17-758
TAX TYPE: INCOME TAX
TAX YEAR: 2013, 2014 & 2015
DATE SIGNED: 01/26/2018
COMMISSIONERS: M CRAGUN, R PERO, R ROCKWELL
EXCUSED: J VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 17-758 Account No. ##### Tax Type: Income Tax Years: 2013, 2014 & 2015 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
RESPONDENT-3, 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 November 14, 2017.

TAXPAYERS ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessments of additional Utah individual income taxes for the 2013, 2014, and 2015 tax years. On March 30, 2017, the Division issued Notices of Deficiency and Audit Change ("Statutory Notices"), in which it imposed additional tax and interest (calculated as of April 29, 2017),[1] as follows:

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

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

2014	$$$$$	$$$$$	$$$$$	$$$$$
2015	$$$$$	$$$$$	$$$$$	$$$$$

For the 2013, 2014, and 2015 tax years, the taxpayers were a married couple who filed joint federal returns, joint STATE part-year resident returns, and joint Utah part-year resident returns. With each of the 2013, 2014, and 2015 Utah returns, the taxpayers included a TC-40B form on which they checked the "part-year resident" (not the "nonresident" box). On these TC-40B forms, the taxpayers also allocated the income that TAXPAYER-1 and/or TAXPAYER-2 earned from INSTITUTION-1 ("INSTITUTION-1") to Utah and the income that TAXPAYER-2 earned from the STATE INSTITUTION-2 ("INSTITUTION-2") to STATE.

The Division proffers that the taxpayers were both full-year Utah resident individuals for 2013, 2014, and 2015 because they are both considered to be domiciled in Utah throughout these years. As a result, the Division has determined that all income that both taxpayers earned during these years is subject to Utah taxation (regardless of where it was earned) and assessed them accordingly.[2] For these reasons, the Division asks the Commission to sustain its assessments.

The taxpayers admit that TAXPAYER-1 was a Utah resident individual for all of 2013 and 2014 and for the first 10 months of 2015, but contend that he was not a Utah resident individual for the last two months of 2015. In addition, the taxpayers admit that TAXPAYER-2 was a Utah resident individual for the first nine months of 2013, but contend that she was not a Utah resident individual for the last three months of 2013 or for any portion of 2014 and 2015. As a result, the taxpayers ask the Commission to find that they properly filed their 2013, 2014, and 2015 Utah part-year resident returns and to reverse the Division's assessments for these years.

2 For a resident individual, Utah Code Ann. §59-10-1003 (2013 – 2015) provides that a nonrefundable tax credit may be applied against a person's Utah tax liability based on the amount of tax imposed on the person by another state, if certain conditions are met. Because the Division has assessed both taxpayers as Utah resident individuals for the 2013, 2014, and 2015 tax years, it has applied a credit against their Utah tax liability for the income taxes they paid to STATE for these years. In the event the Commission finds that the taxpayers are both Utah resident individuals for the 2013, 2014, and 2015 tax years, the taxpayers have not contested the amounts of the Section 59-10-1003 credits that the Division allowed for these years.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2013)[3], "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:
> (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 applicable to the 2013, 2014, and 2015 tax years 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:

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3 All substantive law citations are to the 2013 version of Utah law, unless otherwise indicated. Except as noted, the substantive law remained the same during the 2013, 2014, and 2015 tax years.

(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 TAXPAYER-1 was a Utah resident individual for all of 2013 and 2014 and for the first 10 months of 2015. The taxpayers also admit that TAXPAYER-2 was a Utah resident individual for the first nine months of 2013. At issue is whether TAXPAYER-1 was a Utah resident individual for the last two months of 2015 and whether TAXPAYER-2 was a Utah resident individual for the last three months of 2013 and for all of 2014 and 2015. 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 asserts that TAXPAYER-1 was a Utah resident individual for all of 2013, 2014, and 2015 not only under the 183 day test, but also under the domicile test. The Division does not assert that TAXPAYER-2 was a Utah resident individual for any of the 2013, 2014, and 2015 tax years under the 183 day test. However, the Division does assert that TAXPAYER-2 was a Utah resident individual for the entirety of these three years under the domicile test. First, the Commission will apply the facts to the Utah domicile law in effect for the 2013, 2014, and 2015 tax years to determine whether each of the taxpayers is considered to be domiciled in Utah for these years. Second, in the event that the Commission finds that TAXPAYER-1 is not considered to be domiciled in Utah for all of 2013, 2014, and 2015, the Commission will determine whether he is considered to be a Utah resident individual under the 183 day test for any period for which he is not considered to be domiciled in Utah.

