18-67
TAX TYPE: INCOME TAX
TAX YEAR: 2012, 2013, 2014 & 2015
DATE SIGNED: 10/26/2018
COMMISSIONERS: M. CRAGUN, R. PERO, R. ROCKWELL
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-67 Account No. ##### Tax Type: Income Tax Years: 2012, 2013, 2014 & 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT, 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 October 2, 2018.

TAXPAYERS ("Petitioners" or "taxpayers")[1] have appealed Auditing Division's (the "Division") assessments of additional Utah individual income taxes for the 2012, 2013, 2014, and 2015 tax years. On December 11, 2017, the Division issued Notices of Deficiency and Estimated Income Tax ("Statutory Notices") to the taxpayers, in which it imposed additional tax, penalties, and interest (calculated as of January 10, 2018),[2] as follows:

Year	Tax	Penalties	Interest	Total

1 The taxpayers were married on August 10, 2012, and they divorced in 2016.

2012	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$
2014	$$$$$	$$$$$	$$$$$	$$$$$
2015	$$$$	$$$$$	$$$$$	$$$$$

During the 2012, 2013, 2014, and 2015 tax years, the taxpayers lived in STATE-1. For these years, the taxpayers filed federal and STATE-1 income tax returns with a status of married filing jointly, but they did not file Utah income tax returns. Initially, the Division determined that the taxpayers were domiciled in Utah and were Utah resident individuals for all four tax years at issue, and it assessed them accordingly.[3]

However, after the taxpayers filed their appeal, they provided additional information to the Division. With this additional information, the Division determined that its assessments for the four years at issue either needed to be modified or reversed. For the 2013, 2014, and 2015 tax years, the Division determined that neither taxpayer was domiciled in Utah for these years and that, as a result, its assessments for these three years needed to be reversed. For the 2012 tax year, the Division determined that the taxpayers were Utah part-year resident individuals, not Utah full-year resident individuals as reflected in the 2012 assessment. The Division now contends that the taxpayers are domiciled in Utah and, thus, are Utah part-year residents only from August 27, 2012 to December 13, 2012 of the 2012 tax year, which coincides with the period that TAXPAYER-1 was enrolled as a resident student at UNIVERSITY ("UNIVERSITY"). As a result, the Division asks the Commission to revise its 2012 assessment to reflect a Utah part-year residency for both taxpayers from August 27, 2012 to December 13, 2012; and to reverse its 2013, 2014, and 2015 assessments in their entireties.

The taxpayers agree that the Division's 2013, 2014, and 2015 assessments should be reversed in their entireties. The taxpayers, however, contend that the Division's 2012 assessment should also be reversed in its entirety. The taxpayers admit that TAXPAYER-1 was enrolled as a resident student at UNIVERSITY from

---

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

3 For all four tax years at issue, the Division allowed the taxpayers credits against their Utah tax liabilities for income taxes they had paid to STATE-1. For a period that an individual is deemed to be a Utah resident individual, the individual is entitled to claim a credit against his or her Utah tax liability for income taxes paid to another state, pursuant to Utah Code Ann. §59-10-1003 (2012-2015).

August 27, 2012 to December 13, 2012. However, they point out that he only took one UNIVERSITY course during this period and that he took it on-line from his home in STATE-1. For these reasons and because the taxpayers were living and working in STATE-1 throughout 2012, the taxpayers believe that they were not domiciled in Utah during any portion of 2012, including the August 27, 2012 to December 13, 2012 period that the Division now considers them both to be domiciled in Utah. In summary, the taxpayers ask the Commission to reverse all four of the assessments at issue in their entireties.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2012)[4], "a tax is imposed on the state taxable income of a resident individual[.]"

2. For purposes of Utah income taxation, a "resident individual" is defined in UCA §59-10-103(1)(q)(i), as follows in pertinent part:

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

3. Effective for tax year 2012, UCA §59-10-136 provides guidance concerning the determination of "domicile," as follows:

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

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

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

(i) is the noncustodial parent of a dependent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or
(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
(A) return to this state for more than 30 days in a calendar year;
(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

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

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

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

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

(b) For purposes of this section, an individual is not considered to have a spouse if:

(i) the individual is legally separated or divorced from the spouse; or

(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

(6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

4. 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."

