

18-48
TAX TYPE: INCOME TAX
TAX YEAR: 2014
DATE SIGNED: 07/09/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
DISSENT: L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION Appeal No. 18-48 Account No. ##### Tax Type: Income Tax Tax Year: 2014 Judge: Phan
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Presiding:

Lawrence C. Walters, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on March 12, 2019, in accordance with Utah Code Ann. §59-1-501 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioners (“Taxpayers”) are appealing an audit deficiency issued by Respondent (“Division”) of Utah individual income taxes for the tax year 2014. The Division issued the Notice of Deficiency and Audit Change on December 11, 2017.¹ The Taxpayers timely appealed the notice under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

¹ Exhibit AUD 007-010.

2. No penalties were assessed with the audit. Interest was assessed pursuant to Utah Code §59-1-402 and continues to accrue until the balance is paid in full.

3. The amount of tax and the interest accrued as of the date of the audit notice are as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total²</u>
2014	\$\$\$\$\$	\$0	\$\$\$\$\$	\$\$\$\$\$

4. The Division issued the audit on the basis that both Taxpayers were Utah resident individuals for income tax purposes for all of 2014. The Taxpayers claim that they were part-year Utah resident individuals and part-year STATE-1 resident individuals. It was the Taxpayers' position that they had moved to STATE-1 in March of 2013 and they were residents of that state until they moved back to Utah in October 2014.

5. Prior to moving to STATE-1 in March 2013, the Taxpayers had been residing in Utah. They had Utah Driver Licenses and were registered to vote in Utah. They also had vehicles registered in Utah. In 2013, prior to the move, they were living with one of the Taxpayers' parents. They did not own a residence in Utah or have a rental home in their name. TAXPAYER-1 was finishing a PROGRAM at UNIVERSITY in CITY-1, Utah and he graduated in December 2012. The Taxpayers also had a new baby at this time. After graduation, TAXPAYER-1 was able to find full time employment in STATE-1 and the Taxpayers moved to STATE-1 in March 2013.

6. When they first moved, the Taxpayers rented a townhome in STATE-1 in March 2013. TAXPAYER-1 obtained a STATE-1 Driver License and registered to vote in STATE-1. The Taxpayers did purchase a residence in STATE-1 in March 2014, after being in STATE-1 one year. However, TAXPAYER-2 did not obtain a STATE-1 Driver License or register to vote in STATE-1. She testified that not obtaining the STATE-1 Driver License was just a matter of convenience only, as her Utah license had not expired. She also testified that she did not know that failing to register to vote in STATE-1 would affect their income tax liability.

7. While in STATE-1, both Taxpayers obtained a professional license for their respective employment in STATE-1. They also maintained their respective professional licenses in Utah. The Taxpayers attended church in STATE-1. They both worked only in STATE-1 in 2014 until they moved to Utah in October 2014. Their mail went to their address in STATE-1. When the Taxpayers filed their 2013 federal income tax return and part-year Utah return, they used their address in STATE-1. As the Taxpayers were residing in Utah by April 2015, when their 2014 federal and state returns were due, they did use their new Utah address on the returns.

² Total as of the date listed on the Notice of Deficiency.

8. TAXPAYER-1 was then offered employment in Utah, where they would be closer to extended family. In October 2014, the Taxpayers moved back to Utah.

9. The Taxpayers had filed a 2014 part-year Utah resident individual return on which they claimed the income they had earned in Utah after they had returned to Utah in October 2014.

10. Regarding her Utah voter registration, TAXPAYER-2 testified that she generally only voted in the major general elections. She did not vote in 2013 or 2014. She provided a screen shot of her Utah Voting History, which she had obtained from COUNTY. That history showed that she had voted in Utah in 2008, 2012 and 2016. The County's record also showed that a ballot was mailed to TAXPAYER-2 on May 8, 2013 and returned as "undeliverable" to the County on July 11, 2013.³

11. The Taxpayers also provided a second screen shot that they had obtained from COUNTY regarding TAXPAYER-2's voter registration history. This showed a blank box under the tab "Confirmations."⁴ An explanation was typed on the screenshot, which the Taxpayers testified had been written by NAME-1, COUNTY Registrar of Voters. However, there was no name or signature written on the document. The explanation stated as follows:

When the 2013 Ballot was returned as "undeliverable" a confirmation card should have been sent (and forwarded if necessary) to TAXPAYER-1. This card would give her the opportunity to notify the Election's office if she had moved. If the move was out of Utah, she would have been removed from the Utah voter rolls.

