

APPEAL #: 21-1478

TAX TYPE: INDIVIDUAL INCOME TAX

TAX YEAR: 2013 AND 2014

DATE SIGNED: 5/5/2023

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS,

Petitioners,

v.

INCOME TAX AND EDUCATION DIVISION¹
OF THE UTAH STATE TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION**

Appeal No. 21-1478

Account No: #####

Tax Type: Audit - Individual Income Tax

Tax Years: 2013 - 2014

Judge: Phan

Presiding:

Jennifer N. Fresques, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, Attorney for Petitioner²
TAXPAYER-1

For Respondent: RESPONDENT'S REP-1, Assistant Attorney General
RESPONDENT'S REP-2, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 31, 2023, in accordance with Utah Code §59-1-501 and §63G-4-201 et seq. The hearing was conducted via video conferencing. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

¹ Due to a reorganization at the Tax Commission, the name of the Tax Commission division that was the Respondent in this matter has been changed.

² PETITIONER'S REP-1 clarified at the hearing that he represented TAXPAYER-1 and did not represent TAXPAYER-2. TAXPAYER-2 did not appear at the hearing. The audit was issued jointly against both TAXPAYERS and both Taxpayers are jointly and severally liable for the audit assessment that results from this order.

1. The Petitioners (“Taxpayers”) timely filed an appeal of audit deficiencies issued by the Division (“Respondent”) for the tax years 2013 and 2014. The appeal proceeded through the administrative hearing process to this Formal Hearing.

2. The Division issued its audit against the Taxpayers on the basis that the Taxpayers were Utah resident individuals for all of tax years 2013 and 2014.

3. The Division’s Notices of Audit Deficiency and Estimated Income Tax were issued on DATE. The amount of audit tax, penalties and interest accrued through the notice date for each tax year are as follows:³

<u>Tax</u>	<u>Interest</u> ⁴	<u>Penalties</u>	<u>Total</u>
REDACTED TABLE			

4. The parties to this proceeding entered into a Stipulation of Facts dated DATE, which was received into the Formal Hearing record. The Stipulation pertained to facts and the admissibility as evidence of certain documents. The Stipulation of Facts in their entirety are the following:

a. TAXPAYER-1 did not file a Utah individual income tax return for 2013 and 2014.

b. TAXPAYER-1 and TAXPAYER-2 filed 2013 and 2014 federal income tax returns with a status of married filing jointly and claimed two dependent exemptions. Respondent’s Exhibits 5-9 are IRS records for TAXPAYER-1 and TAXPAYER-2 for 2013 and 2014 and their authenticity and admissibility are stipulated to by the parties.

c. TAXPAYER-1 and TAXPAYER-2 have two children who were over 18 and did not attend public elementary or secondary school during 2013 and 2014.

d. The Division issued non-filing estimate audits for the 2013 and 2014 tax years on DATE. Respondent’s Exhibit 1 and Exhibit 2 are the Notices of Deficiency for the two years and their authenticity and admissibility are stipulated to by the parties.

e. Respondent’s Exhibit 3 is the Domicile Survey provided to the Auditing Division by TAXPAYER-1 and TAXPAYER-2 and the answers therein are correct to the best of his knowledge at the time. The parties stipulate to the authenticity and admissibility of Respondent’s Exhibit 3.

f. The audit changes included all of TAXPAYER-1’s out of state income for the 2013 and 2014 tax years.

g. TAXPAYER-1 timely appealed the Notices of Deficiency.

h. He resided in an apartment located at ADDRESS-1 in 2013 through the middle of 2014.

i. He moved to CITY-1, STATE-1 in the middle of 2014 and resided in an apartment located at ADDRESS-2 for the remainder of 2014 until he moved to Utah on July 15, 2015.

³ Respondent’s Exhibits 1 & 2.

⁴ Pursuant to Utah Code Ann. §59-1-402, interest continues to accrue on any unpaid balance. The Statutory Notices indicated that the interest amounts included in the Statutory Notices were computed to September 10, 2021.

j. TAXPAYER-1 worked at BUSINESS-1 in CITY-2, STATE-1 in 2013 through 2014, and in CITY-1, STATE-1 from the middle of 2014 through MONTH 2015. Plaintiff's Exhibit 2 are TAXPAYER-1's W-2's for 2013 and 2014 and their authenticity and admissibility are stipulated to by the parties.

k. TAXPAYER-1 held a STATE-2 commercial driver license that expired on DATE and a STATE-1 commercial driver license in 2013 and 2014 that showed an address of ADDRESS-1 and expired on DATE.

