17-812
TAX TYPE: INCOME TAX
TAX YEAR: 2010, 2011, 2014 & 2015
DATE SIGNED: 03/13/2018
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. PERO, R. ROCKWELL
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. 17-812 Account No. ##### Tax Type: Income Tax Years: 2010, 2011, 2014 & 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
For Respondent: RESPONDENT, 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 January 16, 2018.

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessments of additional Utah individual income taxes for the 2010, 2011, 2014, and 2015 tax years. On April 10, 2017, the Division issued Notices of Deficiency and Estimated Income Tax ("Statutory Notices") to the taxpayers for the four years at issue. In the Statutory Notices, the Division imposed additional tax, 10% failure to timely file penalties, 10% failure to timely pay penalties, and interest (calculated as of May 10, 2017),[1] as follows:

Year	Tax	Penalties	Interest	Total

2010	$$$$$	$$$$$	$$$$$	$$$$$
2011	$$$$$	$$$$$	$$$$$	$$$$$
2014	$$$$$	$$$$$	$$$$$	$$$$$
2015	$$$$$	$$$$$	$$$$$	$$$$$

The taxpayers are a married couple who filed joint federal returns, but no Utah returns, for the 2010, 2011, 2014, and 2015 tax years. The Division has determined that both taxpayers were domiciled in Utah for all of 2010, 2011, 2014, and 2015 and, thus, were Utah resident individuals for these years. For these reasons, the Division contends that all of the taxpayers' income during these years is subject to Utah taxation (subject to a credit for income taxes paid to other states).[2] On this basis, the Division asks the Commission to sustain its assessments of additional tax and interest. The Division, however, indicates that it would not object to the Commission waiving the penalties that it imposed.

The taxpayers, on the other hand, contend that neither of them was domiciled in Utah during any of the years at issue. They contend that they abandoned their Utah domicile prior to 2010 (when they moved to STATE-1); that they were domiciled in STATE-1 and/or STATE-2 from January 1, 2010 until December 2011 (when they moved back to Utah and established domicile again in Utah); and that they again abandoned their Utah domicile in August 2013 when they moved to and established domicile in STATE-3 (where they still live). As a result, the taxpayers ask the Commission to find that during the years at issue, neither of them was domiciled in Utah or was a Utah resident individual. For these reasons, the taxpayers ask the Commission to find that the Division's assessments were not properly imposed and to reverse them.

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1 Interest continues to accrue until any tax liability is paid.

2 The Division noted that for a resident individual, Utah Code Ann. §59-10-1003 (2010 – 2015) provides that a nonrefundable tax credit may be applied against a person's Utah tax liability based on the amount of income 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 2010, 2011, 2014, and 2015 tax years, it has applied credits against their Utah tax liability for these years based on the income taxes they paid to other states. In the event the Commission sustains the Division's determination that the taxpayers are both Utah resident individuals for some or all of the years at issue, the taxpayers have not contested the amount of the Section 59-10-1003 credit that the Division allowed for each year.

In the event that the Commission finds that the taxpayers were domiciled in Utah for any of the years at issue, the taxpayers ask the Commission to abate any properly-imposed assessment for two reasons. First, the taxpayers explain that the Division's assessments appear to be based in part or in whole on the fact that during these years, they owned a Utah home on which they claimed a Utah residential exemption from property taxation. The taxpayers stated that it was only after the Division issued its assessments in 2017 that they became aware that they had claimed the Utah residential exemption and that this could affect their residency. The taxpayers are concerned that the Division did not issue its assessments until seven years after the 2010 tax year. The taxpayers contend that had the Division issued its assessment for 2010 in a timelier manner, they could have asked for the residential exemption to be removed from their Utah home, which could have shielded them from any Utah income tax liability for years subsequent to 2010.

Second, the taxpayers recognize that during some of the years at issue, they lived and worked in states such as STATE-1 and STATE-3 that do not impose income taxes, which precludes them from further reducing their Utah tax liability by claiming credits for income taxes paid to these states. The taxpayers, however, ask the Commission to consider that although they did not pay income taxes to STATE-1 and STATE-3, these states made up for not having income taxes by imposing higher amounts of other taxes, including property and sales and use taxes. For example, they explain that $$$$$ of property taxes was imposed on their STATE-1 home (which had a value of $$$$$), as opposed to $$$$$ of property taxes being imposed on their Utah home (which had a value of $$$$$). As a result, the taxpayers ask the Commission to consider that the total tax liability they have already paid to other states for the years at issue should more than offset the Utah income tax liability imposed by the Division. For these reasons, the taxpayers ask the Commission to abate any of the Division's properly-imposed assessments in their entireties.

