

18-893
TAX TYPE: INCOME TAX
TAX YEAR: 2014
DATE SIGNED: 07/12/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
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. 18-893 Account No. ##### Tax Type: Income Tax Tax Year: 2014 Judge: Phan
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on May 2, 2019 for an Initial Hearing in accordance with Utah Code §59-1-502.5. The matter before the Commission was Petitioners' ("Taxpayers") appeal filed under Utah Code §59-1-501 of a Utah individual income tax audit deficiency for tax year 2014. Respondent ("Division") had issued the Notice of Deficiency and Audit Change on April 2, 2018, on the basis that the Taxpayers were Utah resident individuals for all of 2014. No penalties were issued with the audit. The amount of additional tax and interest due as of the date the Notice of Deficiency was issued is as follows:

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

¹ Interest continues to accrue on the unpaid balance until paid in full.

APPLICABLE LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission has been granted the discretion to waive penalties and interest. Utah Code 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 penalties and 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 pursuant to Utah Code Sec. 59-10-136. 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, subject to a credit for the individual income taxes paid to another state. “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 the Taxpayers were both domiciled in Utah for all of 2014. What constitutes being “domiciled” in Utah is specifically set out at Utah Code Sec. 59-10-136.

The Taxpayer, TAXPAYER-1, states that she was only a part-year Utah resident individual in 2014, that she had moved back to STATE-1 in June 2014, although the Taxpayers acknowledged that TAXPAYER-2 remained in Utah for all of 2014. They had filed a 2014 married filing joint federal return and a 2014 part-year Utah return with that same filing status. On the part-year Utah return they had claimed as Utah source income \$\$\$\$\$ in wages and a farm loss of \$\$\$\$\$ in their Column A Utah income. However, they did not claim as Utah income an additional \$\$\$\$\$ in wage income, \$\$\$\$\$ in IRA distributions, \$\$\$\$\$ in rental or \$\$\$\$\$ in “Other” income.²

TAXPAYER-1 explained at the hearing that she was born and raised in STATE-1 and had lived in STATE-1 most of her adult life, except for the 3.5 year period when she had moved to Utah with her husband when they had decided to try living on recreational property that they owned in CITY, Utah. She explained that at some point he had thought it would be fun to live off the grid on the high desert land that they owned. They lived in a 28-foot long travel trailer on their property completely off the electric grid and with no water except for what they hauled in. She explained that during this time she had kept and maintained her STATE-1 residence, she had left their furniture and personal belongings at the STATE-1 residence, and they never rented out that residence. They also had left a vehicle in STATE-1, which was registered in that state. TAXPAYER-1 would return to STATE-1 several times a year and stated that she never considered herself a resident of Utah or that this was a permanent move to Utah. She

² At the hearing the Taxpayers did not provide evidence to establish that the income they had claimed on their return as non-Utah income was actually earned by TAXPAYER-1 after she had moved to STATE-1, or otherwise properly sourced as non-Utah income. However, it was the Division’s position that because both Taxpayers were domiciled in Utah for all of 2014, they were subject to Utah individual income tax on all of their federal adjusted gross income regardless of where it was earned or received. Had the Taxpayers been audited as part-year residents, more information would be needed from the Taxpayers to establish that the income they claimed as non-Utah income was properly claimed in that manner.

acknowledged that both she and her husband had obtained Utah Driver Licenses and were employed in Utah in order to survive.

The Division points out that the Taxpayers also registered to vote and voted in Utah, providing voter registration records. TAXPAYER-1 had registered to vote in Utah in March 2011 and had voted in Utah elections in 2012, 2013 and by mail in June 2014. She was removed from voter registration in 2015 and the notation on the voter registration record was that she had “Moved out of County.” TAXPAYER-2 had registered to vote in Utah in 2008. He had voted in Utah elections in 2008, 2010, 2012, 2013, and both in June and November 2014 elections. He was also removed from voter registration in 2015 because he had moved from the County.

