19-1711
TAX TYPE: INCOME TAX
TAX YEARS: 2012, 2013 and 2014
DATE SIGNED: 1/20/2021
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 19-1711 Account No. #### Tax Type: Income Tax Tax Years: 2012, 2013 and 2014 Judge: Phan

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

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA
TAXPAYER
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing conducted by teleconference on September 28, 2020, 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. Petitioner ("Taxpayer") had filed an appeal of audit deficiencies issued by Respondent ("Division") of Utah individual income tax and interest for tax years 2012 through 2014. The Division issued the Notices of Deficiency and Estimated Income Tax on July 25, 2019 for each tax year at issue in

this appeal.[1] The Taxpayer timely appealed the notices under Utah Code §59-1-501 and the matter eventually proceeded to this Formal Hearing.

2. The amount of tax, penalties and the accrued interest as listed on the Notices of Deficiency for the tax years at issue are as follows:[2]

Year	Tax	Penalties	Interest	Total as of Notice Date[3]
2012	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$
2014	$$$$	$$$$$	$$$$$	$$$$$

3. The Division issued the audits on the basis that the Taxpayer was a Utah resident individual for income tax purposes for all of tax years 2012 and 2013. The Division recognized that the Taxpayer moved to STATE-1 at the end of 2014 and for that year calculated the deficiency on the basis that the Taxpayer was a Utah resident individual from January 1, 2014 through November 30, 2014.

4. The Taxpayer claimed to be a resident of STATE-1 for all the audit years. The Taxpayer had filed an STATE-1 resident return for each of the audit years. The Division has allowed a credit for the individual income taxes that the Taxpayer paid to STATE-1 as claimed on his STATE-1 returns for each audit year.

5. The Taxpayer was not married during the years 2012 through 2014 and filed his federal return with the filing status of single. Therefore, the Taxpayer did not have a spouse during the audit years for purposes of Utah Code Subsection 59-10-136(5).

6. The Taxpayer did not claim any dependents on his federal returns for the audit years at issue.

7. During the audit years, the Taxpayer was not a resident student enrolled in a Utah institution of higher education.

8. The Taxpayer testified that he had lived in Utah many years and owned a home in the NAME OF AREA of CITY-1, Utah. After he had retired, he decided he would move to STATE-1 to avoid both the cold and snow and as well as poor winter air quality in CITY-1. From November 2011 until May of 2012, he rented a residence in the CITY-2 area and he testified at the hearing that he stayed in CITY-2 about six months in 2012 and in Utah about six months that year. When in Utah, he stayed in the residence he owned in Utah. He testified that he had left all of his furniture and furnishing at his Utah

1 Respondent's Exhibit 2.
2 *Id.*
3 Total as of the date listed on the Notices of Deficiency. Interest continues to accrue on the unpaid balance.

residence and his possessions filled the house, which was ##### square feet. He bought new furnishings to furnish his rental in CITY-2. He stated that he did travel back to Utah to maintain his Utah residence and yard and spent the summer months in Utah in 2012. He testified that it was the same in 2013 and 2014, that he would spend most of the summers in Utah staying in his Utah residence. He testified he generally was spending October through May in STATE-1.

9. The Taxpayer did testify that he had listed his Utah residence for sale at some point in 2012, but it did not sell. Eventually it was relisted again, he stated possibly in 2013, and he sold it in MONTH 2014. At the hearing, the Taxpayer was not able to provide the dates of when the residence was listed and for how long. He did not provide the exact date of the sale, but also testified that he was still moving out of the residence in December, after the sale had closed sometime in MONTH. In the audit, the Division had concluded the Taxpayer was a Utah resident until DATE, 2014. The Taxpayer did not provide sufficient evidence to prove he had sold his Utah residence prior to this date and does have the burden of proof in this matter. The Division did not argue at the hearing that this date should have been extended through December.

10. The Taxpayer's Utah residence received the primary residential property tax exemption for the tax years 2012 through 2014.[4] The Division pointed out at the hearing that because the Taxpayer was receiving this exemption he had saved about $$$$$ in property tax each year.