5. Utah Admin. Rule R861-1A-42 ("Rule 42") (2018) provides guidance concerning the waiver of penalties and interest, as follows:

. . . .
(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.
(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
(a) Timely Mailing…
(b) Wrong Filing Place…
(c) Death or Serious Illness…
(d) Unavoidable Absence…
(e) Disaster Relief…
(f) Reliance on Erroneous Tax Commission Information…
(g) Tax Commission Office Visit…
(h) Unobtainable Records…
(i) Reliance on Competent Tax Advisor…
(j) First Time Filer…
(k) Bank Error…
(l) Compliance History. . . .
(m) Employee Embezzlement…
(n) Recent Tax Law Change…
(4) Other Considerations for Determining Reasonable Cause.
(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
(i) whether the commission had to take legal means to collect the taxes;
(ii) if the error is caught and corrected by the taxpayer;
(iii) the length of time between the event cited and the filing date;
(iv) typographical or other written errors; and
(v) other factors the commission deems appropriate.
(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

7. For the instant matter, UCA §59-1-1417(1) (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 taxpayers have the burden of proof in this matter. Still at issue is whether the taxpayers were Utah resident individuals from August 27, 2012 to December 13, 2012 of the 2012 tax year (the "period at issue"). The Division contends that the taxpayers were Utah resident individuals for the period at issue, while the taxpayers contend that they were not. 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 taxpayers qualify as Utah resident individuals for the August 27, 2012 to December 13, 2012 period at issue under the 183 day test. Instead, the Division contends that the taxpayers were Utah resident individuals for the period at issue under the domicile test. As a result, the Commission must apply the facts to the Utah domicile law in effect for 2012 to determine whether the taxpayers are considered to be domiciled in Utah during the August 27, 2012 to December 13, 2012 period at issue (as the Division contends) or whether the taxpayers are not considered to be domiciled in Utah for the period at issue (as the taxpayers contend).

I. Additional Facts.

The taxpayers grew up in Utah. TAXPAYER-1 graduated from a Utah high school in or around 2008, after which he enrolled as a resident student at UNIVERSITY, where he majored in aviation science. Around 2011, while TAXPAYER-1 was still a student at UNIVERSITY, he started working in the eastern United States as a helicopter pilot. In late 2011, TAXPAYER-1 accepted a full-time position in STATE-1 as a helicopter pilot and moved to that state with TAXPAYER-2, who at that time was TAXPAYER-1's girlfriend. The taxpayers married on August 10, 2012, and they continued to live in STATE-1 until 2016. TAXPAYER-2 did not work during the August 27, 2012 to December 13, 2012 period that remains at issue.

After the taxpayers moved to STATE-1 in 2011, the only semester that TAXPAYER-1 enrolled as a student at UNIVERSITY was the Fall 2012 semester, during which he was enrolled as a resident student and took one on-line course from his home in STATE-1. TAXPAYER-2, on the other hand, did not attend any institution of higher education during the 2011 to 2016 period that the taxpayers lived in STATE-1. Furthermore, the taxpayers did not have any dependents who attended any Utah school during the 2011 to 2016 period that they lived in STATE-1. The taxpayers' only child was born in 2014.

During the years that the taxpayers lived in STATE-1, they would occasionally visit their families in Utah. However, they were in Utah for less than 30 days during each of the calendar years that they lived in STATE-1. In 2016, the taxpayers moved back to Utah, and they divorced in 2017. The taxpayers did not own any real property anywhere during the 2011 to 2016 period that they lived in STATE-1. Prior to moving to STATE-1 in 2011, TAXPAYER-1 had either rented an apartment in Utah or lived at his parents' Utah home. Upon moving to STATE-1, the taxpayers lived in a camper for a short period of time, after which they rented an apartment in STATE-1.

While TAXPAYER-2 was never registered to vote in Utah, TAXPAYER-1 registered to vote in Utah sometime before he moved to STATE-1 in late 2011. TAXPAYER-1 proffered at the hearing that he could not remember whether he was still registered to vote in Utah during any portion of the 2011 to 2016 period that

he lived in STATE-1. In comparison, on a written Domicile Survey that TAXPAYER-1 signed in 2017, he certified that he was not registered to vote in Utah during the 2012 through 2015 tax years. The Division did not contend that TAXPAYER-1 was registered to vote in Utah for any portion of the 2012 tax year that remains at issue. Although neither party proffered Utah voting records to clarify whether TAXPAYER-1 was registered to vote in Utah during 2012 or not, a preponderance of the evidence that was proffered at the Initial Hearing suggests that TAXPAYER-1 was not registered to vote in Utah during 2012, especially where the Division does not dispute TAXPAYER-1's initial written statement that he was not registered to vote in Utah during 2012.

