

18-88  
TAX TYPE: INCOME TAX  
TAX YEAR: 2014  
DATE SIGNED: 03/22/2019  
COMMISSIONERS: J. VALENTINE, M. CRAGUN, L. WALTERS  
EXCUSED: R. ROCKWELL  
GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYERS,</p> <p style="text-align: center;">Petitioners,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 18-88</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2014</p> <p>Judge: Phan</p>
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**Presiding:**

Jane Phan, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYERS, CPA  
TAXPAYER-1

For Respondent: REPRESENTATIVE FOR RESPONDENT-1, Manager, Income Tax  
Auditing  
REPRESENTATIVE FOR RESPONDENT-2, Manager, Income Tax

Auditing<sup>1</sup>

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 26, 2018 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Respondent (“Division”) had issued a Notice of Deficiency and Audit Change on December 13, 2017 to the Petitioners (“Taxpayers”) for tax year 2014 on the basis that the Taxpayers were Utah resident individuals. The Taxpayers timely appealed under Utah Code §59-1-501, contesting the Utah individual income tax audit deficiency. The amount of additional tax and interest due as of the date the Notice of Deficiency was issued is as follows:

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<sup>1</sup> Subsequent to this Initial Hearing, REPRESENTATIVE FOR RESPONDENT-1 retired and REPRESENTATIVE FOR RESPONDENT-2 is now the Audit Manager over this appeal.

	<u>Tax</u>	<u>Interest<sup>2</sup></u>	<u>Penalties</u>	<u>Total as of Notice Date</u>
2014	\$\$\$\$\$	\$\$\$\$\$	\$0	\$\$\$\$\$

APPLICABLE LAW

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

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

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

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

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

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

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

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

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

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

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

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<sup>2</sup> Interest continues to accrue on the unpaid balance until paid in full.

- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
  - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
  - (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
  - (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
- (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
  - (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
  - (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.
- (b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:
  - (i) whether the individual or the individual's spouse has a driver license in this state;
  - (ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;
  - (iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;
  - (iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;
  - (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;
  - (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
  - (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
  - (viii) whether the individual or the individual's spouse lists an address in

- this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
- (ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
  - (x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
  - (xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or
  - (xii) whether the individual is an individual described in Subsection (1)(b).
- (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
- (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
  - (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
    - (A) return to this state for more than 30 days in a calendar year;
    - (B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
    - (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
    - (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
    - (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
- (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
- (c) For purposes of Subsection (4)(a), an absence from the state:
- (i) begins on the later of the date:
    - (A) the individual leaves this state; or
    - (B) the individual's spouse leaves this state; and
  - (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

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

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, “Upon making a record of its actions, and upon reasonable

cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part.”

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

...

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

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

#### DISCUSSION

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

The Taxpayers had been Utah resident individuals for several years leading up to 2014. TAXPAYER-2 had been working for BUSINESS in its CITY-1, Utah office from April 2011 up through April 2014. The Taxpayers owned a Utah residence for which they were receiving the Utah primary residential property tax exemption. They had obtained Utah Driver Licenses and were registered to vote in Utah. TAXPAYER-2 registered to vote in Utah in 2008 and voted in Utah in 2008, 2012 and 2016. TAXPAYER-1 also registered to vote in Utah in 2008 and voted in Utah in 2008, 2012 and 2016. The Taxpayers had children attending public school in Utah up through April 2014.

By May of 2014, BUSINESS had offered TAXPAYER-2 the position of Sales Manager at its Indio, STATE-1 office. The Taxpayers proffered that they did move to STATE-1. TAXPAYER-2 moved in May 2014 to start his employment there. TAXPAYER-1 and the children stayed in Utah to finish the school year and then rented a residence in STATE-1 and moved there in July 2014. They registered their children in school in STATE-1 and the children attended school there from September 2014 to the end of the year. However, TAXPAYER-1

returned to Utah with the Children in January 2015 and the children were registered again to attend school in Utah at that time. TAXPAYER-2 also returned to Utah and to work again at his employer's Utah office beginning April 1, 2015.