I. Facts.

The taxpayers are a married couple who were not legally separated or divorced during the 2013, 2014, and 2015 tax years. For approximately 10 years prior to 2012, both taxpayers lived and worked in STATE,

where they owned a home. TAXPAYER-1 subsequently accepted a faculty position at INSTITUTION-1 and moved to Utah on January 1, 2012 to begin his new job. TAXPAYER-2, who is a professor at INSTITUTION-2, was able to take a one-year sabbatical from her STATE job, and she and the taxpayers' son moved to Utah in September 2012. The taxpayers' son, who was 10 years of age in 2012, was enrolled in a charter school in Utah from September 2012 until June 2013.[4] While living in Utah, TAXPAYER-2 worked part-time at INSTITUTION-1. TAXPAYER-2 and the taxpayers' son moved back to STATE sometime after their son's school year ended in June 2013. TAXPAYER-1 continued to work at INSTITUTION-1 and live in Utah until the end of 2015. TAXPAYER-1 was in Utah more than 183 days of each tax year at issue, and he moved back to STATE on or around November 1, 2015. Neither of the taxpayers was enrolled in a Utah institution of higher learning during any of the tax years at issue.

TAXPAYER-1 explained that his position at INSTITUTION-1 involved work on a research project and that it was a temporary job. As a result, he contends that he knew that he would be returning to STATE eventually. TAXPAYER-1 explained that he and his wife did not sell the STATE home in which they had lived since 2005 when they moved to Utah in 2012. This home, which is ##### square feet in size and has a #####-car garage, will be referred to as the "first STATE home." The taxpayers rented out this home when TAXPAYER-2 moved to Utah in September 2012, and they sold this home in 2015.

Sometime in 2012, the taxpayers purchased another home in STATE that, in the taxpayers' opinion, was in a superior school district. This home, which is ##### square feet in size and has a #####-car garage, will be referred to as the "second STATE home." TAXPAYER-1 explained that they purchased the second STATE home with the intention to tear it down and build a new, larger home on the lot. As a result, the taxpayers did not rent out the second STATE home when TAXPAYER-2 moved to Utah in 2012. However, permit issues prevented them from following through on their plans to tear down the old home and build a new

4 Utah Code Ann. §53A-1a-503.5(1) provides that "[c]harter schools are . . . considered to be public schools within the state's public education system[.]"

one on the lot. As a result, they rented out the second STATE home in 2014. As of the hearing date, the taxpayers still own the second STATE home and still rent it out.

In September 2013, the taxpayers purchased another home in STATE. This home, which is ##### square feet in size and has a #####-car garage, will be referred to as the "third STATE home." TAXPAYER-1 stated that when TAXPAYER-2 and the taxpayers' son moved from Utah to STATE in 2013, they moved "directly" into the third STATE home.[5] As of the hearing date, the taxpayers still live in the third STATE home.

When TAXPAYER-1 first moved to Utah in January 2012, he rented a furnished room in a home in CITY. When TAXPAYER-2 and the taxpayers' son moved to Utah in September 2012, the taxpayers rented a different, unfurnished home in CITY. TAXPAYER-1 explained that he and his wife brought little of their furniture from STATE to Utah because they knew that the move to Utah was temporary. As a result, they stored most of their furniture in the second STATE home when TAXPAYER-2 moved to Utah in September 2012. TAXPAYER-1 stated that he and his wife only moved beds and "essentials" to Utah.

In December 2012, the taxpayers purchased a home in CITY, Utah (which will be referred to as the "Utah home"). The Utah home was not the same home that they had rented in Utah for the last few months of 2012. The Utah home has ##### square feet of above-grade living space, a basement with about ##### square feet of finished space, and a #####-car garage. The taxpayers moved into the Utah home in January 2013.

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5 At the hearing, TAXPAYER-1 initially stated that TAXPAYER-2 and the taxpayers' son moved back to STATE in June 2013 (after school ended). Later in the hearing, TAXPAYER-1 stated that TAXPAYER-2 and the taxpayers' son moved "directly" into the third STATE home upon returning to STATE in 2013. Because the taxpayers did not purchase the third STATE home until September 2013, TAXPAYER-2 and the taxpayers' son could not have moved "directly" into it in June 2013. For this reason and because the taxpayers reported on their 2013 STATE income tax return that TAXPAYER-2 was a 2013 STATE resident only between October 1, 2013 and December 31, 2013, the Commission finds that TAXPAYER-2 and the taxpayers' son moved back to STATE in September 2013. The taxpayers, who have the burden of proof, have not shown otherwise. Regardless, for reasons that will be discussed later in the decision, the Commission's decision in this case would be the same regardless of whether TAXPAYER-2 and the taxpayers' son moved back to STATE in June 2013 or September 2013.

Both taxpayers lived in the Utah home until TAXPAYER-2 and the taxpayers' son moved back to STATE in September 2013. As of August 3, 2013, however, TAXPAYER-1 rented out most of the Utah home's main floor to tenants, as shown by a lease dated July 15, 2013. The lease indicates that the tenants leased the Utah home's "rooms above the ground level and the garage, except the dining room [.]" TAXPAYER-1 explained that he did not lease the basement to the tenants because he would remain living in the Utah home's basement while he continued working at INSTITUTION-1. In addition, he indicated that he did not rent out the Utah home's main floor dining room because he was able to exit the home from the basement through the dining room. The tenants who rented most of the Utah home's main floor brought their own furniture into the Utah home because the portion of the Utah home they rented was unfurnished.

