16-1791
TAX TYPE: INCOME
TAX YEAR: 2013
DATE SIGNED: 8/1/2017
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO
EXCUSED: R. ROCKWELL
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 16-1791 Account No. #### Tax Type: Income Tax Year: 2013 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
For Respondent: RESPONDENT-1, from Auditing Division
RESPONDENT-2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on June 21, 2017.

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessment of additional Utah individual income taxes for the 2013 tax year. On November 1, 2016, the Division issued a Notice of Deficiency and Audit Change ("Statutory Notice"), in which it imposed additional tax and interest (calculated as of December 1, 2016),[1] as follows:

Year	Tax	Penalties	Interest	Total
2013	$$$$$	$$$$$	$$$$	$$$$$

1 Interest continues to accrue until any tax liability is paid. No penalties were imposed.

For the 2013 tax year, the taxpayers filed a Utah part-year resident income tax return, on which they indicated that they were STATE-1 residents from January 1, 2013 through June 20, 2013, and that they were Utah residents from June 21, 2013 through December 31, 2013. Based on these dates of residency, the taxpayers allocated to Utah $$$$$ of their total federal adjusted gross income ("FAGI") of $$$$$.

The Division, however, has determined that both taxpayers were full-year Utah residents for the 2013 tax year. As a result, the Division has assessed Utah tax on all $$$$$ of the taxpayers' 2013 FAGI. The Division proffers that the taxpayers were both 2013 full-year Utah resident individuals because they are both considered to be domiciled in Utah for all of 2013. As a result, the Division asks the Commission to sustain its assessment.

The taxpayers contend that they were domiciled in STATE-1, not Utah, during the January 1, 2013 through June 20, 2013 period that they were living and working in STATE-1. As a result, they claim that they were not Utah resident individuals for the January 1, 2013 through June 20, 2013 period. For these reasons, the taxpayers ask the Commission to find that they properly filed their 2013 Utah part-year resident return and to reverse the Division's assessment.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2013)[2], "a tax is imposed on the state taxable income of a resident individual[.]"

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

> (i) "Resident individual" means:
> (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
> (B) an individual who is not domiciled in this state but:

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

(I) maintains a place of abode in this state; and
(II) spends in the aggregate 183 or more days of the taxable year in this state.

. . . .

3. Effective for tax year 2012 and, thus, applicable to the 2013 tax year at issue, UCA §59-10-136 provides for the determination of "domicile," as follows:

> (1) (a) An individual is considered to have domicile in this state if:
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
> (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
> (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
> (i) is the noncustodial parent of a dependent:
> (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
> (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
> (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).
> (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
> (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
> (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
> (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
> (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
> (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
> (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

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

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

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

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

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

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

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

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

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

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

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

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

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

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

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

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

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

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

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

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

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

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

> (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
> (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

4. For the instant matter, UCA §59-1-1417(1) (2017) provides guidance concerning which party has the burden of proof, as follows:

> (1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:
> (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
> (i) required to be reported; and
> (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. The taxpayers admit that they were Utah resident individuals for a portion of the 2013 tax year, specifically from June 21, 2013 through December 31, 2013. At issue is whether the taxpayers were also Utah resident individuals for the January 1, 2013 through June 20, 2013 portion of the 2013 tax year (the "period at issue"). For 2013, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the "183 day test").

The Division does not assert that the taxpayers are Utah resident individuals for the January 1, 2013 through June 20, 2013 period at issue under the 183 day test. Instead, the Division contends that the taxpayers

are Utah resident individual for this period under the domicile test. As a result, the Commission must apply the facts to the Utah domicile law in effect for 2013 to determine whether the taxpayers are considered to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period at issue.

I. Facts.

Both of the taxpayers were born and raised in Utah. After marrying, the taxpayers purchased a home in CITY-1, Utah in 2008 (the "Utah home"), where they lived with their children until December 2012, when TAXPAYER-1 moved to STATE-1 for work. In early January 2013, TAXPAYER-2 and the taxpayers' three children also moved to STATE-1. In 2013, the taxpayers' three children were six, four, and two years of age. The taxpayers have never been legally separated or divorced.

Prior to moving to STATE-1 for work in December 2012, TAXPAYER-1 had worked for CORPORATION-1 ("CORPORATION-1") in CITY-2, Utah. In December 2012, TAXPAYER-1 took advantage of an opportunity to "transfer" from CORPORATION-1 to CORPORATION-2. ("CORPORATION-2"), a sister corporation located near CITY-3, STATE-1. TAXPAYER-1 explained that his employment at CORPORATION-2 was considered a temporary assignment and that at the end of six months, he could decide whether to continue working for CORPORATION-2 in STATE-1 or transfer back to CORPORATION-1 in Utah. At the end of the six months, TAXPAYER-1 decided to transfer back to CORPORATION-1 in Utah, which resulted in the taxpayers and their children moving back to Utah on June 21, 2013.