11. The Taxpayer did not lease his Utah residence to a tenant during the period from 2012 to 2014. He continued to maintain the residence for his own personal use and to stay in the residence when he was in Utah. The Taxpayer never left the residence vacant and listed for sale. Although it was listed for sale twice during the audit years, he still maintained the residence for his own use, left all of his furniture and possessions in the residence and stayed in the residence from time to time.

12. The Taxpayer did not purchase a residence in STATE-1 until 2016. He testified that he had rented three different apartments in STATE-1 for the years 2012 through 2014. He said his first apartment was not in an area that was safe and his residence was robbed a couple of times. He rented this first apartment from November 2011 to May 2012. After that, he returned to Utah and had no residence in STATE-1 until he rented a different place in STATE-1, which he leased from November 2012 until September 2014. In September 2014, he moved to a different rental in STATE-1 just down the street.

13. The Taxpayer testified that he did continue to have his financial mail sent to his Utah address during the audit years because he thought it was safer and he did not have a permanent address yet in STATE-1. He also used his Utah address on his STATE-1 resident tax returns for 2012 and 2013. He used an STATE-1 address on his 2014 STATE-1 return. The Taxpayer also kept his Utah Driver

4 Respondent's Exhibit 5.

License and continued to register his motor vehicle in Utah through 2014. After the audit period, in 2015, he did obtain a STATE-1 Driver License and registered his vehicle in STATE-1.

14. The Taxpayer did not file Utah individual income tax returns for any of the years at issue.

15. The Taxpayer testified at the hearing that he could not recall if he had registered to vote in STATE-1 during the audit period. He did not provide a copy of his STATE-1 voter registration records. The Division provided a copy of the Taxpayer's Utah voter registration records and they showed that the Taxpayer was registered to vote in Utah from 2012 through 2014 and had, in fact, voted in person in Utah in both 2012 and 2013 November elections.[5] This record showed that he was made removable on DATE.

16. The Taxpayer testified that when in Utah he attended a church in Utah and when in STATE-1 he attended a church in STATE-1. The Taxpayer did not testify that he belonged to any clubs or similar organizations in either state. The Taxpayer testified that he did spend a couple months each year in FOREIGN COUNTRY, which was generally in the spring or fall.

17. The Taxpayer testified that his Utah residence was ##### square feet and he did not have enough space in the apartments where he resided in STATE-1 from 2012 through 2014 for all of the possessions in his Utah residence.

18. During the audit years, the Taxpayer did receive medical treatment in STATE-1. The Taxpayer also used a STATE-1 CPA. The CPA attended the Formal Hearing and indicated that because the Taxpayer had told him he was in the process of moving to STATE-1 permanently and was spending more than half the year in STATE-1, based on STATE-1 law and the laws in other states that he was familiar with, the Taxpayer would be considered domiciled in STATE-1. He also stated that he was unaware of the Utah law change that became effective for tax year 2012.

19. The Taxpayer testified that he is living on a fixed income and if he had to pay the audits, it would cause him severe financial hardship issues.

20. The Taxpayer is presumed domiciled in Utah from January 1, 2012 through November 30, 2014 under Utah Code Subsection 59-10-136(2)(a) because was receiving the primary residential property tax exemption on the residence that he owned in Utah. The Division had set the date of his Utah domicile through November 30, 2014 in its audit and the Taxpayer has not provided sufficient evidence to establish that he sold his Utah residence sooner. In addition, although the Taxpayer did not stay at the Utah residence full time, he did reside in his Utah residence several months each year and maintained the residence for his own personal use, keeping his furniture and possessions at the residence until he sold the residence in November 2014 and moved from the residence in December 2014. The Taxpayer's Utah residence was never leased to a tenant and although it was listed for sale, it was never left vacant while it was listed for sale, with the Taxpayer staying in the residence from time to time. The Taxpayer did not

5 Respondent's Exhibit 3.

assert that he had contacted the County and told the County his Utah residence no longer qualified for the primary residential exemption. The Taxpayer had not filed Utah returns for the tax years at issue, so he did not check the box on the Utah return indicating that he no longer qualified for the exemption on a Utah residence.