TAXPAYER-1 explains that he lived only in the basement of the Utah home from August 3, 2013 until around November 1, 2015, when he moved back to STATE. TAXPAYER-1's job with INSTITUTION-1 ended in September 2015. When TAXPAYER-1 moved back to STATE around November 2015, he removed all of his furniture and personal belongings from the Utah home. He explained that he took some of these belongings to STATE and donated the rest to charity. As a result, the taxpayers had no belongings in the Utah home after November 1, 2015. In addition, on or around November 1, 2015, TAXPAYER-1 and the tenants who had been renting most of the Utah home's main floor entered into another lease that provided that the tenants would begin renting the entirety of the Utah home (including the basement) beginning on January 1, 2016. The taxpayers sold the Utah home in late 2016.

Neither of the taxpayers ever obtained a Utah driver's license or registered to vote in Utah. In addition, they never registered a vehicle in Utah. TAXPAYER-1 explained that he brought a vehicle from STATE to Utah when he moved to Utah in January 2012, but continued to register it in STATE for the nearly four years he lived in Utah. TAXPAYER-1 also explained that they left TAXPAYER-2's vehicle in STATE

during the period she lived in Utah in 2012 and 2013. Neither of the taxpayers was a member of a church, a club, or any organization during the 2013, 2014, and 2015 tax years at issue.

For each of the 2013, 2014, and 2015 tax years, the taxpayers filed federal, STATE, and Utah returns. All of these returns were filed with a status of married filing jointly and with an STATE address. For each of the 2013 and 2014 tax years, the STATE and Utah returns were both filed as part-year resident returns where the taxpayers allocated income between Utah and STATE. For 2013, the taxpayers indicated: 1) on their 2013 Utah return that they were part-year residents of Utah from January 1, 2013 to September 30, 2013; and 2) on their 2013 STATE return that each of them was a part-year resident of STATE from October 1, 2013 to December 31, 2013. On the 2013 Utah return, the taxpayers allocated the income that TAXPAYER-1 and TAXPAYER-2 earned from INSTITUTION-1 to Utah and the income that TAXPAYER-2 earned from INSTITUTION-2 to STATE. Based on this allocation and the dates of residency asserted on the 2013 Utah return, it appears that both taxpayers asserted on the Utah return that they were Utah resident individuals from January 1, 2013 to September 30, 2013.

For 2014, the taxpayers claimed: 1) on their 2014 Utah return that they were Utah part-year residents from January 1, 2014 to December 31, 2014; and 2) on their 2014 STATE return that TAXPAYER-1 was a *Utah* resident from January 1, 2014 to December 31, 2014, and that TAXPAYER-2 was an *STATE* resident from January 1, 2014 to December 31, 2014. On the 2014 Utah return, the taxpayers allocated the income that TAXPAYER-1 earned from INSTITUTION-1 to Utah and the income that TAXPAYER-2 earned from INSTITUTION-2 to STATE. Based on this allocation and the dates of residency asserted on the 2014 Utah return, it appears that the taxpayers were asserting on the Utah return that TAXPAYER-1 was a Utah resident for all of 2014 and that TAXPAYER-2 was a Utah nonresident for all of 2014.

For 2015, the taxpayers did not file a 2015 STATE part-year resident return. Instead, it appears that they filed a 2015 STATE resident return on which they both asserted to be STATE residents for all of 2015.

On the 2015 STATE return, the taxpayers allocated all of their income to STATE and claimed a credit for the income taxes they paid to Utah for the 2015 tax year. Nonetheless, the taxpayers filed a 2015 Utah part-year resident return on which they indicated that they were Utah resident individuals from January 1, 2015 to November 1, 2015. On the 2015 Utah return, the taxpayers allocated the income that TAXPAYER-1 earned from INSTITUTION-1 to Utah and the income that TAXPAYER-2 earned from INSTITUTION-2 to STATE. Based on this allocation and the dates of residency asserted on the 2015 Utah return, it appears that the taxpayers were asserting on the Utah return that TAXPAYER-1 was a Utah resident from January 1, 2015 to November 1, 2015, and that TAXPAYER-2 was a Utah nonresident for all of 2015.

II. Domicile Test.

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, 2014, and 2015 tax years, 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)).[6]

Subsection 59-10-136(5)(b). 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.

6 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.

Neither of these circumstances applies to the taxpayers for any of the years at issue because the taxpayers were not legally separated or divorced during 2013, 2014, and/or 2015, and because they filed joint federal returns for all three of these years. Accordingly, for each of the 2013, 2014, and 2015 tax years, TAXPAYER-1 and TAXPAYER-2 are both considered to have spouses for purposes of Section 59-10-136.