The above screen (blank portion) shows that TAXPAYER-1 was never sent a confirmation card.

12. TAXPAYER-2 testified that had she received a confirmation card from the County forwarded to her at her STATE-1 address in 2013, she would have returned it to the County to notify the County that she no longer lived in Utah.

13. The Division did not dispute that TAXPAYER-1 had obtained a STATE-1 Driver License and registered to vote in STATE-1. TAXPAYER-1 provided a copy of his STATE-1 voter registration card, which indicated his STATE-1 voter registration was issued on January 22, 2014.⁵ The Division did provide TAXPAYER-1's voting history, which showed that he voted in Utah in 2008 and 2016. It also showed the County had sent a "confirmation due to inactivity" to TAXPAYER-1 on December 3, 2013 and a notation "confirmation card returned undeliverable" on March 7, 2014. Then a notation on April 23, 2014 indicated "Removed per ERIC, Registered in STATE-1."⁶

14. The facts as indicated herein were not disputed by the Division. It was the Division's contention that regardless of the move to STATE-1 and the other facts noted herein, the Taxpayers

3 Petitioners' Exhibit 1.

4 Petitioners' Exhibit 2.

5 Exhibit AUD 029.

6 Exhibits AUD 026-027.

remained domiciled in Utah for all of 2014 based on Utah law, and specifically Utah Code Subsection 59-10-136(2)(b) because TAXPAYER-2 was registered to vote in Utah.

APPLICABLE LAW

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

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

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

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(q), as follows:

- (i) “resident individual” means:
 - (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
 - (B) an individual who is not domiciled in this state but:
 - (I) maintains a place of abode in this state; and
 - (II) spends in the aggregate 183 or more days of the taxable year in this state.

The factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136 (2014),⁷ as set forth below:

- (1) (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
 - (i) is the noncustodial parent of a dependent:
 - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
 - (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
 - (ii) is divorced from the custodial parent of the dependent described in

⁷ Utah Code §59-10-136 was amended by the 2019 Utah Legislature and the changes made in that session became effective May 14, 2019, with retrospective application to tax year 2018. The 2019 revisions made changes to both Utah Code Subsections 59-10-136(2)(b) and 59-10-136(5). However, this decision cites to the code and applies the law that was in effect for tax year 2014, which is the tax year at issue in this appeal.

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 eligibility for voter registration in Utah is provided in Utah Code Ann. §20A-2-101, set forth below, in part:

- (1) Except as provided in Subsection (2), an individual may register to vote in an election who:
- (a) is a citizen of the United States;
 - (b) has been a resident of Utah for at least the 30 days immediately before the election;
 - (c) will be:

- (i) at least 18 years of age on the day of the election; or
- (ii) if the election is a regular primary election, a municipal primary election, or a Western States Presidential Primary:
 - (A) 17 years of age on or before the day of the regular primary election, municipal primary election, or Western States Presidential Primary; and
 - (B) 18 years of age on or before the day of the general election that immediately follows the regular primary election, municipal primary election, or Western States Presidential Primary; and
- (d) currently resides within the voting district or precinct in which the individual applies to register to vote.

Utah Code Ann. §20A-2-305 provides for removal of a voter's name from the official voter registration, as follows:

- (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
 - (2) The county clerk shall remove a voter's name from the official register if:
 - (a) the voter dies and the requirements of Subsection (3) are met;
 - (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
 - (c) the county clerk has:
 - (i) obtained evidence that the voter's residence has changed;
 - (ii) mailed notice to the voter as required by Section 20A-2-306;
 - (iii) (A) received no response from the voter; or
 - (B) not received information that confirms the voter's residence; and
 - (iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;
 - (d) the voter requests, in writing, that the voter's name be removed from the official register;
 - (e) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or
 - (f) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.
- (3) The county clerk shall remove a voter's name from the official register within five business days after the day on which the county clerk receives confirmation from the Department of Health's Bureau of Vital Records that the voter is deceased.