l. Plaintiff's Exhibit 3 are TAXPAYER-1's driver's licenses and voter card for 2013 and 2014 and their authenticity and admissibility are stipulated to by the parties.

m. TAXPAYER-1 and TAXPAYER-2 were married for all of 2013 and 2014, but did not live together. There was no legal separation. They ultimately divorced after the years in question.

n. TAXPAYER-2 resided in Utah in 2013 and 2014 in a home the Tischmaks jointly owned, located at ADDRESS-3.

o. The property located at ADDRESS-3 received the residential exemption for the 2013 and 2014 tax years. Respondent's Exhibit 4 show that this property received the residential exemption and its authenticity and admissibility are stipulated to by the parties.

5. Information provided by the Taxpayers in the Domicile Survey received in this matter as Respondent's Exhibit 3 and referenced in Finding of Fact #4(e) above as being provided by both Taxpayers is summarized as follows:

a. In answer to whether the "Taxpayer or Taxpayer's spouse or dependent attended a Utah institution of higher education during the audit period," the answer was that Taxpayer TAXPAYER-2 "attended SCHOOL-1 -2 yrs." This answer also indicated that PERSON-1, the son of the Taxpayers, attended SCHOOL-1 and the SCHOOL-2 for two years. The answer also stated, "Both paid resident tuition."

b. During the audit period, TAXPAYER-2 was registered to vote in Utah.

c. During the audit period, the Taxpayers jointly owned their residence in Utah at ADDRESS-3. During the audit period this property was not listed for sale. The Taxpayers did not own any other residential real estate during the audit period and the residence was not occupied by anyone else.

d. During the audit period, TAXPAYER-2 held a Utah Driver License.

e. During the audit period, TAXPAYER-2 resided at the Taxpayers' Utah residence located on ADDRESS-3.

f. TAXPAYERS were co-owners of BUSINESS-1., which had an address of ADDRESS-3, which was the same address as the Taxpayers' residence in Utah.

g. During the audit period, TAXPAYER-2 owned a vehicle that was registered in Utah. TAXPAYER-1 also owned a vehicle that was registered in Utah during the audit period and another vehicle registered in STATE-1 during the audit period.

h. During the audit period, neither Taxpayer was a member of a church, club or other similar organization.

i. During the audit period, TAXPAYER-2 used the ADDRESS-3 address for mail, telephone listings, listings in government publications and other similar correspondence. TAXPAYER-1 used his STATE-1 address for these mailings.

j. During the audit period, the Taxpayers used their ADDRESS-3 address on their federal tax returns.

k. The Taxpayers did not recall if during the audit period, they ever declared residency in any state on a document provided to a court or government entity, other than a federal individual income tax return.

l. The Taxpayers did not recall if during the audit period they failed to obtain any permit or license.

m. The Taxpayers stated that they were not ever absent from Utah for at least 761 consecutive days during a period that encompassed the audit period.

n. The Taxpayers stated that they separated in 2013, and divorced DATE. However as noted in Findings of Fact #4(m), they were not legally separated during the audit period.

6. TAXPAYER-1 attended the hearing and provided testimony. He testified that he and TAXPAYER-2 had separated and were living separately during the audit period and when he returned to Utah to visit family, he would stay at their ADDRESS-3 residence, but would sleep on the fold-out couch in the den. He confirmed there was no legal separation, but they divorced after the audit period. He also explained that he has now been informed their Utah residence was receiving the primary residential exemption, but he testified that he had done nothing to claim the exemption when he purchased the property.

7. TAXPAYER-1 testified that during the audit period all of his employment was in STATE-1. He stated he was living in STATE-1 and working at well sites in STATE-1. He stated he performed cement jobs on well sites and he would drive a truck to the job site where he would spend 15 days on and six days off. He also testified that he was often on call and his days off were not guaranteed, so that he frequently worked on those days as well. He testified that he would generally return to Utah to visit family one time for a couple of days each month. However, he testified there were some months that he did not spend any time in Utah at all.