21. In addition, the Taxpayer is also presumed domiciled in Utah from January 1, 2012 through the end of 2014 under Utah Code Subsection 59-10-136(2)(b) because he was registered to vote in Utah. The Division did not audit the Taxpayer for the period after November 30, 2014 and had concluded that the Taxpayer did not have Utah domicile after that date. The Taxpayer did not argue or provide any information to indicate that he had removed or tried to remove his name from the Utah voter register. He did vote in Utah in 2012 and 2013. He did not provide his STATE-1 voter registration record to establish that he registered to vote in STATE-1 during the audit period.

APPLICABLE LAW

Utah Code Ann. §59-10-104(1) (2016)[6] imposes a tax as follows:

"a tax is imposed on the state taxable income of a resident individual[.]"

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.
> . . . .

Utah Code §59-10-136 was adopted effective beginning with tax year 2012 regarding what constitutes domicile in the State of Utah. This was a substantial change in which Utah enacted a statute that sets out a hierarchy of very specific factors that constitute Utah domicile. This legislation indicates a clear change from the pre-2012 factors for determining domicile in Utah. After the 2012 law had been in effect for a number of years, the Utah Legislature made some limited, specific revisions to the law effective beginning with tax year 2018, but the revisions were not made retrospective to the tax years at issue in this appeal. Utah Code §59-10-136 as in effect for the 2012 through 2014 tax years 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

6 All substantive law citations are to the 2014 version of Utah law. The substantive law remained the same during the tax years at issue.

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.

Utah provides for property tax assessment for all tangible property located within Utah, but it also allows for a residential exemption on a property that is used as an individual's primary residence at Utah Code Sec. 59-2-103 as follows:

(1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.

. . .

In Utah Code §59-10-136, two subsections require the Commission to determine whether the property for which an individual or an individual's spouse claims a residential exemption is that individual's or individual spouse's "primary residence."[7] To assist in determining whether a property is considered the "primary residence" of the individual or individual's spouse who claimed the exemption, the Legislature enacted new property tax provisions at the same time it enacted the new domicile law in Section 59-10-136. Specifically, to assist in the determination of Utah income tax domicile of a property owner, Utah Code §59-2-103.5(4) provides, as follows:[8]

> (4) Except as provided in Subsection (5), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, the property owner shall:
>
> (a) file a written statement with the county board of equalization of the county in which the property is located:
>
> (i) on a form provided by the county board of equalization; and
>
> (ii) notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence; and
>
> (b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.

Utah Code Ann. §20A-2-305 provides for removal of a voter's name from the official voter registry, 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;

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7 *See* Subsections 59-10-136(2)(a) and (4)(a)(ii)(D). It is noted that the term "primary residence" is also found in Subsection 59-10-136(6). However, Subsection 59-10-136(6) concerns the "primary residence" of a tenant, not the "primary residence" of the individual or individual's spouse who owns the property for which the residential exemption was claimed. Accordingly, the guidance provided in Subsection 59-2-103.5(4) does not apply when determining the "primary residence" of a tenant.

8 During the 2012 through 2014 tax years at issue, Subsection 59-2-103.5(4) was renumbered and amended. The amendments to Subsection 59-2-103.5(4) during the tax years at issue were nonsubstantive. In SB 13 (2019), the Utah Legislature also amended Section 59-2-103.5 effective for tax years beginning on or after January 1, 2018. Again, however, the SB 13 amendments have no applicability to the tax years at issue in this appeal.

(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)[9] 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?

9 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, this deletion does not affect the outcome of this decision.

> _____
> Street City County State Zip
> If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:
> - you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or
> - if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.
>
> _____
> 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 §59-1-401(14) 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."

Utah Admin. Rule R861-1A-42 ("Rule 42") (2019) provides guidance concerning the waiver of penalties and interest that is authorized under Section 59-1-401(14), as follows in pertinent part:

. . . .

