a room at his employer's man camp, the taxpayer did not receive any utility bill during 2012. In addition, the taxpayer used a Utah address for his bank statements and his paycheck (which was directly deposited into his bank account).

II. Applying the Facts to the 2012 Domicile Law.

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "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[.]" For the 2012 tax year, 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)).[12]

A. Subsection 59-10-136(4). The taxpayer does not argue that he is *not* considered to be domiciled in Utah during 2012 under Subsection 59-10-136(4). For an unmarried individual, this subsection applies to an individual who is "absent from the state" if certain requirements are met, one of which is that the individual must be absent from Utah for at least 761 consecutive days and another of which is that the individual must not return to Utah for more than 30 days in a calendar year. After the taxpayer moved to STATE-1 on January 15, 2012, he returned to Utah for more than 30 days during the remainder of 2012. Specifically, the taxpayer estimated that he returned to Utah for approximately 70 days during that portion of 2012 that he worked in STATE-1. In addition, the taxpayer returned to Utah for several months beginning on December 24, 2012 and ending in 2013. Given these circumstances, the taxpayer is not considered to have been absent from Utah for at least 761 consecutive days that included any portion of 2012. Accordingly, Subsection 59-10-136(4) is not applicable to the taxpayer for any portion of the 2012 tax year.

As a result, the Commission must analyze whether the taxpayer is considered to have domicile in Utah for the years at issue 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. It is clear that the taxpayer is not domiciled in Utah during 2012 under Subsections 59-10-136(1), (2)(a), and (2)(c) because the taxpayer, during 2012, did not have any dependents

12 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.

who attended a Utah public kindergarten, elementary, or secondary school; did not attend a Utah institution of higher education; did not own any real estate; and did not file a 2012 Utah income tax return. However, the Commission must still determine whether the taxpayer is considered to be domiciled in Utah during 2012 under one of the two remaining subsections (Subsections 59-10-136(2)(b) and (3)).

B. Subsection 59-10-136(2)(b). Under Subsection 59-10-136(2)(b), an individual is presumed to be domiciled in Utah if the individual or the individual's spouse is registered to vote in Utah, unless the presumption is rebutted. The taxpayer was registered to vote in Utah for all of the 2012 tax year. Accordingly, the taxpayer will be considered to be domiciled in Utah for all of 2012, unless he is able to rebut the presumption. Because Subsection 59-10-136(2)(b) involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual whose actions give rise to this presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to this presumption *is not* considered to have domicile in Utah.[13] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. As a result, it is left to the Commission to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

The Commission has previously found that an individual has not rebutted a Subsection 59-10-136(2) presumption because he or she would not be considered to be domiciled in Utah under Rule 52, the property tax rule used to determine income tax domicile for tax years prior to 2012. It is arguable that using the "old" income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in Rule 52 to determine an

13 The Legislature did not provide that being registered to vote in Utah is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the Legislature's "new" law little or no effect, which the Commission declines to do.[14]

Similarly, the Commission has found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[15]

In addition, the Commission acknowledges that the taxpayer did not vote in Utah during the 2012 tax year at issue. This alone, however, is insufficient to rebut the presumption.[16] At the hearing, the Division proffered that an individual who is registered to vote in Utah may rebut the Subsection 59-10-136(2)(b) presumption by showing that he or she has moved to and registered to vote in another state.[17] This situation is sufficient to rebut the Subsection 59-10-136(2)(b) presumption because an individual who is registered to vote

14 That being said, the Commission is not precluded from considering certain facts that might be described in Rule 52 when determining whether a Subsection 59-10-136(2) presumption has been effectively rebutted. However, the Commission will not determine an individual's income tax domicile for 2012 and subsequent tax years solely from the factors found in Rule 52.

15 This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if Subsection 59-10-136(1) or one of the presumptions of Subsection 59-10-136(2) does not apply.

16 *See USTC Appeal No. 15-720* (Initial Hearing Order Mar. 6, 2016), in which the Commission found that the Subsection 59-10-136(2)(b) presumption was not rebutted for the period that an individual was registered to vote in Utah, but had not voted in Utah. The Commission explained that it reached this conclusion, at least in part, because the Utah Legislature elected to use voting registration, not actual voting, as the criterion that could trigger domicile. Redacted copies of this and other selected Commission decisions can be reviewed on the Commission's website at https://tax.utah.gov/commission-office/decisions.

17 This position is consistent with prior Commission decisions. *See, e.g., USTC Appeal No. 16-1376* (Initial Hearing Order May 1, 2017), in which the Commission found that the Subsection 59-10-136(2)(b) presumption was not rebutted, in part, because the taxpayer in that case did not show that she had "registered to vote in another state."

in Utah and who subsequently moves to and registers to vote in another state has taken some action in the other state that diminishes the fact that the individual is still registered to vote in Utah.