8. TAXPAYER-2 did not attend the hearing to testify. TAXPAYER-1 testified at the hearing, that despite that they had originally claimed TAXPAYER-2 attended a Utah institution of higher education for two years during the audit period in the answers to the Domicile Survey, and the audit period was only 2013 and 2014, TAXPAYER-1 testified that she may have only attended the first

semester of 2014. However, TAXPAYER-1 was unclear in regards to his understanding about the period of TAXPAYER-2's attendance at SCHOOL-1. The Taxpayers could have provided testimony or an affidavit from TAXPAYER-2, or documentation from SCHOOL-1 that would have established the exact dates that TAXPAYER-2 attended SCHOOL-1. The Taxpayers have the burden of proof in this proceeding. Therefore, the Tax Commission finds that TAXPAYER-2 had been enrolled at a Utah institution of higher education for all of 2013 and 2014 based on the Taxpayers' response to the Domicile Survey and absent adequate evidence to the contrary.

9. For tax years 2013 and 2014, the Taxpayers filed federal individual income tax returns with the filing status of married filing jointly and claimed two dependents on the returns.⁵ The Division's witness testified at the hearing that the Taxpayers did not file a Utah individual income tax return for either of the tax years at issue. The Division provided electronic copies obtained from the Internal Revenue Service of the Taxpayers' married filing joint federal returns for tax years 2013 and 2014 and the federal Wage and Income Transcripts. Most of the Taxpayers' income came from TAXPAYER-1's wages. The Taxpayers' federal adjusted gross income for tax year 2013 had been \$\$\$\$\$ and TAXPAYER-1's wages had been \$\$\$\$\$. In 2014 the Taxpayers' federal adjusted gross income had been \$\$\$\$\$ and TAXPAYER-1's wage income had been \$\$\$\$\$.

10. Late filing and late payment penalties had been assessed with the audit. The Division's representative testified that the Division did not object to waiver of the penalties.

11. The Division submitted the Internal Revenue Service's Wage and Income Transcript for TAXPAYER-2 for tax year 2013.⁶ This indicated a Form 1098-T was issued to TAXPAYER-2 for tax year 2013 from SCHOOL-1. This indicated TAXPAYER-2 had obtained a scholarship or grant from SCHOOL-1 in that year in the amount of \$\$\$\$\$. The document also noted she was a "grtr than or eq to Half Time Student." On the line of the form for "Amounts Billed for Qualified Tuition & Related Expenses" the amount of \$\$\$\$\$ was entered. At the hearing the Taxpayers' representative argued that this showed that TAXPAYER-2 did not actually pay resident tuition because her tuition was paid by a scholarship.⁷ The parties did not provide the Form 1098-T for TAXPAYER-2 for tax year 2014.

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Ann. §59-10-104(1)⁸ as follows:

⁵ Respondent's Exhibit 6 & 8.

⁶ Respondent's Exhibit 5.

⁷ It does not appear that the amount of \$\$\$\$\$ would have covered tuition and fees, based on more than half time credit hours, for more than one semester in 2013. See REDACTED LINK

⁸ All substantive law citations are to the 2013 version of Utah law, unless otherwise indicated.

. . . . 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 §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.

“State taxable income” is defined in Utah Code Ann. §59-10-103(1)(w) as follows:

(w) "Taxable income" or "state taxable income":

(i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:

(A) additions and subtractions required by Section 59-10-114; and

(B) adjustments required by Section 59-10-115;

(ii) for a nonresident individual, is an amount calculated by:

(A) determining the nonresident individual's adjusted gross income for the taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117;

(iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

(iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

Beginning with the 2012 tax year, Utah Code Ann. §59-10-136⁹ was adopted regarding what constitutes domicile in the State of Utah. Utah Code Ann. §59-10-136 as in effect for the 2013 and 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 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:

⁹ Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in Senate Bill 13, 2019 General Session. However, it is the version of Section 59-10-136 in effect during the 2013 and 2014 tax years that is applicable to this appeal.

- (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 Code Ann. §53B-2-101(1)(2013) describes an institution of higher education in this state as follows:

- (1) The following institutions of higher education are bodies politic and corporate with perpetual succession and with all rights, immunities, and franchises necessary to function as such:
 - (a) the University of Utah;
 - (b) Utah State University;
 - (c) Weber State University;
 - (d) Southern Utah University;
 - (e) Snow College;
 - (f) Dixie State College of Utah;¹⁰
 - (g) Utah Valley University;
 - (h) Salt Lake Community College; and
 - (i) the Utah College of Applied Technology.

...

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:

- (1) 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...”