When the taxpayers moved to STATE-1 in late December 2012 and/or January 2013, they moved all of the furnishings from their Utah home to STATE-1, where they had rented an apartment on a six-month lease (the "STATE-1 apartment"). The STATE-1 apartment was approximately 1,400 square feet in size and had three bedrooms and two baths. In comparison, the Utah home consists of a 0.25-acre lot and a home with

1,300 square feet of living space, three bedrooms, and two baths on the main floor. In addition, the Utah home has an unfinished basement that is also 1,300 square feet in size. For their Utah home, the taxpayers received the residential exemption from property taxation for the 2013 tax year.

The taxpayers did not list their Utah home for sale when they moved to STATE-1 because they did not know if they would be remaining in STATE-1 or moving back to Utah after six months. However, they did not want the Utah home to remain vacant while they were in STATE-1. As a result, the taxpayers arranged for a family to move into the Utah home rent-free until the taxpayers decided to either sell the home or move back into it. The taxpayers explained that the family who moved into their Utah home were their friends, not family members. During the time that this family lived in the taxpayers' Utah home, it was that family's primary residence. This family moved their own furniture into the taxpayers' Utah home.

Neither taxpayer was enrolled in an institution of higher education during 2013. In addition, the taxpayers' only child who attended school during 2013 was their son, who was six years of age in 2013. During 2013, the taxpayers' son first attended SCHOOL in, STATE-1 from January 1, 2013 through May 10, 2013, and subsequently attended a Utah public elementary school after the taxpayers returned to Utah on June 21, 2013.

After the taxpayers moved to STATE-1 in December 2012 and/or January 2013, TAXPAYER-2 obtained a STATE-1 doctor. In addition, they had all of their mail changed from their Utah address to their STATE-1 address. They also had their church records transferred from a Utah unit of their church to a STATE-1 unit of their church.

However, the taxpayers kept their Utah driver's licenses and did not obtain STATE-1 driver's licenses. In addition, TAXPAYER-1 did not register to vote in STATE-1, but remained registered to vote in Utah.[3] In addition, the taxpayer kept both of their motor vehicles registered in Utah, even though they had taken the

3 TAXPAYER-2 has never registered to vote in any state. The Division proffered that Utah voting

vehicles with them to STATE-1. TAXPAYER-1 explained that he and his wife did not obtain STATE-1 driver's licenses, that he did not register to vote in STATE-1, and that they did not register their vehicles in STATE-1 because they were not sure that the move to STATE-1 was permanent.

In 2014 (after the taxpayers had moved back to Utah), the taxpayers filed a 2013 federal return with a status of married filing jointly, as well as their 2013 Utah part-year resident return. On both of these returns, the taxpayers used their Utah address at which they were living at the time of filing. However, in or around April 2013 (when the taxpayers were living in STATE-1), the taxpayers proffer that they used their STATE-1 address to file their 2012 federal and Utah returns, which the Division did not refute. Other than belonging to their church, the taxpayers were not members of any organizations or clubs in either Utah or STATE-1 during 2013.

II. Applying the Facts to the Domicile Law in Effect for 2013.

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]" For the 2013 tax year, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).[4] The Commission will refer to these subsections when determining whether the taxpayers are considered to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period at issue.

---

records show that TAXPAYER-1 voted in Utah in 2007, 2008, 2011, 2012, and 2016.

4 Prior to tax year 2012, an individual's income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) ("Rule 2"), which provided, in part, criteria to be used when determining an individual's income tax domicile and which referred to a non-exhaustive list of domicile factors in Utah Admin. Rule R884-24P-52 (2011) ("Rule 52") (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile for the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

For a married individual, it is often necessary, as in this case, to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if the individual is legally separated or divorced from the individual's spouse or if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. Neither of these circumstances applies to the taxpayers for the January 1, 2013 through June 20, 2013 period at issue because the taxpayers were not legally separated or divorced during this period and because they filed a joint 2013 federal return. Accordingly, for the January 1, 2013 through June 20, 2013 period at issue, TAXPAYER-1 and TAXPAYER-2 are both considered to have spouses for purposes of Section 59-10-136.

The taxpayers do not argue that they are *not* considered to be Utah domiciliaries from January 1, 2013 through June 20, 2013 under Subsection 59-10-136(4). This subsection applies to a taxpayer who is "absent from the state" if certain requirements are met, one of which is being absent from Utah for at least 761 consecutive days. The taxpayers were absent from Utah for less than 200 days. Accordingly, this subsection is not applicable to the taxpayers' circumstances.

As a result, the Commission must analyze whether the taxpayers are considered to have domicile in Utah for the January 1, 2013 through June 20, 2013 period under the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found in *any one* of these subsections, that individual is considered to be domiciled in Utah, even if the individual does not meet the criteria found in any of the other subsections.