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

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing…

(b) Wrong Filing Place…

(c) Death or Serious Illness…

(d) Unavoidable Absence…

(e) Disaster Relief…

(f) Reliance on Erroneous Tax Commission Information…

(g) Tax Commission Office Visit…

(h) Unobtainable Records…

(i) Reliance on Competent Tax Advisor: The taxpayer:

(i) furnishes all necessary and relevant information to a competent tax advisor, and the tax advisor:

(A) incorrectly advises the taxpayer;

(B) fails to timely file a return on behalf of the taxpayer; or

(C) fails to make a payment on behalf of the taxpayer; and

(ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and diligence in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error…

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(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.

Utah Code §59-1-1417 provides guidance concerning which party has the burden of proof and on statutory construction, as follows in relevant part:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner . . .
> (2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee or charge shall:
> (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer, and
> (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

CONCLUSIONS OF LAW

1. The issue in this appeal is whether the Taxpayer was a "resident individual" in the State of Utah for the purposes of Utah Code Sec. 59-10-104, for the audit period from January 1, 2012 through November 30, 2014. For the purposes of Utah individual income tax during the audit period, a "resident individual" was 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 (emphasis added)." It was the Division's position, that the Taxpayer was a Utah "resident individual" for the whole audit period under Subsection 59-10-103(1)(q)(i)(A), because he was domiciled in Utah during this period.

2. Utah Code Sec. 59-10-136 specifically addresses what constitutes having "domicile" in Utah.

3. For all of the tax years at issue in this appeal, the Taxpayer was single and did not have a spouse for purposes of Utah Code Subsection 59-10-136(5).

4. The Taxpayer did not claim that he met, nor did he meet the exception to domicile provided at Utah Code Subsection 59-10-136(4) during the audit period. Under that subsection there is an exception if the individual is absent from Utah for at least 761 consecutive days and if other factors have been met. He did not meet this requirement as he was in Utah for more than 30 days of each audit year.

5. There was no evidence submitted at the hearing that indicated the Taxpayer was domiciled in Utah under Subsection 59-10-136(1). Subsection 59-10-136(1)(a)(i) provides that an individual is domiciled in Utah if "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." Subsection 59-10-136(1)(a)(ii) provides that an individual is domiciled in Utah if "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 . . ."

6. However, the Taxpayer is presumed domiciled in Utah under the provisions of Subsection 59-10-136(2). Subsection 59-10-136(2) provides, "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 (emphasis added). . . . " If an individual meets any one of these three provisions, the individual is presumed domiciled in Utah and if not rebutted, the individual is considered to be domiciled in this state. The Division argued that the Taxpayer was domiciled in Utah for all of the audit period under Subsection 59-10-136(2)(a) and (2)(b) because he owned a residence in Utah that received the residential property tax exemption and he was registered to vote in Utah. There was no assertion from the Division and no factual information that indicated the Taxpayer was domiciled in Utah under Subsection 136(2)(c) because he had not filed a Utah return during any of the audit years.

7. Utah Code Subsection 59-10-136(2)(a) 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 claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's *or* individual's spouse's primary residence." For this presumption to arise, two elements must exist. First, the taxpayer or the taxpayer's spouse must have claimed the residential exemption on their Utah home. Second, the Utah home on which the taxpayer claimed the residential exemption must be considered the "primary residence" of the taxpayer in accordance with the guidance provided in Subsection 59-2-103.5(4).

8. As to the first element, the Taxpayer is considered to have claimed the residential exemption on his Utah home for the period at issue because he was receiving that exemption for each audit year. Subsection 59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Subsection 59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. The Taxpayer's residence is located in COUNTY which is in the majority of counties in that it does not require an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county adds the second step of requiring formal application in order to receive the benefit of the exemption. The claim persists until

the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner). Therefore, simply owning a residential property in Utah generally asserts an enduring claim to the residential exemption.[10]

9. For purposes of determining if the second element of whether the residence is the individual's or the individual's spouse's primary residence, when Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; *and* 2) declare on the property owner's Utah individual income tax return for the taxable year that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence. The Taxpayer did not take either of these steps. Under Subsection 59-10-136(2)(a), the Taxpayer is presumed domiciled in Utah for the entire audit period.

10. The Subsection 59-10-136(2) factors are rebuttable presumptions. Because Subsection 59-10-136(2) involves rebuttable presumptions, the Legislature clearly intended not only for there to be circumstances where an individual whose actions give rise to these presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to these presumption *is not* considered to have domicile in Utah. However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2) presumptions. As a result, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut these presumptions.