CONCLUSIONS OF LAW

1. The Taxpayers have the burden of proof in this matter under Utah Code Ann. §59-1-1417.

2. For the 2013 and 2014 tax years, Utah Code Ann. §59-10-103(1)(q)(i) provides that a individual is a Utah resident for income tax purposes under either of two scenarios: 1) if the individual is domiciled in Utah (the “domicile test”); or 2) if the individual maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the “183 day test”). The Division contends that both Taxpayers are Utah full-year resident individuals for 2013 and 2014 under the domicile test. The Taxpayers did not contest that TAXPAYER-2 was domiciled in Utah during all of 2013 and 2014, but argued that TAXPAYER-1 should not be

¹⁰ The Commission notes that Utah Code Ann. §53B-2-101(1)(f) was amended in H.B. 61, SCHOOL-3 - University Status, 2013 General Session, to change the name of SCHOOL-4 of Utah to SCHOOL-3, effective DATE. The name change does not impact the outcome of this decision.

considered domiciled in Utah. The Commission must apply the facts to the Utah income tax domicile law applicable for the 2013 and 2014 tax years to determine whether the Taxpayers were considered to be domiciled in Utah for all of 2013 and 2014.

3. The Utah Legislature enacted domicile legislation that became effective beginning with the 2012 tax year, and was in effect for the audit years at issue in this appeal. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. It contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).

4. Utah Code Ann. §59-10-136(5)(a) provides that 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. Subsection (5)(b) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have a spouse if "the individual is legally separated or divorced from the spouse," or the individual and individual's spouse claim married filing separate filing status for purposes of filing their federal individual income tax return for the year in question. In this case, the Taxpayers were married for the years at issue, had filed their federal returns with a married filing jointly filing status and were not "legally separated" during the audit years. Therefore, the Taxpayers are considered to be "spouses" for purposes of Utah Code Ann. §59-10-136. The Taxpayers argued that although not "legally separated" they were estranged during the audit period and lived separately. However, Utah Code Ann. §59-10-136(5)(b) is specific in requiring they be "legally separated," divorced or had filed their federal returns with separate filing status in order to not be considered spouses. The Commission has previously determined that parties are "legally separated" only when there is a court proceeding and court order such as a decree of separate maintenance, or an order approving a petition for temporary separation or other similar order.¹¹ The

¹¹ See *Initial Hearing Order, Appeal No. 19-211, Utah State Tax Commission* (April 21, 2020), pgs. 15-16; *Initial Hearing Order, Appeal No. 19-211, Utah State Tax Commission*, pg. 16; *Initial Hearing Order, Appeal No. 19-211, Utah State Tax Commission* (April 21, 2020); *Initial Hearing Order, Appeal No. 17-514, Utah State Tax Commission* (January 8, 2018); and *Initial Hearing Order, Appeal No. 17-832, Utah State Tax Commission* (October 31, 2018).

parties acknowledged that there was no such proceeding and order, so the Taxpayers were not “legally separated” and they are considered to be each other's spouse for purposes of Utah Code Sec. 59-10-136.

5. Utah Code Ann. §59-10-136(4) provides that an individual is not considered to have domicile in the State of Utah under Subsection §59-10-136(1), (2), or (3) if “the individual and the individual’s spouse are absent from the state for at least 761 consecutive days” and certain other qualifications are met. The Taxpayers conceded that they did not meet the criteria to not be considered to have domicile in Utah under Subsection 136(4).

6. In prior decisions, the Commission has decided not to rely on Subsection (5)(a) of Utah Code Ann. §59-10-136 alone to find that an individual is domiciled in Utah because this subsection only applies if “an individual is considered to have domicile in this state in accordance with this section.” Accordingly, the Commission declines to find that the Taxpayers are considered to be domiciled in Utah for any portion of 2013 or 2014 based on Subsection 59-10-136(5)(a) alone. Instead, the Commission must first determine whether one or both of the Taxpayers is considered to be domiciled in Utah “in accordance with this section,” specifically in accordance with Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3). In instances where the actions of only one spouse meet the circumstances described in Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3), the Commission has generally found that both spouses are considered to be domiciled in Utah under the applicable subsection, and that such a conclusion is supported by Subsection 59-10-136(5)(a). As a result, the Commission must analyze whether the Taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), or (3).

7. It was the Division’s position that the Taxpayers were domiciled in Utah for all of 2013 and 2014 under the provisions of Utah Code §59-10-136(1)(a)(ii). The Division pointed out that Utah Code §59-10-136(1)(a)(ii) is clear and based on its express provisions, the

These and other selected decisions can be reviewed in a redacted format on the Commission’s website at <https://tax.utah.gov/commission-office/decisions>.