Subsection 59-10-136(1). The taxpayers are not considered to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period under this subsection because during this period, none of their dependents attended a Utah public kindergarten, elementary, or secondary school and because neither taxpayer was a resident student enrolled in an Utah institution of higher education. As a result, the Commission must

determine whether the taxpayers are considered to be domiciled in Utah for the period at issue under another subsection of Section 59-10-136.

Subsection 59-10-136(2)(a). This subsection provides that there is a rebuttable presumption that an individual is considered to be domiciled in Utah if the individual *or* the individual's spouse claims the property tax residential exemption on either the individual's or individual's spouse's primary residence. For the 2013 tax year, which includes the January 1, 2013 through June 20, 2013 period at issue, the taxpayers received the 45% residential exemption from property taxes, as allowed under Utah Code Ann. §59-2-103, for their Utah home.

However, Subsection 59-10-136(6) provides that "whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state." The Division contends that the friends the taxpayers allowed to live in their Utah home while the taxpayers were in STATE-1 should not be considered "tenants" for purposes of the Subsection 59-10-136(6) exception. The Division argues that these friends should not be considered tenants because the taxpayers wanted them in the home to watch over it.

The Commission has previously considered a property owner who is absent from his or her home, but allows a person to live in the home rent-free in exchange for "services like maintaining the property and being on site to prevent theft or vandalism[.]" Under such circumstances, the person living in the home rent-free is considered a "tenant" for purposes of Subsection 59-10-136(6), if the home is that person's primary residence during the period he or she is living there rent-free.[5] During the period the taxpayers lived in STATE-1 and their friends lived in the Utah home rent-free, the friends provided services to watch over the home. In

5 *See USTC Appeal No. 15-1063* (Initial Hearing Order Aug. 26, 2016). This and other selected decisions may be reviewed in a redacted format on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

addition, because the Utah home was the friends' only residence during the period at issue, it was their primary residence during this time. Accordingly, for the January 1, 2013 through June 20, 2013 period at issue, the taxpayers' friends who resided in the Utah home and used it as their primary residence are considered tenants for purposes of Subsection 59-10-136(6).

For these reasons, Subsection 59-10-136(2)(a) presumption concerning the residential exemption does not even arise. As a result, the taxpayers are not required to rebut this presumption, and they are not considered to be domiciled in Utah under this subsection. Nevertheless, the Commission must determine whether the taxpayers are considered to be domiciled in Utah for the period at issue under another subsection of Section 59-10-136 (i.e., under Subsection 59-10-136(2)(b), (2)(c), or (3)).

Subsection 59-10-136(2)(b). This subsection provides that there is a rebuttable presumption that an individual is considered to be domiciled in Utah if the individual *or* the individual's spouse is registered to vote in Utah. The evidence shows that TAXPAYER-1 voted in Utah both before and after the January 1, 2013 through June 20, 2013 period at issue. For this reason and because the taxpayers have not shown that TAXPAYER-1 terminated his Utah voter registration while he lived in STATE-1, the Commission finds that TAXPAYER-1 was registered to vote in Utah during the January 1, 2013 through June 20, 2013 period at issue. Accordingly, under Subsection 59-10-136(2)(b), the taxpayers are considered to be domiciled in Utah during the January 1, 2013 through June 20, 2013 period, unless they are able to rebut this presumption.

Because Subsection 59-10-136(2)(a) involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual who is registered to vote in Utah *is* considered to have domicile in Utah, but also for there to be circumstances where an individual who is registered to vote in Utah *is not* considered to have domicile in Utah.[6] However, the Legislature has not

---

6 The Legislature did not provide that being registered to vote in Utah is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah

provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. As a result, it is left to the Commission to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

Although neither taxpayer voted in Utah during the January 1, 2013 through June 20, 2013 period at issue, this factor alone is insufficient to rebut the Subsection 59-10-136(2)(b) presumption. Had the Legislature intended actual voting in Utah to be the event that triggered domicile in Utah, it could have easily stated so, but it did not. As a result, the Commission is not inclined to find that the Subsection 59-10-136(2)(b) presumption is rebutted by a taxpayer showing that he or she did not vote in Utah despite being registered to do so.

Furthermore, this presumption is not rebutted on the basis that TAXPAYER-1 was the only one of the taxpayers who was registered to vote in Utah during the January 1, 2013 through June 20, 2013 period. The Subsection 59-10-136(2) presumption provides that an individual is considered to be domiciled in Utah if the individual *or* the individual's spouse is registered to vote in Utah. Accordingly, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah even though TAXPAYER-1 was the only one of the taxpayers who was registered to vote in Utah. This conclusion is supported by the previously-mentioned Subsection 59-10-136(5)(a), which provides that "[i]f an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state."