The Taxpayers stated that they did not try to sell their Utah residence and instead leased it out. However, they did not provide a copy of a signed lease. Instead they provided a very brief statement signed by a NAME-1 that stated in its entirety, "Statement of Fact- I NAME-1 did rent the property of ADDRESS-1, UT from TAXPAYERS from the dates of July 2014 –Dec 2014."<sup>3</sup> From this, it is not clear if rent was charged, how much rent, or if, in fact they were allowing NAME-1 to stay in some part of the residence, while they would return to the residence for weekends and stay there as well. In their answers to the Domicile Survey, which they had provided to the Division prior to the hearing, the Taxpayers had referred to their Utah residence as their primary property and stated in an answer to a question asking if they returned to Utah, "Yes, we came to our home often. Almost every weekend to see family and stay in our home."<sup>4</sup> At the hearing, the Taxpayers proffered they had received \$\$\$\$\$ per month as rent for the residence, which seems to conflict with the statement given in the Domicile Survey.

During the short period of time the Taxpayers were residing in STATE-1, they did not register to vote in that state or obtain driver licenses in STATE-1. They explained at the hearing they were unaware of the importance of registering to vote in the new state or unregistering in Utah. They filed a part-year STATE-1 return on which they stated they were in STATE-1 from July 16, 2014 to the end of tax year 2014. The Division has allowed the Taxpayers a credit for the taxes that they paid to STATE-1.

The Division also stated that the TAXPAYERS had a Utah business, in addition to his employment and TAXPAYER-2 remained the Utah registered agent for the business even during the time the Taxpayers were residing in STATE-1.

Under Subsection 59-10-136(2) there is a rebuttable presumption that an individual is considered to have domicile in Utah if: (a) the individual or the individual's spouse claims a residential exemption for that individual's or individual's spouse's primary residence; or (b) the individual or the individual's spouse is registered to vote in Utah. These are rebuttable presumptions and the Taxpayers did not present information sufficient to rebut them. A taxpayer is domiciled in Utah if they meet and fail to rebut either of these provisions separately. Reviewing the information submitted by the Taxpayers and the applicable law, the Division is correct that the Taxpayers remained domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) for the

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<sup>3</sup> Respondent's Exhibit 6, pg. 4.

<sup>4</sup> Respondent's Exhibit 9, pg. 4.

entire audit period because they remained registered to vote in Utah, did not register to vote in STATE-1 and did not provide information that would rebut the presumption of Utah domicile set out in that subsection. In the alternative, they failed to meet the burden of proof to establish that they had a tenant in their Utah residence. They received the primary residential exemption for their Utah residence and because they had made conflicting statements about staying in their Utah residence and provided little evidence to establish that they had a tenant in that residence, they have not rebutted the presumption in Subsection 59-10-136(2)(a). The Taxpayers have the burden of proof in this proceeding.<sup>5</sup> However, the Commission need only make a finding of domicile under either provision of Subsection (2) to find the Taxpayers domiciled in Utah.

In prior decisions, other taxpayers have argued that they did not have knowledge of the provisions of the law regarding the rebuttable presumptions at Utah Code Subsection 59-10-136(2) and the Tax Commission has concluded that ignorance of the law is not sufficient to abate the tax or rebut these presumptions.<sup>6</sup> Because both Taxpayers were domiciled in Utah for all of 2014, they were Utah resident individuals and subject to taxation on all of their income, consistent with the Division's audit.

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

Jane Phan  
Administrative Law Judge

#### DECISION AND ORDER

Based on the foregoing, the Utah State Tax Commission finds that both Taxpayers were domiciled in Utah for all of 2014 and upholds the Utah individual income tax audit deficiency of tax and the interest accrued thereon. 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

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<sup>5</sup> See Utah Code Ann. §59-1-1417.

<sup>6</sup> See *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30* (9/2/2015); *Initial Hearing Orders, Appeal No. 15-1154* (2/1/16); *Appeal No. 16-117* (1/18/17); and *Appeal No. 16-792* (8/16/2017).

Appeal No. 18-88

case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission  
Appeals Division  
210 North 1950 West  
Salt Lake City, Utah 84134

or emailed to:  
taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

John L. Valentine  
Commission Chair

Michael J. Cragun  
Commissioner

Rebecca L. Rockwell  
Commissioner

Lawrence C. Walters  
Commissioner

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