Taxpayers are both domiciled in Utah for 2013 and 2014. The Commission concurs with the Division's position that the statute is clear and unambiguous and based on its express terms both Taxpayers were domiciled in Utah for all of 2013 and 2014. Subsection 136(1)(a) provides "An individual is considered to have domicile in this state if : . . . (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." If a taxpayer falls under Subsection (1) the taxpayer "is considered to have domicile" in Utah. There are no exceptions to this Subsection (1)(a)(ii) provision. Furthermore, the statute makes it clear even though it was TAXPAYER-2 who was attending the Utah institution of higher education, under Utah Code Subsection 59-10-136(5) as concluded above, she was TAXPAYER-1's spouse for purposes of Utah Code Sec. 59-10-136 and, therefore, TAXPAYER-1 also "is considered to have domicile" in Utah. Additionally, it is irrelevant whether TAXPAYER-2 paid tuition or had received a scholarship because the statutory requirement is that the individual "is enrolled" in the institution of higher education, which was not in dispute. As noted by the Utah Supreme Court in *Steiner v. Tax Commission*, 2019 UT 47, at ¶58, "[a]s in all cases of statutory interpretation, we begin with the text." In *Ivory Homes v. Tax Commission*, at 2011 UT 54, ¶21 the Court provided the following guidance, "When interpreting statutory language, our primary objective is to ascertain the intent of the legislature. To discern legislative intent, we first look to the plain language of the statute. We presume that the legislature used each word advisedly and read each term according to its ordinary and accepted meaning." Utah Code Subsection 59-10-136(1)(a)(ii) is clear and unambiguous. Based on its plain language and reading in connection with every other part of Section 59-10-136, including Utah Code Subsection 59-10-136(5), TAXPAYER-1 was domiciled in Utah for tax years 2013 and 2014 pursuant to Utah Code Subsection 59-10-136(1)(a)(ii).

8. At the hearing, the Taxpayer's representative noted that Utah Code Subsection 59-10-136(1)(a)(ii) did not appear to "provide much leeway" and provisions of Utah Code Sec. 59-10-136 make it clear that if one individual is domiciled in Utah under Utah Code Sec. 59-10-136 the

individual's spouse is also domiciled in Utah. However, he argued that as applied to TAXPAYER-1, the statute is unconstitutional. He argued when considered individually, TAXPAYER-1 was not domiciled in Utah. He was domiciled in STATE-1. The Taxpayer's representative argued that individuals have a guaranteed right under the United States Constitution to choose where they live and have the privileges and immunities of persons in that state. He argued that the statute as written and applied to TAXPAYER-1 that made him domiciled in Utah based on the actions of his estranged spouse is a violation of TAXPAYER-1's constitutional rights. He argued that under the Utah Constitution, it is a violation of due process, the statute in question has not been narrowly tailored to meet the governmental interest, and violates uniform operation of the law. The Taxpayer's representative also argued the law as applied to TAXPAYER-1 violates his United States Constitutional rights to due process, equal protection, and the privileges and immunities clause because he is having his domicile determined solely based on TAXPAYER-2's domicile and not his own. Regarding these constitutional arguments, the Division noted they are facial challenges to Utah Code Sec. 59-10-136. The Division pointed out that the language of the statute is clear and based on the statute, TAXPAYER-1 is domiciled in Utah. The Division pointed out that prior to the enactment of Utah Code Sec. 59-10-136, which became effective for tax year 2012, it was not uncommon for one spouse to be domiciled in Utah and one spouse to be domiciled in another state. The Division pointed out that when the Utah Legislature enacted Utah Code Sec. 59-10-136, they specifically changed how domicile was to be determined in Utah. The Division also noted that the Tax Commission cannot determine whether a statute is unconstitutional.

9. In reviewing the constitutional arguments made by the Taxpayer regarding whether Utah Code Sec. 59-10-136 as applied to TAXPAYER-1 is unconstitutional, the Tax Commission notes that it must presume that acts of the Legislature are constitutional. *Rio Algom Corp. v. San Juan Cty.*, 681 P.2d 184, 190 (Utah 1984). In addition, the Utah Supreme Court has previously held that the Utah State Tax Commission lacks authority to determine the constitutionality of Utah laws, finding “[i]t is not for the Tax Commission to determine questions of legality or constitutionality of

legislative enactments.” *Jim Nebeker Trucking v. Utah State Tax Comm’n*, 2001 UT 74, ¶18; citing *State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979). *See also Steiner v. Tax Commission*, 2019 UT 47, ¶11. Therefore, the Tax Commission declines to opine in regards to the Taxpayers’ arguments that Utah Code Section 59-10-136 as applied is unconstitutional and instead applies Utah Code Sec. 59-10-136 as written to the facts in this matter. Based on the clear and express provisions of Utah Code Sec. 59-10-136, the Taxpayers were both domiciled in Utah for all of tax years 2013 and 2014.