Had TAXPAYER-1 also registered to vote in STATE-1, the Commission would have considered whether this factor would have been sufficient to rebut the presumption. However, TAXPAYER-1 admitted that he did not register to vote in STATE-1. The taxpayers suggest that they have rebutted the presumption by showing that they and their children lived in STATE-1 and that TAXPAYER-1 worked in STATE-1 during the period at issue. Such factors, however, are relevant in determining whether the taxpayers are considered to

---

institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public

be domiciled in Utah under Subsection 59-10-136(3). The Commission declines find that an individual can rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[7] For these reasons, the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption for the January 1, 2013 through June 20, 2013 period at issue. Accordingly, both taxpayers are considered to be domiciled in Utah during the period at issue.

Remaining Subsections of Section 59-10-136. Because the Commission has already found that both taxpayers are considered to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period at issue, it is not necessary to determine whether they would also be considered to be domiciled in Utah under another subsection of Section 59-10-136. However, it may prove useful to make some limited observations about the two remaining subsections, specifically Subsections 59-10-136(2)(c) and (3).

Under Subsection 59-10-136(2)(c), there is a rebuttable presumption that an individual is considered to be domiciled in Utah if "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." This presumption appears to arise because the taxpayers filed a joint 2013 Utah part-year resident return on which they asserted that they were part-year residents of Utah from June 21, 2013 through December 31, 2013. However, on this same return, they

---

kindergarten, elementary, or secondary school).

7 This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of the presumptions of Subsection 59-10-

asserted that they were Utah non-residents from January 1, 2013 through June 20, 2013, which is consistent with their position that they were residents of STATE-1, not Utah, during this period. As a result, it appears that the taxpayers could sufficiently rebut the Subsection 59-10-136(2)(c) presumption for the January 1, 2013 through June 20, 2013 period at issue. Regardless, the Commission has already found that both taxpayers are considered to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period at issue pursuant to Subsection 59-10-136(2)(b).

Lastly, under Subsection 59-10-136(3), an individual is considered to be domiciled in Utah based on the preponderance of the evidence shown by 12 facts and circumstances specifically identified in Subsection 59-10-136(3)(b). Because both taxpayers have already been found to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period under Section 59-10-136(2)(b) and because neither party specifically addressed the 12 factors of Subsection 59-10-136(3), the Commission will not determine in this order whether the taxpayers are also considered to be domiciled in Utah under Subsection 59-10-136(3). However, the Commission notes that a cursory review of the facts and circumstances appear to indicate that for the January 1, 2013 through June 20, 2013 period at issue, 3 of the 12 facts and circumstances are not applicable, 4 of the 12 factors suggest a Utah domicile, and 5 of the 12 factors suggest a STATE-1 domicile.

Domicile – Conclusion. Under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for the January 1, 2013 through June 20, 2013 period at issue. As a result, both taxpayers are full-year Utah resident individuals for the 2013 tax year, even though they were living in STATE-1 for a portion of the year.

III. Taxpayers' Other Argument.

The taxpayers do not believe that Utah should tax their income for the January 1, 2013 through June 20, 2013 period at issue, even if they are considered to be domiciled in Utah for this period. The taxpayers

---

136(2) applies.

acknowledge that STATE-1 does impose an income tax. However, they contend that STATE-1 makes up for not imposing an income tax by imposing higher sales taxes and property taxes, to which they were subject while living in STATE-1. As a result, the taxpayers do not believe that should be required to pay any additional taxes, including Utah income taxes, for the period at issue.

To avoid double taxation, most states, like Utah, provide a credit for income taxes paid to another state. Utah provides for such a credit in Utah Code Ann. §59-10-1003. However, because STATE-1 does not impose an income tax, the taxpayers did not pay any income taxes to STATE-1. Accordingly, the credit afforded under Section 59-10-1003 is not applicable to this case. Furthermore, the Legislature has not provided a credit for other taxes that an individual may pay to another state. The taxpayers may be suggesting that the Commission should change or amend Utah law to effectuate what they may consider to be a better tax policy. The Commission's role, however, is to implement the laws that exist. Changing or amending current Utah law is the role of the Legislature. After analyzing the income tax domicile law (i.e., Section 59-10-136) that is applicable to the 2013 tax year, the Commission finds that the Division's assessment of additional income taxes under this law is appropriate.

IV. Conclusion.

The taxpayers have not met their burden of proof to show that they do not owe the additional taxes that the Division imposed in its assessment for the 2013 tax year. Accordingly, the Commission should sustain the Division's assessment in its entirety.

_____

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2013 assessment in its entirety. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

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

or emailed to:
taxappeals@utah.gov

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

DATED this _____ day of _____, 2017.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner

Rebecca L. Rockwell
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.