APPLICABLE LAW

I. Definitions Involving "Income" and Taxation of a Utah Resident Individual.

1. For all four years at issue, Utah Code Ann. §59-10-103 defines "adjusted gross income," "federal taxable income," and "'taxable income' or 'state taxable income,'" as follows:

> (1) As used in this chapter:
> (a) "Adjusted gross income":
> (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or
> . . . .
> (f) "Federal taxable income":
> (i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or
> . . . .
> (w) "Taxable income" or "state taxable income":
> (i) . . . for a resident individual, means the resident individual's adjusted gross income after making the:
> (A) additions and subtractions required by Section 59-10-114; and
> (B) adjustments required by Section 59-10-115;
> . . . .

2. For all four years at issue, UCA §59-10-104(1) provides that "a tax is imposed on the state taxable income of a resident individual[.]"

3. For all four years at issue, a "resident individual" is defined in UCA §59-10-103(1)(q), as follows:

> (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.
> (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what constitutes spending a day of the taxable year in the state.[3]

II. Domicile Law in Effect for the 2010 and 2011 Tax Years.

3 For purposes of Subsection 59-10-103(1)(q)(ii), Utah Admin. Rule R865-9I-2 ("Rule 2") provides that "[f]or purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a 'day' means a day in which the individual spends more time in this state than in any other state." For the 2010 and 2011 tax years, this provision was found in Subsection (2) of Rule 2. For the 2014 and 2015 tax years, this provision was found in Subsection (1) of Rule 2.

4. For the 2010 and 2011 tax years, Utah Admin. Rule R865-9I-2 ("Rule 2") provides guidance concerning the determination of "domicile," as follows in pertinent part:[4]

> 1. Domicile.
>
> (a) Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.
>
> (b) For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.
>
> (i) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.
>
> (ii) Domicile applies equally to a permanent home within and without the United States.
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> (c) A domicile, once established, is not lost until there is a concurrence of the following three elements:
>
> a) a specific intent to abandon the former domicile;
>
> b) the actual physical presence in a new domicile; and
>
> c) the intent to remain in the new domicile permanently.
>
> (d) An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.
>
> . . . .

5. For the 2010 and 2011 tax years, Utah Admin. Rule R884-24P-52 ("Rule 52") is not only used to determine an individual's property tax domicile, but also his or her income tax domicile.[5] Rule 52 sets forth a non-exhaustive list of factors or objective evidence that may be determinative of domicile, as follows:

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4 Rule 2 was also renumbered when it was amended on August 12, 2010 (as previously discussed). The version of the Rule 2 that is cited for the 2010 and 2011 tax years is the renumbered version. Effective for tax year 2012, however, Utah law concerning income tax "domicile" was substantively amended. The Rule 2 definition of income tax domicile in effect for 2010 and 2011 was repealed beginning with tax year 2012, and new criteria concerning income tax domicile were enacted in UCA §59-10-136. As a result, the Rule 2 definition of income tax domicile in effect for 2010 and 2011 will be used to determine the taxpayers' income tax domicile during 2010 and 2011, but Section 59-10-136 will be used to determine their income tax domicile during 2014 and 2015.

5 Rule 52 is a property tax rule that, as of the hearing date, is still used to determine an individual's property tax domicile. However, prior to the 2012 tax year, Rule 52 was referenced in Rule 2 (the income tax

. . . .

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

. . . .

III. Domicile Law in Effect for the 2014 and 2015 Tax Years.

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rule, that was in effect for the 2010 and 2011 tax years). Effective for the 2012 tax year, Rule 52 is no longer referenced in Rule 2. Accordingly, Rule 52 *is* applicable for purposes of determining the taxpayers' income tax domicile for the 2010 and 2011 tax years. However, it *is not* applicable for purposes of determining the taxpayers' income tax domicile for the 2014 and 2015 tax years.

6. Effective for tax year 2012 (and thus applicable to the 2014 and 2015 tax years at issue), Utah Code Ann. §59-10-136 provides guidance concerning 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.

7. In Section 59-10-136, two subsections require the Commission to determine whether the property for which an individual or an individual's spouse claims a residential exemption is that individual's or individual spouse's "primary residence."[6] To assist in determining whether a property is considered the "primary residence" of the individual or individual's spouse who claimed the exemption, the Legislature enacted new property tax provisions at the same time it enacted the new domicile law in Section 59-10-136. Specifically, to assist in the determination of Utah income tax domicile of a property owner, Utah Code Ann §59-2-103.5(4) (2015) provides, as follows:[7]

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

IV. Waivers of Penalties and Interest and Burden of Proof.

8. UCA §59-1-401(14) (2018) provides that "[u]pon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

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

7 Effective for the 2015 tax year, Section 59-2-103.5 was renumbered and amended. The amendments to the prior version of Subsection 59-2-103.5(4) were nonsubstantive.