In the instant case, however, the taxpayer moved to STATE-1, the only state without voter registration. As a result, the taxpayer was unable to diminish the fact that he was still registered to vote in Utah by showing that he registered to vote in STATE-1. The taxpayer could have diminished this fact by actually voting in STATE-1. However, no evidence was proffered to show that the taxpayer voted in STATE-1 during the January 15, 2012 to December 24, 2012 portion of 2012 that he lived there or during the 2013-2014 period that he also lived there. The Commission is aware that many voters do not vote in all elections and that some only vote in presidential elections. However, where the taxpayer did not vote in any election in STATE-1 during the various periods that he lived there (including the 2012 presidential election that took place during the 2012 tax year at issue), the Commission finds that the taxpayer has not rebutted the Subsection 59-10-136(2)(b) merely by showing that he moved to a state without voter registration.[18]

The taxpayer also asks the Commission to consider that few individuals know to terminate their Utah voting registration when they move out of Utah. The taxpayer asserts that the COUNTY Clerk has not had anyone ask to terminate their Utah voter registration since Utah's new income tax domicile law became effective for tax year 2012. In addition, the taxpayer asserts that the State of Utah Voter Registration Form does not inform individuals who are registering to vote in Utah that this action may have consequences in determining their income tax domicile for future years. In *USTC Appeal No. 16-1272* (Initial Hearing Order

18 For an individual for whom the Subsection 59-10-136(2)(b) presumption has arisen and who eventually voted in STATE-1 after moving there, additional information might be needed to determine if that individual has rebutted the Subsection 59-10-136(2)(b) presumption for the entire period that the individual lives in STATE-1. For example, for such an individual, the Commission may also be interested in knowing whether, prior to voting, that individual had sufficient identification or other residency information that would have allowed that individual to vote in STATE-1 (pursuant to STATE-1 voting law).

Oct. 10, 2017), however, the Commission "concluded that ignorance of the law is not sufficient to rebut the presumption of domicile under Utah Code Subsection 59-10-136(2)."[19]

Furthermore, the Commission provided all taxpayers with notice of the newly enacted Section 59-10-136 in the instructions for the 2012 Form TC-40 and in the instructions for each subsequent tax year's Form TC-40. Page 2 of the 2012 instructions contained a "What's New" section, which provided as follows:[20]

> **Domicile Definition Changed**. Utah law defining domicile has changed. . . . See page 3. (Emphasis in original).

In addition, pages 3 and 4 of the 2012 instructions contained the new Section 59-10-136 definition of domicile, including the following:

> . . . .
> 2. There is a rebuttable presumption that an individual or a spouse is domiciled in Utah if:
> . . . .
> B. They are registered to vote in Utah; . . .

For these reasons, the taxpayer has not rebutted the Subsection 59-10-136(2)(b) presumption by showing that many individuals may be unaware that they may be considered to be domiciled in Utah if they are registered to vote in Utah.

Based on the foregoing, the taxpayer's circumstances and arguments are not sufficient to rebut the Subsection 59-10-136(2)(b) presumption that has arisen for him for all of the 2012 tax year. Accordingly, the taxpayer is considered to be domiciled in Utah for all of 2012.[21] Because the taxpayer is considered to be

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19 *See also USTC Appeal No. 14-30* (Findings of Fact, Conclusions of Law and Final Decision Sept. 2, 2015); *USTC Appeal No. 16-117* (Initial Hearing Order Jan. 18, 2017); and *USTC Appeal No. 16-792* (Initial Hearing Order Aug. 16, 2017).

20 Forms and instructions for previous years can be found on the Commission's website at https://tax.utah.gov/forms-pubs/previousyears.

21 Because the taxpayer has been found to be domiciled in Utah for all of 2012 under Subsection 59-10-136(2)(b), the Commission need not discuss Subsection 59-10-136(3) to resolve this matter. However, a cursory review suggests that some of the Subsection 59-10-136(3)(b) factors would suggest a domicile in Utah during 2012 and some would suggest a domicile outside of Utah during 2012. In addition, one of the factors (specifically the Subsection 59-10-136(3)(b)(i) factor) would suggest a Utah domicile for that portion of 2012 that the taxpayer had a Utah driver's license and a domicile outside Utah for that portion of 2012 that the taxpayer had a STATE-1 driver's license. However, because neither party specifically addressed the

domiciled in Utah for all of 2012, he is a Utah resident individual for all of 2012, pursuant to Subsection 59-10-103(1)(q)(i)(A).

III. Taxpayer's Other Concerns.

The taxpayer is concerned that Utah would tax income that he earned in another state. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), however, 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[.]" In accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because the taxpayer has been found to be a Utah resident individual for all of the 2012 tax year at issue, Subsection 59-10-117(2)(c) does not apply to him for this year. Accordingly, all of the income that the taxpayer received during 2012 is subject to Utah taxation, including the income that the taxpayer earned while living and working in STATE-1. Any double taxation concerns are alleviated by the credit for income taxes paid to another state.

IV. Penalties and Interest.

For this case, the applicable law to determine whether the penalties and interest assessed to the taxpayer may be waived is found in Subsection 59-1-401(14) and Rule 42.[22] In Subsection 59-1-401(14), the Commission is authorized to waive penalties and interest upon a showing of reasonable cause. The

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Subsection 59-10-136(3) factors at the hearing and because the Commission has already found the taxpayer to be domiciled in Utah for all of 2012 under Subsection 59-10-136(2)(b), the Commission will not discuss the Subsection 59-10-136(3) factors any further.

22 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, these specific provisions are not applicable in determining whether the penalties and interest assessed to 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.[23] The taxpayer did not fail to pay the 2012 Utah income taxes at issue because of Tax Commission error or erroneous advice. As a result, reasonable cause does not exist to waive any of the interest that has been imposed.

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 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 tax year.

V. Conclusion.

Based on the foregoing, the taxpayer is considered to be domiciled in Utah for all of the 2012 tax year. As a result, the taxpayer is a 2012 full-year Utah resident individual, and all of his 2012 income is subject to Utah taxation. For these reasons and because the Division allowed a credit for 2012 income taxes that STATE-1 imposed on the taxpayer, the Commission should sustain the taxes and interest that the Division imposed in its assessment. The Commission, however, should waive all penalties that the Division imposed.

Kerry R. Chapman
Administrative Law Judge

taxpayer may be waived.

23 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.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2012 assessment in its entirety, with one exception. The Commission waives all penalties that the Division imposed. 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: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.