Subsection 59-10-136(4). The taxpayers do not argue that they are *not* considered to be Utah domiciliaries for any of the years at issue 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. Subsection 59-10-136(4)(a)(ii)(A) provides that Subsection 59-10-136(4) does not apply to an individual if the individual or the individual's spouse is present in Utah for more than 30 days in a calendar year. TAXPAYER-1 was present in Utah for more than 30 days in each of the three years at issue. Accordingly, Subsection 59-10-136(4) does not apply to either TAXPAYER-1 or TAXPAYER-2.

As a result, the Commission must analyze whether the taxpayers are considered to have domicile in Utah for the years at issue 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. The Commission will first analyze these remaining subsections of Section 59-10-136 in regards to the 2013 tax year, then to the 2014 and 2015 tax years.

A. 2013 Tax Year.

Subsection 59-10-136(1). This subsection provides that an individual is considered to be domiciled in Utah if a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school, subject to an exception found in Subsection (1)(b) that is not applicable to this case. The taxpayers claimed their son as a dependent on their 2013 federal return. In addition, the taxpayers' son was enrolled in a Utah

public elementary school for the first five months of 2013 (from January 2013 through May 2013). Accordingly, under Subsection 59-10-136(1), both TAXPAYER-1 and TAXPAYER-2 are considered to be domiciled in Utah from January 1, 2013 through May 31, 2013.[7] Because the taxpayers are not considered to be domiciled in Utah for all of 2013 under Subsection 59-10-136(1), the Commission must determine whether they are domiciled in Utah for all of 2013 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, the taxpayers received the 45% residential exemption from property taxes, as allowed under Utah Code Ann. §59-2-103, for their Utah home. Before determining whether the Subsection 59-10-136(2)(a) presumption arises for all or part of 2013, the Commission must also consider the impact of Subsection 59-10-136(6).

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." This exception to the Subsection 59-10-136(2)(a) presumption is clearly not applicable for the January 1, 2013 to August 2, 2013 period that no tenants were leasing a portion of the Utah home. Accordingly, the Subsection 59-10-136(2)(a) presumption arises for the January 1, 2013 to August 2, 2013 period.

7 Subsection 59-10-136(1)(a)(ii) provides that an individual is considered to be domiciled in Utah if the individual or the individual's spouse is enrolled in a Utah institution of higher education. While TAXPAYER-1 and TAXPAYER-2 were both employed by a Utah institution of higher education during 2013, neither of them was enrolled in such an institution. Accordingly, neither taxpayer is considered to be domiciled in Utah under Subsection 59-10-136(1)(a)(ii) during the 2013 tax year.

At issue is whether the Subsection 59-10-136(2)(a) presumption also arises for the remainder of 2013 (i.e., for August 3, 2013 to December 31, 2013), when tenants were leasing the majority of the Utah home's main floor and using it as their primary residence. The tenants were leasing the majority of the Utah home. Specifically, they were leasing all but one room of the Utah home's main floor, which had twice as much finished living space than the basement in which TAXPAYER-1 continued to live once the tenants moved in. Had the taxpayers not used or lived in the relatively small portion of the Utah home that the tenants did not lease, perhaps the Commission would have found that the Subsection 59-10-136(6) exception was applicable and that the Subsection 59-10-136(2)(a) presumption would not have arisen for the August 3, 2013 to December 31, 2013 period.

However, where TAXPAYER-1 continued to live in the portion of the Utah home that the tenants did not lease, the Commission declines to find that Subsection 59-10-136(6) precludes the Subsection 59-10-136(2)(a) presumption from arising for the August 3, 2013 to December 31, 2013 period. Subsection 59-10-136(6) must be read in concert with, not in isolation from, Subsection 59-10-136(2)(a). To find that the Subsection 59-10-136(6) exception applies where the owner of a home receiving the residential exemption lives in a portion of the home and tenants use the remainder of the home as their primary residence would completely ignore the plain meaning of Subsection 59-10-136(2)(a).[8] As a result, the Commission finds that the Subsection 59-10-136(2)(a) presumption not only arises for the January 1, 2013 to August 2, 2013 period when no tenants resided in the Utah home, but also for the August 3, 2013 to December 31, 2013 period when tenants leased a majority of the Utah home's main floor and TAXPAYER-1 was living in the basement. Accordingly, the Subsection 59-10-136(2)(a) presumption arises for the entirety of the 2013 tax year.

8 Such a ruling could lead to results that appear to be completely contrary to Subsection 59-10-136(2)(a). For example, assume that a person who owned a home on which he or she was receiving the residential exemption rented out a room over the home's garage to another person who used the room as his or her primary residence. Where the owner of the home lived in the remainder of the home (i.e., in all but the room over the garage), the existence of this tenant would not preclude the Subsection 59-10-136(2)(a) presumption from arising in regards to the owner.