During the 2011 to 2016 period that the taxpayers lived in STATE-1, including the 2012 tax year that remains at issue, the taxpayers maintained some contacts with Utah. For example, while living in STATE-1, TAXPAYER-1 retained his Utah driver's license and used a Utah address to receive most of his mail. In addition, the taxpayers used a Utah address to file their federal and STATE-1 income tax returns. On the other hand, during the 2011 to 2016 period that the taxpayers lived in STATE-1, they did not claim Utah as their tax home for federal income tax purposes. In addition, it appears that TAXPAYER-1 obtained STATE-1 resident hunting and fishing licenses while he lived in that state. During 2012, neither taxpayer was a member of a church, a club, or another similar organization.

It is not entirely clear whether the taxpayers owned motor vehicles throughout 2012 and, if so, where these vehicles were registered. On the Domicile Survey that TAXPAYER-1 completed in 2017, he indicated that during 2012 to 2015, the taxpayers owned two motor vehicles that were registered in Utah and a camper that was registered in STATE-1. No information was provided to show whether the two motor vehicles that were purportedly registered in Utah were owned at the same time or at different times. In comparison, at the hearing, however, TAXPAYER-1 stated that the camper that he and/or TAXPAYER-2 resided in for a short period of 2012 was owned by a friend. He also stated that because his STATE-1 employer eventually provided

him a company-owned motor vehicle to drive, he sold the motor vehicle he had taken with him from Utah to STATE-1 before the 2011-2012 Utah registration had expired. He further stated that TAXPAYER-2 did not have a motor vehicle while she lived in STATE-1.

II. Applying the Facts to the Domicile Law in Effect for 2012.

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)).[5]

A. Subsection 59-10-136(5)(b). For a married individual, it is often necessary to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if the individual is legally separated or divorced from the individual's spouse or if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. Neither of these circumstances applies to the taxpayers for the August 10, 2012 to December 31, 2012 portion of 2012 that they were married. Accordingly, for the August 10, 2012 to December 31, 2012 portion of 2012, TAXPAYER-1 and TAXPAYER-2 are each considered to have a spouse for purposes of Section 59-10-136. However, because neither taxpayer was married prior to August 10, 2012, neither taxpayer is considered to have a spouse for purposes of Section 59-10-136 for the January 1, 2012 to August 9, 2012 portion of 2012.

5 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.

B. Subsection 59-10-136(4). The Division asserts that under this subsection, the taxpayers are considered to *not* be domiciled in Utah beginning on December 14, 2012, the day after TAXPAYER-1's enrollment as a resident student at UNIVERSITY ended on December 13, 2012. Subsection 59-10-136(4) applies to an individual who is "absent from the state" for at least 761 consecutive days during which certain requirements are met. It appears that the Division has correctly determined that the taxpayers meet all of the Subsection 59-10-136(4)(a) requirements for a 761 or more day period that begins on December 14, 2012 and ends sometime around the taxpayers' return to Utah in 2016. Accordingly, for the 2012 tax year that remains at issue, neither taxpayer would be considered to be domiciled in Utah for the December 14, 2012 to December 31, 2012 portion of this year.[6]

However, the taxpayers are not considered to *not* be domiciled in Utah under Subsection 59-10-136(4) for the remainder of 2012 (i.e., from January 1, 2012 to December 13, 2012), because TAXPAYER-1 was enrolled as a resident student at UNIVERSITY for the Fall 2012 semester that ran from August 27, 2012 to December 13, 2012. *See* Subsection 59-10-136(4)(a)(ii)(C). Although TAXPAYER-1 asks the Commission to consider that he only enrolled for one on-line class at UNIVERSITY during the Fall 2012 semester and that he attended the class from STATE-1, he did, nevertheless, enroll as a resident student in a Utah institution of higher education for the August 27, 2012 to December 13, 2012 portion of 2012. Accordingly, even though the taxpayers were absent from Utah for a 761 or more consecutive day period that included all of 2012, they did not meet all of the Subsection 59-10-136(4) requirements for the entire period they were absent from Utah. Specifically, the taxpayers do not meet the Subsection 59-10-136(4) exception from domicile from January 1, 2012 to December 13, 2012, because this portion of 2012 is not part of a 761 or more consecutive day period during which they meet *all* of the requirements set forth in Subsection 59-10-136(4)(a).