10. Because both Taxpayers have been found to be domiciled in Utah for the 2013 and 2014 tax years under Utah Code Ann. §59-10-136(1)(a)(ii), there is no need to analyze the remaining Subsections of Utah Code Ann. §59-10-136 (i.e., Subsections (2)(a), (2)(b), (2)(c), and (3)) to resolve this case.¹²

11. As the Commission finds pursuant to Utah Code Ann. §59-10-136, that the Taxpayers were domiciled in Utah for the 2013 and 2014 tax years, they meet the definition of full-year “resident individuals” whose income is subject to tax in Utah under Utah Code Ann. §59-10-104(1) for the 2013 and 2014 tax years.

12. Utah imposes a tax on the state taxable income of resident individuals pursuant to Utah Code §59-10-104(1). Utah Code Ann. §59-10-103(1)(x)(i) provides that “state taxable income” for a resident individual is federal adjusted gross income subject to additions and subtractions made under Section 59-10-114 and adjustments made under Section 59-10-115. There is no limitation in the definition of “state taxable income” for a resident individual that the state taxable income be calculated by determining the amount that is derived only from Utah sources. Therefore, all income included in the federal adjusted gross income of a resident individual is state taxable income regardless of whether it is

¹² Although it is unnecessary to determine whether the Taxpayers were domiciled in Utah under Subsection (2) or (3) because the Commission has found the Taxpayers were domiciled in Utah under Subsection (1), the Commission notes the facts indicate that the Taxpayers would also be found to be domiciled in Utah under Subsection (2) because of the Taxpayers’ ties to Utah, including: owning a Utah residence where TAXPAYER-2 resided during the audit period and receiving the primary residential exemption for the residence, and TAXPAYER-2’s voter registration in Utah. In addition, the Commission has generally found that with respect to the rebuttable presumptions in Subsection 59-10-136(2), taxpayers cannot rebut a presumption for only one of the taxpayers. Either the presumption is rebutted for both taxpayers, or the presumption is not rebutted for both Taxpayers. If the Taxpayers were not found to be domiciled under Subsections (1) or (2), the Taxpayers would still be domiciled in Utah under Subsection (3) based on the numerous ties that TAXPAYER-2 had to Utah. Furthermore, the Commission notes that effective beginning with the 2018 tax year, the Legislature amended Utah’s domicile law to include an exception to allow one spouse to be domiciled in Utah while the other spouse is not domiciled in Utah, but only if certain requirements are met. This provision is not applicable in this matter, because it was not given retrospective operation to tax years 2013 or 2014, but even had it been applicable, the Taxpayers would not have met the requirements for TAXPAYER-1 to not be domiciled in Utah under that exception for reasons including that TAXPAYER-1 owned property in Utah.

derived from Utah sources or is earned in another state unless it is subject to addition or subtraction under Utah Code Ann. §59-10-114 or adjustment under Utah Code Ann. §59-10-115. The Taxpayers have not argued or provided evidence that any portion of their federal adjusted gross income is subject to addition or subtraction under Utah Code Ann. §59-10-114 or adjustment under Utah Code Ann. §59-10-115, thus their entire federal adjusted gross income is included in state taxable income that is subject to tax in Utah for the 2013 and 2014 tax years. Their Utah individual tax amount would be subject to a credit for the individual income taxes imposed by another state; however, as STATE-1 does not impose an individual income tax, there is no credit to apply.

13. 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 in domicile cases based on equitable considerations due to the complex and fact-specific nature of domicile issues. For these reasons, the Tax Commission finds there is reasonable cause to waive all of the audit penalties.

14. Under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove “that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayers did not assert a basis for waiver of interest.

After review of the evidence submitted by the parties at the hearing and the applicable law, the Taxpayers were domiciled in Utah for all of tax years 2013 and 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 Taxpayers were domiciled in Utah for all of tax years 2013 and 2014. The Commission sustains the Division's audit deficiency as to the tax and interest for the audit period. The Tax Commission finds reasonable cause for waiver of the audit penalties. It is so ordered.

DATED this ____ day of ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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 applied. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. 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.