Furthermore, the Subsection 59-10-136(2)(a) presumption arises for the entirety of 2013 in regards to both taxpayers, even though TAXPAYER-1 was the only one of the taxpayers to live in the Utah home once TAXPAYER-2 and the taxpayers' son returned to STATE in September 2013. Subsection 59-10-136(2)(a) 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 exemption. Even if TAXPAYER-1 alone had owned the Utah home or had been the only one of the taxpayers to claim the exemption or pay the property taxes, the rebuttable presumption of Subsection 59-10-136(2)(a) would still apply to both TAXPAYER-1 and TAXPAYER-2.[9] Accordingly, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the entirety of the 2013 tax year, unless they are able to rebut the presumption.

The Commission will next determine whether TAXPAYER-1 and TAXPAYER-2 have rebutted the Subsection 59-10-136(2)(a) presumption that has arisen for both of them. 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 claims a residential exemption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual who claims a residential exemption *is not* considered to have domicile in Utah.[10] 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)(a) 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.

The 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

9 This conclusion is supported by 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."

10 The Legislature did not provide that claiming a residential exemption 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 institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

implement the individual's request. In addition, the Commission has indicated that the presumption may be rebutted if an individual received the residential exemption for a vacant home that was listed for sale and which would qualify for the exemption upon being sold.[11] Neither of these circumstances exists in this case for the 2013 tax year.

On the other hand, the Commission has 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 he or she was receiving the residential exemption. Furthermore, the Commission has found that an individual has not rebutted the presumption because he or she would not be considered to be domiciled in Utah under Rule 52, the property tax rule used to determine income tax domicile for tax years prior to 2012. It is arguable that using the "old" income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in Rule 52 to determine an individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the new law enacted by the Legislature little or no effect, which the Commission declines to do.[12]

Similarly, the Commission has found that an individual cannot 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).[13]

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11 *See* Utah Admin. Rule R884-24P-52(6)(f), which provides that "[i]f the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied." While Rule 52 is no longer the controlling law for purposes of determining income tax domicile, there may be limited portions of Rule 52 that may be useful when the Commission delineates which circumstances are sufficient or insufficient to rebut a Subsection 59-10-136(2) presumption.

12 Again, the Commission is not precluded from considering certain facts that might be described in Rule 52 when determining whether a Subsection 59-10-136(2) presumption has been effectively rebutted. However, the Commission will not determine an individual's income tax domicile for 2012 and subsequent tax years solely from the factors found in Rule 52.

13 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

The Commission has also indicated that there may be other circumstances to be raised in future cases that will be sufficient to rebut the presumption. The taxpayers, however, have not proffered any convincing arguments to rebut the presumption for the 2013 tax year. TAXPAYER-1 lived and worked in Utah for nearly four years, and the Utah home received the residential exemption for all years that the taxpayers owned the home. The specific circumstances of this case do not warrant a finding that TAXPAYER-1 and TAXPAYER-2 have rebutted the Subsection 59-10-136(2)(a) presumption. Accordingly, under Subsection 59-10-136(2)(a), TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the entirety of the 2013 tax year.

Subsection 59-10-136(2)(b). Because TAXPAYER-1 and TAXPAYER-2 have both been found to be domiciled in Utah for all of 2013 under Subsection 59-10-136(2)(a), they are 2013 full-year Utah domiciliaries regardless of whether they are also considered to be domiciled in Utah under another subsection of Section 59-10-136. As a result, the Commission need not address the other subsections of Section 59-10-136 to resolve this appeal. Nevertheless, it may be helpful for the Commission to make some observations about these other subsections, beginning with Subsection 59-10-136(2)(b). Under Subsection 59-10-136(2)(b), an individual is presumed to be domiciled in Utah if the individual or the individual's spouse is registered to vote in Utah, unless the presumption is rebutted. Because neither TAXPAYER-1 nor TAXPAYER-2 was ever registered to vote in Utah, this presumption does not arise for the 2013 tax year.[14]

Subsection 59-10-136(2)(c). Under this subsection, an individual is presumed to be domiciled in Utah if the individual or the individual's spouse asserts Utah residency on a Utah return. Although the Division contends that this presumption does not arise in regards to the taxpayers, the Commission believes otherwise.

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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 Subsection 59-10-136(1) or one of the presumptions of Subsection 59-10-136(2) does not apply.

14 Because neither taxpayer was ever registered to vote in Utah, the Subsection 59-10-136(2)(b) presumption also does not arise for the 2014 and 2015 tax years. As a result, the Commission will not address

For the 2013 tax year, it appears that TAXPAYER-1 and TAXPAYER-2 asserted on the taxpayers' 2013 Utah return that they were Utah part-year residents for the period January 1, 2013 to September 30, 2013. Accordingly, the Subsection 59-10-136(2)(c) presumption arises in regards to both taxpayers for the January 1, 2013 to September 30, 2013 portion of 2013.[15]