6 For these reasons, the Division also determined that the taxpayers are considered to *not* be domiciled in Utah for all of 2013, 2014, and 2015.

Although the taxpayers are considered to *not* be domiciled in Utah from December 14, 2012 to December 31, 2012 under Subsection 59-10-136(4), the Commission must still determine whether the taxpayers are considered to be domiciled in Utah for the remainder of 2012 (i.e., from January 1, 2012 to December 13, 2012) under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3). If the taxpayers are considered to be domiciled in Utah under *any one* of these subsections, they are considered to be domiciled in Utah even if they would not be considered to be domiciled in Utah under the other subsections. The Division contends that the taxpayers are not considered to be domiciled in Utah under any of these subsections from January 1, 2012 to August 26, 2012, but are considered to be domiciled in Utah under one of these subsections (specifically Subsection 59-10-136(1)(a)(ii)) from August 27, 2012 to December 13, 2012.

C. Subsection 59-10-136(1). This subsection provides that an individual is considered to be domiciled in Utah if: 1) a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school (Subsection 59-10-136(1)(a)(i)); or 2) the individual or the individual's spouse is enrolled in a Utah institution of higher education (Subsection 59-10-136(1)(a)(ii)). During 2012, the taxpayers did not claim a dependent who attended a Utah public kindergarten, elementary, or secondary school. Accordingly, neither of them is considered to be domiciled in Utah during any portion of 2012 under Subsection 59-10-136(1)(a)(i).

However, because TAXPAYER-1 was enrolled as a resident student at a Utah institution of higher education for the August 27, 2012 to December 13, 2012 period at issue, both taxpayers are considered to be domiciled in Utah for this portion of 2012 under Subsection 59-10-136(1)(a)(ii).[7] Because the Division does

7 Admittedly, TAXPAYER-2 did not attend any institution of higher education during 2012. However, Subsection 59-10-136(1)(a)(ii) provides that an individual is considered to be domiciled in Utah if *the individual or the individual's spouse* is enrolled as a resident student at a Utah institution of higher education. Because TAXPAYER-2's spouse was enrolled as a resident student at a Utah institution of higher education from August 27, 2012 to December 13, 2012, TAXPAYER-2 is also considered to be domiciled in Utah for this period. This conclusion is supported by Subsection 59-10-136(5)(a), which provides that "[i]f an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state."

not assert that the taxpayers are considered to be domiciled in Utah from January 1, 2012 to August 26, 2012 of the 2012 tax year, the Commission could resolve this matter without discussing the remaining subsections of Section 59-10-136 (i.e., without discussing Subsections 59-10-136(2)(a), (2)(b), (2)(c), and (3)). However, it may prove helpful to make some cursory comments about these remaining subsections.

D. Other Subsections of Section 59-10-136. It is clear that the taxpayers are not domiciled in Utah for the remaining January 1, 2012 to August 26, 2012 portion of 2012 under Subsection 59-10-136(2)(a) or (2)(c) because the taxpayers did not own a home in Utah during 2012 and because the taxpayers did not file a 2012 Utah income tax return. For reasons explained earlier, the Commission finds that neither of the taxpayers was registered to vote in Utah during any portion of 2012. As a result, neither of the taxpayers is considered to be domiciled in Utah for the January 1, 2012 to August 26, 2012 portion of 2012 under Subsection 59-10-136(2)(b).[8]

Lastly, even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), he or she may still be considered to be domiciled in Utah based on a preponderance of the evidence relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Neither party specifically addressed these 12 factors. However, a cursory review of the 12 factors indicates that the taxpayers' actions may or may not meet a preponderance of the relevant factors during the January 1, 2012 to December 13, 2012 portion of 2012 that does not meet the Subsection 59-10-136(4) exception from domicile. However, because it is unclear whether the taxpayers' actions meet a preponderance of the Subsection 59-10-136(3)(b) factors during the January 1, 2012 to December 13, 2012 portion of 2012 and because the Division