Utah Code Ann. §20A-2-306 addresses the removal of names from the official voter register where a change of residence occurs, as set forth below:

- (1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:
 - (a) confirms in writing that the voter has changed residence to a place outside the county; or
 - (b) (i) has not voted in an election during the period beginning on the date

of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and

- (ii) has failed to respond to the notice required by Subsection (3).
- (2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:
 - (i) change the official register to show the voter's new address; and
 - (ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
- (b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
- (3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE
We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?"

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

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or
- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

Signature of Voter"

"The portion of your voter registration form that lists your driver license or identification card number, social security number, email address, and the day of your month of birth is a private record. The portion of your voter registration form that lists your month and year of birth is a private record, the use of which is restricted to government officials, government employees, political parties, or certain other persons.

You may apply to the lieutenant governor or your county clerk to have your entire voter registration record classified as private."

- (4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.
- (b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:
 - (i) the voter requests, in writing, that the voter's name be removed; or
 - (ii) the voter has died.

- (c) (i) After a county clerk mails a notice as required in this section, the county clerk may list that voter as inactive.
- (ii) If a county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter, the county clerk may list that voter as inactive.
- (iii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.
- (iv) A county is not required to send routine mailings to an inactive voter and is not required to count inactive voters when dividing precincts and preparing supplies.

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

CONCLUSIONS OF LAW

1. The issue in this appeal is whether the Taxpayers were “resident individuals” in the State of Utah for the purposes of Utah Code Sec. 59-10-104, for all of the 2014 tax year. For Utah individual income tax purposes, a “resident individual” is defined at Utah Code Subsection 59-10-103(1)(q)(i) to be: “(A) an individual who is domiciled in this state . . . or (B) an individual who is not domiciled in this state but: (I) maintains a place of abode in this state; and (II) spends in the aggregate 183 or more days of the taxable year in this state.” The Taxpayers were Utah “resident individuals” under Subsection 59-10-103(1)(q)(i)(A) because they were domiciled in Utah during the audit period based on the provisions of Utah law in effect for tax year 2014.

2. The law in effect for tax year 2014, Utah Code Sec. 59-10-136, specifically provides what constitutes being “domiciled” in Utah. Under the express provisions of Utah Code Subsection 59-10-136(2)(b), there was a presumption that an individual was domiciled in Utah if “the individual or the individual’s spouse is registered to vote in this state.” Although TAXPAYER-1 did register to vote in STATE-1, TAXPAYER-2 did not do so. TAXPAYER-2 had been registered to vote in Utah prior to when the Taxpayers moved to STATE-1 in 2013. She did not cancel her Utah Voter registration, nor did she register to vote in STATE-1. Therefore, both TAXPAYER-2 and TAXPAYER-1 were both presumed to be domiciled in Utah.

3. The Taxpayers argue in this hearing that the County should have sent TAXPAYER-2 a confirmation card after receiving back her 2013 Ballot as “undeliverable.” TAXPAYER-2 testified that had she received a confirmation card from the County, she would have responded that she no longer lived in Utah and then she would have been removed from the Utah Voter Rolls.⁸ The Division, however,

⁸ As noted above in Finding of Fact No. 13, the County had mailed to TAXPAYER-1 a “confirmation due to inactivity” on December 3, 2013. It does not appear that he received the confirmation card because a subsequent