Because the Division argued that the Subsection 59-10-136(2)(c) presumption did not arise, the taxpayers did not offer arguments to rebut it. Specifically, the taxpayers did not indicate whether they filed a Utah resident return because neither of them considered themselves to be domiciled in Utah and only filed the return because one or both of them met the 183 day test described earlier. In a prior case, the Commission found that a person who was a Utah resident under the 183 day test and who filed a Utah resident return was able to rebut the Subsection 59-10-136(2)(c) presumption because the person was not considered to be domiciled in Utah under any other subsection of Section 59-10-136. In the instant case, however, the Commission has found that the taxpayers are considered to be domiciled in Utah for all of 2013 under another subsection of Section 59-10-136. As a result, it is questionable whether the taxpayers would have been able to rebut the Subsection 59-10-136(2)(c) presumption that has arisen for the January 1, 2013 to September 30, 2013 period. If they are not able to rebut this presumption, both of them would also be considered to be domiciled in Utah from January 1, 2013 to September 30, 2013 under Subsection 59-10-136(2)(c).

Subsection 59-10-136(3). Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), they may 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). The Division indicates that the taxpayers would not be considered to be domiciled in Utah under

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this subsection when it discusses the 2014 and 2015 tax years later in the decision.

15 It is further noted that even if TAXPAYER-1 alone had asserted that he was a Utah part-year resident from January 1, 2013 to September 30, 2013, the Subsection 59-10-136(2)(c) presumption would still have arisen in regards to both taxpayers for this period because TAXPAYER-2's spouse would have asserted Utah part-year residency.

this subsection. A cursory review of the 12 facts and circumstances suggests that the Division's conclusion is correct. However, because neither party discussed this subsection in detail at the hearing, the Commission will not discuss this subsection any further in this decision for any tax year.

2013 Domicile – Summary. Based on the foregoing, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the entirety of the 2013 tax year. As a result, TAXPAYER-1 and TAXPAYER-2 are both considered to be full-year Utah resident individuals for 2013. Accordingly, all income that TAXPAYER-1 and TAXPAYER-2 earned in 2013 is subject to Utah taxation, regardless of whether each of them lived and worked in Utah for the entire year. For these reasons, the Commission should sustain the 2013 assessment the Division has imposed on the taxpayers.

B. 2014 Tax Year.

Subsection 59-10-136(1). As discussed earlier, the taxpayers' son did not attend school in Utah after June 2013. As a result, during 2014, the taxpayers' son was not enrolled in school in Utah. Furthermore, neither taxpayer was enrolled in a Utah institution of higher education during 2014. Accordingly, neither taxpayer is considered to be domiciled in Utah for any portion of 2014 under Subsection 59-10-136(1).[16]

Subsection 59-10-136(2)(a). The taxpayers claimed the residential exemption for the Utah home for the 2014 tax year. For all of 2014, the tenants described earlier leased the majority of the Utah home's main floor and used it as their primary residence. However, TAXPAYER-1 resided in the Utah home for all of 2014. For reasons explained earlier for the 2013 tax year, the Subsection 59-10-136(2)(a) presumption arises in regards to both taxpayers for the entirety of the 2014 tax year, and the taxpayers have not rebutted the

16 The same facts that existed for 2014 and that apply to this subsection also existed for 2015. As a result, neither taxpayer is considered to be domiciled in Utah for any portion of the 2015 tax year under this subsection, as well. Accordingly, the Commission will not address Subsection 59-10-136(1) when it discusses the 2015 tax year later in the decision.

presumption.[17] Accordingly, under Subsection 59-10-136(2)(a), TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the entirety of the 2014 tax year.

Subsection 59-10-136(2)(c). On the taxpayers' 2014 Utah return, TAXPAYER-1 asserted that he was a Utah resident individual for the entirety of 2014. As a result, the Subsection 59-10-136(2)(c) presumption arises in regards to both taxpayers for the entirety of 2014. For reasons explained earlier in regards to the 2013 tax year, the taxpayers would also be considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(c), unless they were able to rebut this presumption.

2014 Domicile – Summary. Based on the foregoing, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah for the entirety of the 2014 tax year. As a result, TAXPAYER-1 and TAXPAYER-2 are both considered to be full-year Utah resident individuals for 2014. Accordingly, all income that TAXPAYER-1 and TAXPAYER-2 earned in 2014 is subject to Utah taxation, regardless of whether each of them lived and worked in Utah for the entire year. For these reasons, the Commission should sustain the 2014 assessment the Division has imposed on the taxpayers.

C. 2015 Tax Year.

Subsection 59-10-136(2)(a). The taxpayers claimed the residential exemption for the Utah home for the 2015 tax year. For all of 2015, the tenants described earlier leased the majority of the Utah home's main floor and used it as their primary residence. From January 1, 2015 to November 1, 2015, TAXPAYER-1 resided in the Utah home's basement. However, once TAXPAYER-1 permanently returned to STATE after November 1, 2015, neither taxpayer lived in or had any personal property in the Utah home, including the relatively small portion of the home that their tenants were not leasing for the year. The Commission will first

17 TAXPAYER-1 stated that he would occasionally go to STATE to visit his family, then return to live in the Utah home. These occasional absences do not result in the Subsection 59-10-136(2)(a) presumption arising for less than the full 2014 tax year, nor would these occasional absences be sufficient to rebut the presumption for any or all of the 2014 tax year.

discuss the Subsection 59-10-136(2)(a) presumption in regards to the January 1, 2015 to November 1, 2015 portion of the year, then in regards to the November 2, 2015 to December 31, 2015 portion of the year.