TAXPAYER-1 explained that it was very difficult to earn a living in CITY County and their wages were not high enough to keep up with prices in the ‘Basin’ at that time. She started looking for work back where their house was in STATE-1 in 2013 and did find a job beginning in June 2014. She moved back to STATE-1 at that time. TAXPAYER-2 remained in Utah where he was employed, but moved to STATE-1 in 2015, after being laid off from his Utah employment.

The Division did not dispute that TAXPAYER-1 had moved to STATE-1 in June 2014 or that she was employed in that state. It was the Division’s position that despite this, she was still domiciled in Utah for all of 2014 based on Utah Code Subsections 59-10-136(2), (3) and (5). Utah Code Subsection 59-10-136(2)(b) provides that there is a rebuttable presumption that an individual is considered to have domicile in Utah if “the individual or the individual's spouse is registered to vote in Utah.” TAXPAYER-1 had been registered to vote in Utah and had voted in Utah in 2014, just prior to her move. She remained registered to vote in Utah until 2015. TAXPAYER-2 was registered in Utah and voted in the June and November 2014 elections in Utah. The Taxpayers did not provide information that would rebut this presumption. It was clear they were registered and they voted in Utah in 2014. Neither taxpayer registered to vote in the new state or canceled their Utah registration during the tax year at issue in this appeal.

The Division points out that if the Taxpayers were not domiciled in Utah under Utah Code Subsection 59-10-136(2) then they would look to Utah Code Subsection 59-10-136(3) and based on a weighing of those factors, TAXPAYER-2 would also have been domiciled in Utah for all of 2014. They point out that he was living in Utah, working in Utah, receiving his mail in Utah, had a Utah Driver License as well as the Utah voter registration. The Division points to Utah Code Subsection 59-10-136(5) which indicates that for taxpayers who file married filing joint returns and are not legally separated or divorced, if one spouse is domiciled in Utah, the other spouse is considered domiciled in Utah. Taxpayers would be given a credit for individual

income taxes paid to another state, but in this case, STATE-1 does not have an individual income tax, so TAXPAYER-1 did not pay income tax to STATE-1 and there is no credit available.

TAXPAYER-1 explained that she was unaware of the Utah domicile provisions and pointed out that had she been aware of the law she would have canceled her Utah voter registration when she moved and they would have filed with married filing separate status on their returns. She expressed that the Utah statutory provisions were unfair to her because she had left Utah and was working in the state she considered her home, STATE-1, but Utah was still taxing the income she earned in STATE-1. She expressed the frustration that Utah was taking advantage of people “to get tax money wherever they can get tax money by making this law.”

After reviewing the facts and the applicable Utah law in this appeal, the Division’s audit should be upheld as both Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(2)(b). The Subsection 59-10-136(2) provisions are rebuttable presumptions. Regarding the voter registration, the Taxpayers have not provided evidence to rebut that presumption. They did not cancel their registration to vote in Utah or attempt to register to vote in STATE-1 until 2015. The Taxpayers remained domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) for the 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. The Taxpayers have the burden of proof in this proceeding.³ The Commission need only make a finding of domicile under one of the provisions of Subsection (2) to find the Taxpayers domiciled in Utah and because the Commission finds both Taxpayers were domiciled under Subsection (2)(b) for all of tax year 2014, the Commission does not need to further analyze the application of any other subsection of Section 59-10-136. 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.⁴ Because the Taxpayers were both domiciled in Utah for all of 2014, they were Utah resident individuals and subject to Utah individual income tax on all of their income regardless of where it was earned or received.

There is no basis for waiver of interest. Utah Admin. Rule R861-1A-42(2) provides that interest is waived only if the taxpayer proves that the Tax Commission gave the taxpayer

³ See Utah Code Ann. §59-1-1417.

⁴ See *Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30* (9/2/2015); *Initial Hearing Orders, Appeal No. 15-1154* (2/1/2016); *Appeal No. 16-117* (1/18/2017); *Appeal No. 16-792* (8/16/2017); *Appeal No. 17-609* (1/26/2018); and *18-88* (3/22/2019).

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 the 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 for that 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.

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.