argues that there was no obligation for the county to send a voter registration notice under Utah Code Subsection 20A-2-306(3) until the County receives notice that the voter's residence has changed. Utah Code Subsection 20A-2-306(2)(b) states, "When a county clerk obtains information that a voter's address has changed" the clerk "shall" mail the confirmation card. It was the Division's position that the return of a ballot as undeliverable does not constitute notice that a voter's residence has changed. The Division points out that a ballot may be undeliverable for other reasons that do not include a change of residence, citing Utah Code Subsection 20A-2-306(4)(c)(ii) that lists clerical error as a reason a voter identification card might be returned. If a voter registration card is returned as undeliverable, the statute specifically states the County is to list the voter as inactive, it does not allow the County to cancel the voter registration under Utah Code Subsection 20A-2-306(4)(c)(ii). The Division notes that an "inactive voter" is still able to vote. TAXPAYER-2's situation is different from TAXPAYER-1's for two reasons: (1) because the last Utah election that TAXPAYER-1 had voted in had been 2008; and (2) he had registered to vote in STATE-1 in January 2014. TAXPAYER-2 had voted in Utah 2012 and did not register in STATE-1. Because of TAXPAYER-1's inactivity, the County mailed him a Utah Code §20A-2-306(3) confirmation card. In addition, under Utah Code §20A-2-305(2)(f) if the county clerk receives notice that a voter has registered to vote in another state, the County Clerk is to remove that person from the official Utah voter register. The notation on the County Clerk's record regarding removing TAXPAYER-1 was that he was registered to vote in STATE-1. At the hearing, the Taxpayers did not cite to a statutory provision under which the County was required to mail to TAXPAYER-2 a confirmation card upon receipt of an "undeliverable" ballot or that would have required the county to unregister TAXPAYER-2 due to the returned ballot. The Taxpayers' have not supported grounds to rebut the presumption of Utah domicile based on voter registration in Utah.

4. The Taxpayers testified they were unaware that TAXPAYER-2's failure to cancel her Utah voter registration or failure to register in STATE-1 could result in their both being domiciled in Utah. Many individuals have argued ignorance of the law as basis for rebutting the presumptions set out at Utah Code Subsection 59-10-136(2). However, the Tax Commission has concluded that ignorance of the income tax provisions is not a sufficient basis to rebut these presumptions.⁹

5. Other taxpayers have argued that the Commission should consider that if a preponderance of the factors found in Subsection 59-10-136(3) support domicile in the new state, that should be accepted as rebutting the Subsection 59-10-136(2) presumptions. The Commission has previously rejected this

notation stated, "confirmation card returned undeliverable" on March 7, 2014. However, shortly after that, the County found that he was registered in STATE-1.

⁹ See *Findings of Fact, Conclusions of Law and Final Decisions, Appeal No. 14-30* (9/2/2015) and *Appeal No. 16-1770; Initial Hearing Orders, Appeal No. 15-1154* (2/1/16); *Appeal No. 16-117*(1/18/17); *Appeal No. 16-792* (8/16/2017); and *Appeal No. 17-237* (9/18/17). Many Tax Commission decisions are published in a redacted format and available for review at tax.utah.gov/commission-office/decisions.

argument concluding that permitting rebuttal of the presumptions in Subsection 59-10-136(2) by applying the factors in Subsection 59-10-136(3), would be giving no meaning to the Subsection 59-10-136(2) presumptions.¹⁰

6. Under Utah Code Subsection 59-1-401(14), the Commission may waive, reduce or compromise interest upon a showing of reasonable cause. Under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove “that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayers have not asserted a basis for waiver of interest.

After review of the evidence submitted by the parties at the hearing and the applicable law, the Taxpayers were domiciled in Utah for all of tax year 2014 and the tax and interest accrued thereon should be sustained.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the Taxpayers were domiciled in Utah for all of tax year 2014 and upholds the Utah individual income tax audit deficiency as to the tax and interest. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

DISSENT

I respectfully dissent from my colleagues in this matter because of my concern that the County in which the Taxpayers were registered to vote in Utah did not follow the process set forth in statute with regard to information received regarding a voter’s change of address.

¹⁰ *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decisions, Appeal No. 14-30* (September 21, 2015) and *16-1770; Initial Hearing Order 17-1748*.

The Auditing Division's exhibits include a history of transactions and mailings involving TAXPAYER-2. These include:

1. 21 September 2008: a voter registration card was mailed to ADDRESS-1.
2. 12 February 2012: a voter registration card was mailed to the same address.
3. 11 July 2013: An absentee ballot was returned "undeliverable."
4. 13 July, 2015: TAXPAYER-2's address was changed "by mail" to a residence in CITY-2, UT, then to an address in CITY-3, UT, and a new voter ID card was mailed.