January 1, 2015 to November 1, 2015 Period. For reasons explained earlier in regards to the 2013 and 2014 tax years, the Subsection 59-10-136(2)(a) presumption arises in regards to both taxpayers from January 1, 2015 to November 1, 2015 that TAXPAYER-1 lived in a portion of the Utah home, and the taxpayers have not rebutted the presumption for this period. Accordingly, under Subsection 59-10-136(2)(a), TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah from January 1, 2015 to November 1, 2015.

November 2, 2015 to December 31, 2015 Period. For this period, the taxpayers' tenants were again not leasing the entirety of the Utah home, and the taxpayers again claimed the residential exemption for all of 2015, including this November 2, 2015 to December 31, 2015 period. Accordingly, the Subsection 59-10-136(2)(a) presumption also arises for this period. However, whereas the taxpayers' circumstances *were insufficient* to rebut the Subsection 59-10-136(2)(a) presumption for the January 1, 2015 to November 1, 2015 period that TAXPAYER-1 lived in a portion of the Utah home, the taxpayers' circumstances *are sufficient* to rebut the presumption for the November 2, 2015 to December 31, 2015 period.

Beginning on November 2, 2015, neither taxpayer was living in the portion of the Utah home not leased by their tenants, and this portion of the Utah home was also vacant. As mentioned earlier, the Commission has previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual received the residential exemption for a vacant home that was listed for sale and which would qualify for the exemption upon being sold (*citing* Utah Admin. Rule R884-24P-52(6)(f)). It follows that the presumption can also be rebutted if an individual receives the residential exemption for a vacant home that is listed for rent and which would qualify for the exemption upon being leased. Before returning to STATE on November 2, 2015, TAXPAYER-1 signed a lease with the tenants in the Utah home whereby the tenants would also be leasing the Utah home's empty basement as of January 1, 2016. These specific circumstances

are, thus, sufficient to rebut the Subsection 59-10-136(2)(a) presumption for the November 2, 2015 to December 31, 2015 period. Accordingly, while both taxpayers are considered to be domiciled in Utah from January 1, 2015 to November 1, 2015 under Subsection 59-10-136(2)(a), neither of the taxpayers is considered to be domiciled in Utah from November 2, 2015 to December 31, 2015 under this subsection.

Subsection 59-10-136(2)(c). On the taxpayers' 2015 Utah return, TAXPAYER-1 asserted that he was a Utah resident individual for the period January 1, 2015 to November 1, 2015. As a result, the Subsection 59-10-136(2)(c) presumption arises in regards to both taxpayers for this period (but not for the period November 2, 2015 to December 31, 2015). For reasons explained earlier in regards to the 2013 and 2014 tax years, the taxpayers would also be considered to be domiciled in Utah under Subsection 59-10-136(2)(c) for the period January 1, 2015 to November 1, 2015, unless they were able to rebut this presumption for this period.

2015 Domicile – Summary. Based on the foregoing, TAXPAYER-1 and TAXPAYER-2 are both considered to be domiciled in Utah from January 1, 2015 to November 1, 2015. As a result, TAXPAYER-1 and TAXPAYER-2 are both considered to be Utah resident individuals for this period. Accordingly, all income that TAXPAYER-1 and TAXPAYER-2 earned from January 1, 2015 to November 1, 2015 is subject to Utah taxation, regardless of whether each of them lived and worked in Utah during this period.

Neither taxpayer is a Utah resident individual for the November 2, 2015 to December 31, 2015 period under the domicile test. However, the Commission must still decide whether one or both of the taxpayers are Utah resident individuals for the November 2, 2015 to December 31, 2015 period under the 183 day test to determine whether the Division's 2015 assessment should be sustained or amended.

III. 183 Day Test.

Under the domicile test, the Commission has found that both taxpayers are full-year Utah resident individuals for the 2013 and 2014 tax years, but not for the 2015 tax year. For 2015, the Commission has found that both taxpayers are only domiciled in Utah from January 1, 2015 to November 1, 2015. The

Division, however, contends that TAXPAYER-1 (but not TAXPAYER-2) is a 2015 full-year Utah resident individual under the 183 day test, even if he is not a 2015 full-year Utah resident individual under the domicile test. The Division argues that TAXPAYER-1 is a 2015 full-year Utah resident individual under the 183 day test because he maintained a Utah place of abode and was present in Utah for more than 183 days of the 2015 tax year.