11. The Commission has considered what rebuts the Subsection 59-10-136(2)(a) presumption of domicile in numerous decisions and there was no information presented by the Taxpayer in this matter that supported rebuttal of this presumption. The Taxpayer had maintained his Utah residence for his own personal use, he stayed in the residence for several months every year, he left his own possessions in the residence and it was never leased to a tenant. Although he had listed the residence for sale, the residence was never left vacant and listed for sale. One factor the Commission has found to rebut the Subsection 136(2)(a) presumption was where an individual whose home was receiving the residential exemption disclosed on their Utah income tax return that the home no longer qualified for the exemption (even if the individual did not contact the county directly).[11] The Taxpayer did not take this step. In addition, the

10 In a county that requires an application, receiving the residential exemption without filing an application does not constitute a claim to the exemption.

11 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-812* (3/13/2018). These and other prior Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decision.

Commission has previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual has asked a county to remove the residential exemption, and the county failed to implement the individual's request.[12] The Taxpayer did not take this step. Other factors the Tax Commission has found to rebut this presumption were that it was rebutted for the period that a home was listed for sale, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for sale)[13] and that it could be rebutted for that period that a home was listed for rent, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for rent) and if the home would continue to qualify for the residential exemption by being rented to tenants who would use the home as the tenants' primary residence (i.e., not being rented to tenants who would not use the home as their primary residence, such as a short-term rental).[14] The Taxpayer has not demonstrated any of these types of factors to rebut the Subsection 59-10-136(2)(a) presumption. As the Commission has noted in previous decisions, the Commission may recognize additional grounds for rebuttal in future cases.

12. The Commission has previously found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an individual had never heard of the residential exemption or did not know that they were receiving the residential exemption.[15] Many individuals have argued ignorance of the law as a basis to rebut a Subsection 59-10-136(2) presumption and the Tax Commission has concluded that ignorance of the law is not a sufficient basis to rebut the presumptions or abate the audit deficiency. See *Utah State Tax Commission 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); *Appeal No. 16-792* (8/16/2017); *Appeal No. 17-237* (9/18/17); *Appeal No. 17-609* (1/26/2018); and *Appeal No. 18-88* (3/22/2019). In another appeal, a taxpayer had paid to the county the difference between the reduced property tax they had received due to claiming the primary residential property tax exemption and the tax that would have been charged had they not claimed that exemption. The Commission found that retroactively removing the primary residential exemption and paying the difference in property tax after an audit has commenced is insufficient to rebut the presumption of domicile.[16]

12 See also *Initial Hearing Order, Appeal No. 19-1218* (7/10/2020) in which a taxpayer had indicated on the application for residential exemption that the property would only be the taxpayer's primary residence for a period of two years and the County granted the exemption based on the application, then never removed the exemption after the two year period had expired.

13 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1332* (6/27/2016). In another decision, the Commission found that the Subsection 59-10-136(2)(a) presumption would be rebutted for that period that a home was under its initial construction (not a remodel) and until it received a certificate of occupancy, if the home would be used as a primary residence upon its completion. *See Appeal No. 15-1582*.

14 S*ee Utah State Tax Commission Initial Hearing Order, Appeal No. 17-758* (1/26/2018).

15 *See, e.g., Utah State Tax Commission Initial Hearing Order, Appeal No. 15-1582*.

16 *See Appeal Nos. 15-1582 and 17-1787.*

13. Based on the facts and the applicable law, the Taxpayer is domiciled in Utah pursuant to Utah Code Subsection 59-10-136(2)(a) because he has not rebutted that presumption for the entire audit period. Once he sold his Utah residence, he was no longer presumed domiciled in Utah but he did not establish that this occurred prior to November 30, 2014 and he had the burden of proof on this point pursuant to Utah Code Sec. 59-1-1417.