---

8 As mentioned earlier, the Division did not contest TAXPAYER-1's assertion that neither of them was registered to vote in Utah during 2012. However, had the Division contested this assertion and had the taxpayers not been able to show that both of them were not registered to vote in Utah during 2012, it is possible that both of them would have been found to be domiciled in Utah under Subsection 59-10-136(2)(b) from January 1, 2012 to December 13, 2012 (i.e., for that portion of 2012 for which they did not qualify for the Subsection 59-10-136(4) exception), unless they were able to rebut the Subsection 59-10-136(2)(b)

does not assert that the taxpayers are considered to be domiciled in Utah for any portion of 2012 under this subsection, the Commission declines to find that the taxpayers are considered to be domiciled in Utah for any portion of 2012 under Subsection 59-10-136(3)(b).

E. Domicile – Conclusion. Under Subsection 59-10-136(1)(a)(ii), both of the taxpayers are considered to be domiciled in Utah from August 27, 2012 to December 13, 2012 of the 2012 tax year. Neither of the taxpayers is considered to be domiciled in Utah from January 1, 2012 to August 26, 2012 or from December 14, 2012 to December 31, 2012 of the 2012 tax year; or for any portion of the 2013, 2014, and 2015 tax years.

III. Taxpayers' Other Arguments.

The taxpayers suggest that Utah should not tax any of the income that TAXPAYER-1 earned while he was living and working in STATE-1. The Commission, however, has found that both taxpayers are Utah resident individuals for the August 27, 2012 to December 13, 2012 period at issue. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that "a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]" However, in accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because TAXPAYER-1 is a Utah resident individual for the August 27, 2012 to December 13, 2012 period at issue, Subsection 59-10-117(2)(c) does not apply to him for this period. Accordingly, all of the income that TAXPAYER-1 received during the August 27, 2012 to December 13, 2012 portion of 2012 is subject to Utah taxation, even if it was earned outside of Utah and even though it may also have been subject to taxation by another state. As explained

---

presumption.

earlier, any double taxation concerns are alleviated through the application of a credit for taxes paid to the other state, pursuant to Subsection 59-10-1003(1).

The taxpayers also suggest that it is unfair that Utah's domicile tax law would subject their income to Utah taxation under their circumstances. The taxpayers may be suggesting that Section 59-10-136, as written, results in bad tax policy under circumstances such as theirs. The Commission, however, is tasked with implementing the laws that the Legislature enacts. It is not authorized to amend these laws to achieve what the taxpayers may consider to be a better tax policy. That is the role of the Utah Legislature.

IV. Penalties and Interest.

In Subsection 59-1-401(14), the Commission is authorized to waive penalties and interest upon a showing of reasonable cause. The Commission has adopted Rule 42 to provide guidance as to when reasonable cause exists to waive penalties and interest. Rule 42(2) provides that interest is waived only if a taxpayer shows that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the taxpayer's error.[9] The taxpayers have not asserted that they failed to pay 2012 Utah income taxes because of Tax Commission error or erroneous advice. As a result, reasonable cause does not exist to waive any of the interest that remains in regards to the 2012 tax year. 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. Accordingly, reasonable cause exists to waive all penalties that remain for the 2012 tax year at issue.

V. Conclusion.

For reasons explained earlier, the taxpayers are considered to be domiciled in Utah for the August 27, 2012 to December 13, 2012 portion of 2012, pursuant to Section 59-10-136. As a result, under Subsection 103(1)(q)(i)(A), both of the taxpayers are considered to be Utah resident individuals for this period, and all

9 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

income they received during this period is subject to Utah taxation. Accordingly, the Commission should find that the taxpayers are Utah resident individuals only from August 27, 2012 to December 13, 2012 of the 2012 tax year and order the Division to revise its 2012 assessment accordingly. In addition, the Commission should reverse the Division's 2013, 2014, and 2015 assessments and waive all penalties that remain for the 2012 tax year.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the taxpayers are Utah resident individuals only from August 27, 2012 to December 13, 2012 of the 2012 tax year and orders the Division to revise its 2012 assessment accordingly. In addition, the Commission reverses the Division's 2013, 2014, and 2015 assessments and waives all penalties that remain for the 2012 tax year. 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.

---

of this money.

DATED this _____ day of _____, 2018.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
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.