Subsection 59-10-103(1)(q)(i)(B) provides that an individual who *is not domiciled in Utah* is, nevertheless, considered to be a Utah resident individual if he or she maintains a place of abode in Utah and spends in the aggregate 183 or more days of the taxable year in Utah. TAXPAYER-1, however, is not an individual who *is not domiciled in Utah* during 2015. The Commission has found that TAXPAYER-1 was domiciled in Utah for most of 2015 (specifically from January 1, 2015 to November 1, 2015). As a result, under the circumstances of this case, TAXPAYER-1 is not a 2015 full-year Utah resident individual under Subsection 59-10-103(1)(q)(i)(B), regardless of whether he maintained a Utah place of abode and spent 183 or more days in Utah during 2015.

This decision is consistent with prior Commission decisions. For example, in *USTC Appeal No. 08-0856* (Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment Oct. 28, 2010), the Commission considered a petitioner who was domiciled outside of Utah from January 1, 2004 through approximately January 4, 2004 and who was domiciled in Utah for the remainder of 2004 (i.e., domiciled in Utah for all but approximately the first four days of the taxable year).[18] In that case, the Division argued that the 2004 income the petitioner earned prior to January 4, 2004 was subject to Utah taxation because the petitioner had owned a home in Utah for several years prior to and during 2004 and because the petitioner was present in Utah for 183 or more days of 2004. The Commission did not find the Division's argument persuasive, in part, because the 183 day test of Subsection 59-10-103(1)(q)(i)(B) pertains

18 Redacted copies of this and other selected decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

to an individual who is *not domiciled in this state* and because that petitioner *was domiciled in Utah* for most of 2004.[19]

For these reasons, the Commission does not find that TAXPAYER-1 was a Utah resident individual for the November 2, 2015 to December 31, 2015 period under the 183 day test. It is also clear that TAXPAYER-2 was not a Utah resident individual for any portion of the 2015 tax year because she was not present in Utah for 183 or more days of 2015. Accordingly, for the 2015 tax year, both taxpayers are Utah resident individuals only for the January 1, 2015 to November 1, 2015 period that the Commission has found them to be domiciled in Utah. As a result, the Division should amend its full-year 2015 assessment to reflect the Commission's decision that both taxpayers are 2015 Utah part-year resident individuals from January 1, 2015 to November 1, 2015.

IV. Taxpayers' Other Arguments.

The taxpayers contend that none of the income that TAXPAYER-2 earned in STATE after moving back to STATE in September 2013 should be subject to Utah taxation. However, the Commission has found that TAXPAYER-2 is a Utah resident individual for all of 2013 and 2014 and from January 1, 2015 to November 1, 2015. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that "a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]" However, in accordance with

19 At the hearing, the Division further stated that a hypothetical individual would also be considered a full-year Utah resident individual for a year during which the individual maintained a Utah place of abode and spent 183 days in Utah between January 1st and July 31st of that year, even if the individual was not domiciled in Utah after July 31st of that year and even if the individual cut all ties with Utah and never returned to Utah after July 31st of that year. Specifically, the Division proffered that the Tax Commission could tax the income that the individual earned elsewhere between August 1st and December 31st of that year under Subsection 59-10-103(1)(q)(i)(B). The Division's argument is not persuasive.

Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because TAXPAYER-2 is a Utah resident individual for all of 2013 and 2014 and from January 1, 2015 to November 1, 2015, Subsection 59-10-117(2)(c) does not apply to her for these periods. Accordingly, all of the income that TAXPAYER-2 earned during 2013 and 2014 and from January 1, 2015 to November 1, 2015 is subject to Utah taxation, even if it was earned outside of Utah and even though it may also have been subject to taxation in another state. As explained earlier, any double taxation concerns are alleviated through the application of a credit for taxes paid to another state, pursuant to Subsection 59-10-1003(1).

The taxpayers also contend that Utah's relatively new domicile law (i.e., Section 59-10-136) is not fair. In effect, the taxpayers are asking the Commission to find that the new domicile law does not always result in good tax policy and should not be upheld under the specific circumstances of their case. The Commission's role, however, is to implement the law. The Commission is not authorized to change the law to achieve what the taxpayer may consider to be a better tax policy for the specific circumstances of their case. That is the role of the Utah Legislature. Accordingly, the Commission declines to abate those taxes that the Division properly assessed to the taxpayers under Utah law.

V. 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 2013 and 2014 assessments. Accordingly, the Commission should sustain the Division's 2013 and 2014 assessments in their entireties. For the 2015 tax year, however, the evidence is sufficient to show that the taxpayers were Utah resident individuals only from January 1, 2015 to November 1, 2015, and that they were not Utah resident individuals from November 2, 2015 to December 31, 2015. Accordingly, the Commission should order the Division to amend its 2015 assessment to reflect this decision.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2013 and 2014 assessments in their entireties. For the 2015 tax year, the Commission finds that taxpayers were Utah resident individuals from January 1, 2015 to November 1, 2015, but not from November 2, 2015 to December 31, 2015. The Division is ordered to amend its 2015 assessment accordingly. 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 _____, 2018.

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.