14. Under Subsection 59-10-136(2), if a taxpayer meets the criteria of any one of Subsections 59-10-136(2)(a), (2)(b) or (2)(c) the taxpayer is presumed domiciled in Utah and if that presumption is not rebutted they are considered domiciled in Utah. Although the Taxpayer is considered domiciled in Utah for the entire audit period pursuant to Subsection (2)(a), he is also presumed domiciled in Utah under Subsection (2)(b) because he was registered to vote in Utah. Subsection 136(2)(b), as in effect for tax years 2012 through 2014, provided an individual is domiciled in Utah if "the individual or the individual's spouse is registered to vote in this state . . . ." The Taxpayer was registered to vote in Utah for all of the audit period and he had not requested removal from voter registration records at any point during the audit period.

15. The Tax Commission has considered what does rebut and what does not rebut the Subsection 59-10-136(2)(b) presumption of Utah domicile based on voter registration in many appeal decisions. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019). That decision noted that one of the factors found to rebut the presumption includes a showing that the individual registered to vote in the state to which they moved relatively soon after moving there. In this appeal, the Taxpayer claimed to have moved to STATE-1 in 2012, however he has not established that he registered to vote in STATE-1. The Commission has also found that the Subsection 59-10-136(2)(b) presumption can be rebutted if the individual who is registered to vote in Utah requested for their name to be removed from the Utah voter registry and the local county clerk or other official who received the request did not remove the individual's name from the registry. The Commission found the presumption could be rebutted from the date that Utah voting laws provide for an individual's name to be removed from the Utah voter registry and a local county clerk does not immediately remove their name from the registry. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019). There was no indication that this had occurred. In this appeal, the Taxpayer had voted in Utah in both 2012 and 2013 elections. He did not vote in 2014. The Commission, however, has found that an individual cannot rebut the Subsection 59-10-136(2)(b) presumption by showing that they did not actually vote in Utah. The Commission has reached this decision, at least in part, because the Utah Legislature elected to use voting registration, not actual voting, as the criterion that could trigger domicile under the version of Subsection 59-10-136(2)(b) that applies to the tax years at issue in this appeal. As a result, not voting in 2014 is insufficient to rebut

the Subsection 59-10-136(2)(b) presumption. The Taxpayer has not shown factors to rebut the presumption of domicile that arises from being registered to vote in Utah. Therefore, in addition to being domiciled in Utah pursuant to Utah Code Subsection 59-10-136(2)(a), he is considered domiciled in Utah for the entire audit period pursuant to Utah Code Subsection 59-10-136(2)(b).

16. 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). Subsection 59-10-136(3), however, is applicable only if the requirements of Subsection (1) or (2) are not met. Because the Commission has already found that the Taxpayer is considered to be domiciled in Utah for all of the audit period under Subsections 59-10-136(2)(a) and (2)(b), Subsection 59-10-136(3) has no applicability to this case.

17. The Taxpayer's representative points out that the Utah domicile law, adopted effective beginning in 2012, is not consistent with the domicile law in other states. Although Utah's prior domicile provisions were more similar to the traditional common law factors for determining domicile, the Utah Legislature abandoned the traditional notions of domicile when the Legislature adopted Utah Code Sec. 59-10-136 effective beginning in tax year 2012. Instead of the traditional domicile notions, the Legislature set out a very specific hierarchy of factors to consider, clearly giving more weight to certain factors. In *Appeal No. 17-1624, Conclusions of Law No. 18*, the Commission explained:

> Prior to Section 59-10-136 becoming effective for tax year 2012, the three factors that the Utah Legislature described and set forth as rebuttable presumptions in Subsection 59-10-136(2) (as well as the two education factors described in Subsection 59-10-136(1)) had been among the numerous and non-exhaustive list of factors that the Commission had used to determine income tax domicile for years prior to 2012 (as set forth in Rule 2 [R865-9I-2]and/or Rule 52[R884-24P-52]). In Section 59-10-136, however, the Utah Legislature established a hierarchy of specific factors described in Subsections 59-10-136(1) and (2) to establish income tax domicile, with the education factors creating an absolute indication of domicile and the three Subsection 59-10-136(2) factors creating rebuttable presumptions of domicile. Thus, each of the factors described in Subsections 59-10-136(1) and (2) were given greater import than they had received in establishing income tax domicile for years prior to 2012 (when each of these factors was merely one of the many factors with which domicile was determined).[17]