TAXPAYER-2 voted in person in both 2008 and 2012.

The same exhibits include a history of transactions and mailings involving TAXPAYER-1. These include:

1. 9 December 2008: address changed to ADDRESS-1.
2. 14 December 2008: sent voter id card.
3. 12 February 2012: sent voter id card.
4. 11 July 2013: Absentee ballot returned "undeliverable."
5. 30 December 2013: Change from active to inactive because of inactivity.
6. 30 December 2013: Sent confirmation due to inactivity.
7. 7 March 2014: Confirmation returned "undeliverable."
8. 23 April 2014: Removed ["per ERIC. Registered in STATE-1"].

TAXPAYER-1 voted in person in 2008 but did not vote in 2012.

Several facts are apparent from this chronology. Both TAXPAYERS received voter id card mailings at the same ADDRESS-1 address prior to 2013. The absentee ballots mailed to both TAXPAYERS in July, 2013, were returned as "undeliverable."

The log indicates that TAXPAYER-1's status was changed to "inactive" and the "confirmation" was sent to TAXPAYER-1 on 30 December 2013 "due to inactivity." The mailing and change in status were prompted by the return of the absentee ballot. The County acted correctly in these actions under §20A-2-305(2):

- (2) The county clerk shall remove a voter's name from the official register if:
...
(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-2-306¹¹

The change in status to inactive was consistent with §20A-2-306 (4)(c)(i):

After a county clerk mails a notice as required in this section, the county clerk may list that voter as inactive.¹²

¹¹ However, the actual removal of TAXPAYER-1 from the official register was prompted only when the County received information that he had registered to vote in STATE-1. Based solely on inactivity, TAXPAYER-1 could not have been removed from the official register until after the 2016 election. (Section 20A-2-305(2)(c)(iv)).

The County's response upon receiving the returned mail differed for TAXPAYER-1 and TAXPAYER-2. TAXPAYER-1's status was changed to inactive and a confirmation card was mailed. The County failed to act on TAXPAYER-2's undeliverable mail.

Utah Code §20A-2-306(2)(a) and (b) use the same language:

- (a) When a county clerk obtains information that a voter's address has changed ..., the county clerk **shall** ... send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
- (b) When the county clerk obtains information that a voter's address has changed ... 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.

The county clerk obtained the same "information that the voter's address" had changed for both TAXPAYERS. In one case, the County acted on that information as required by statute. In the other case, the County failed to act on identical information.¹³ The majority decision in this appeal is based on the view that TAXPAYER-2 had an affirmative responsibility to either seek in writing to have her name removed from the official register of voters under Section 20A-2-305(2)(d), or to register to vote in STATE-1. Absent either such action, ignorance of Utah's domicile laws does not overcome the presumption of domicile.

However, the same statute places an affirmative responsibility on the County to initiate the process for removing a voter from the official register when there is evidence that the voter's residence has changed. The Division's argument that mail returned as undeliverable does not constitute such evidence is spurious when both voters had received multiple mailings at the same address, and close relatives continued to reside at that address. Had the County followed the statute and mailed the "forwardable" confirmation card, TAXPAYER-2 could have taken action to request removal of her registration. By failing to act in accordance with the statutory requirement, TAXPAYER-2 was denied the opportunity to respond to the confirmation card.

Utah domicile law is complex and obscure for most taxpayers. To expect taxpayers undergoing a major life change such as moving to another state to also promptly update their voter registration in an off-election year creates an exceedingly high hurdle for citizens. It is unreasonable to expect taxpayers to bear the full responsibility for understanding and complying with domicile laws while at the same time totally exonerating other state and local agencies from any responsibility for following the clear language

¹² The only provision in law to change a voter's status to "inactive" is in connection with the mailing required by §20A-2-306.

¹³ It is true that TAXPAYER-2 voted in 2012 while TAXPAYER-1 did not. However, simply failing to vote does not affect a voter's status until and unless the county sends out the notice required by §20A-2-306.

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of governing statutes. In upholding the Division's assessment in this audit, TAXPAYER-1 and TAXPAYER-2 are being penalized for the failure of the county clerk to consistently comply with statute.

Lawrence C. Walters
Commissioner

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