18. The Taxpayer primarily seemed to be arguing at the hearing that the Utah domicile law was unfair or bad tax policy as well as making an argument on financial hardship. The Tax Commission does not have discretion to consider financial hardship in the course of the audit appeal. The purpose of

17 Almost all of the factors that were given greater import in Subsections 59-10-136(1) and (2) are based on an individual or individual's spouse availing themselves of certain benefits of being a resident of Utah, such as having their dependent attend a Utah public school, being enrolled as a resident student at a Utah institution of higher education, receiving a property tax benefit in the form of a residential exemption, or being able to register to vote in Utah.

this appeal is determine the correct amount of the tax, penalty and interest. After that is set, the Taxpayer may contact the Taxpayer Services Division at 801 297-7703 to discuss financial hardship or set up an installment plan. While the Commission is tasked with the duty of implementing laws enacted by the Utah Legislature, the Commission is not authorized to amend these laws to achieve what the Taxpayers may consider to be a better tax policy.[18] That is the role of the Legislature.[19]

19. As the Taxpayer was domiciled in Utah for all of January 1, 2012 through November 30, 2014, he was a Utah resident individual. 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 regardless of where it was earned, subject to a credit for the individual income taxes imposed by another state. In this case, the Division has allowed the Taxpayer a credit for the taxes that he paid to STATE-1 for each of the audit years.

20. Penalties for failure to timely file a tax return and for failure to timely pay the tax when due, along with the interest that has accrued on the balance were assessed in the audit pursuant to Utah Code Sections 59-1-401 & 59-1-402. Utah Code Subsection 59-1-401(14) does provide that the Commission may waive, reduce or compromise penalties and interest upon a showing of reasonable cause. Utah Admin. Rule R861-1A-42 sets out what constitutes reasonable cause for waiver of penalties, and separately what constitutes reasonable cause for waiver of interest. In this appeal, the Division did not object to waiver of all the penalties assessed. The Tax Commission has generally waived penalties where the issue is domicile based on the complicated and fact-specific nature of the law and equitable provisions for waiver set out at Utah Admin. Rule R861-1A-42(4). For these reasons, the Tax Commission finds there is reasonable cause to waive all of the audit penalties.

21. 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 Taxpayer did not assert a basis for waiver of interest.

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18 Utah Code Sec. 59-10-136 was adopted effective beginning with tax year 2012 and has been applied uniformly since that time and for the tax years at issue in this appeal. There are now currently appeals of Tax Commission decisions in other cases involving Utah Code Sec. 59-10-136 pending before the courts that may possibly provide guidance on the interpretation of Utah's domicile law. However, no decisions have been issued by the courts on these appeals at this time.

19 The Legislature has made some amendments to Section 59-10-136. For example, the 2019 Legislature amended Section 59-10-136 in SB 13. Among the SB 13 changes, the Legislature amended the Subsection 59-10-136(2)(b) rebuttable presumption by changing the event that would trigger this presumption from being registered to vote in Utah to actual voting in Utah during the tax year. The Legislature, however, elected for the SB 13 amendments to take effect beginning with tax year 2018, purposefully electing not to apply the amendments to tax years prior to 2018 (including the tax years at issue in this appeal). While the Commission is tasked with the implementation of Section 59-10-136 and SB 13 changes to this statute, the Commission is not authorized to change the effective date of the bill and apply the SB 13 amendments to the tax years at issue in this appeal.

After review of the evidence submitted by the parties at the hearing and the applicable law, the Taxpayer was domiciled in Utah for all of the audit period from January 1, 2012 through November 30, 2014, and the audit tax and interest should be sustained for the audit period. There is reasonable cause, however, for waiver of all of the audit penalties.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Tax Commission finds that the Taxpayer was domiciled in Utah for all of the audit period from January 1, 2012 through November 30, 2014. The Commission sustains the Division's audit deficiency as to the tax and interest for the audit period. The Tax Commission finds that there is reasonable cause for waiver of all the penalties for the entire audit period. It is so ordered.

DATED this _____day of _____, 2021.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

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.