9. Utah Admin. Rule R861-1A-42 ("Rule 42") (2018) provides guidance concerning the waiver of penalties and interest, as follows in pertinent part:

> . . . .
> (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.
> (3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:
> (a) Timely Mailing…
> (b) Wrong Filing Place…
> (c) Death or Serious Illness…
> (d) Unavoidable Absence…
> (e) Disaster Relief…
> (f) Reliance on Erroneous Tax Commission Information…
> (g) Tax Commission Office Visit…
> (h) Unobtainable Records…
> (i) Reliance on Competent Tax Advisor…
> (j) First Time Filer…
> (k) Bank Error…
> (l) Compliance History. . . .
> (m) Employee Embezzlement…
> (n) Recent Tax Law Change…
> (4) Other Considerations for Determining Reasonable Cause.
> (a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
> (i) whether the commission had to take legal means to collect the taxes;
> (ii) if the error is caught and corrected by the taxpayer;
> (iii) the length of time between the event cited and the filing date;
> (iv) typographical or other written errors; and
> (v) other factors the commission deems appropriate.
> (b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
> (c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
> (d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

10. For the instant matter, UCA §59-1-1417(1) (2018) 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. At issue is whether the taxpayers are Utah resident individuals for the 2010, 2011, 2014, and 2015 tax years. For all of these years, 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 contend that the taxpayers are Utah resident individuals for any of the years at issue under the 183 day test. The Division, however, does contend that both taxpayers qualify as Utah resident individuals under the domicile test for all four years at issue. As a result, the Commission must apply the laws in effect for each year at issue to the facts and determine whether the taxpayers are domiciled in Utah for these years (as the Division contends) or are not domiciled in Utah for these years (as the taxpayers contend).[8]

I. Facts.

The taxpayers have been married since 2005 and have not been legally separated or divorced. TAXPAYER-1 grew up in STATE-4, while TAXPAYER-2 grew up in Utah. TAXPAYER-1 moved to Utah in 2004 after accepting a job as the OCCUPATION ("OCCUPATION") of a Utah company. After he and

8 The Division did not assert that any of the income it assessed would be subject to Utah taxation if the taxpayers are deemed to be Utah nonresident individuals for the years at issue.

TAXPAYER-2 married in 2005, TAXPAYER-1 adopted TAXPAYER-2's teenage daughter. The taxpayers only have this one child. After their marriage, the taxpayers lived in a home that they owned in CITY, Utah, which, in 2005, was worth approximately $$$$$ (the "Utah home"). The Utah home had a three-car garage and approximately ##### total square feet of above-grade and basement living space. The Utah home received the residential exemption from property taxation for all years at issue in this appeal, and the taxpayers continued to own the Utah home until they sold it around April 2016.[9]

In January 2008, the Utah Company for which TAXPAYER-1 worked was bought out, and TAXPAYER-1's job was eliminated. TAXPAYER-1 was subsequently able to procure another OCCUPATION position with a STATE-1 company, which required his moving to the CITY, STATE-1 area in May 2008.[10] TAXPAYER-2 and the taxpayers' daughter joined TAXPAYER-1 in STATE-1 in July 2008, and the taxpayers' daughter started attending a STATE-1 public high school in August 2008. TAXPAYER-1 received a "relocation package" from his new STATE-1 employer, and the taxpayers moved all of their furniture and other belongings out of the Utah house and took them to STATE-1. In STATE-1, the taxpayers lived in an apartment for several months until they purchased a home in September 2008 for $$$$$ (the "STATE-1 home"). The STATE-1 home had a three-car garage and ##### square feet of above-grade space (it did not have a basement). For as long as the taxpayers owned the STATE-1 home, it qualified for a STATE-1 homestead exemption from property taxation (which the taxpayers explained was similar to the Utah residential exemption from property taxation).

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9 For all years at issue, UCA §59-2-103(2) provided that ". . . the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption[,]" while "residential property" was defined in Utah Code Ann. §59-2-102 to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that is used as a person's primary residence is only taxed on 55% of its fair market value, while a home that is not a person's primary residence (such as a vacation home) is taxed on 100% of its fair market value.

10 During the years at issue, TAXPAYER-2 did not work and would generally live wherever her husband was living.

In mid-2008, the taxpayers listed their Utah home for sale with a realtor for $$$$$. The taxpayers stated that they needed to obtain this price for the Utah home in order not to lose money on the home. The taxpayers also explained that mid-2008 was not a good time to sell a home because of the economic crisis that occurred around that time. As a result, during the first two to three months that the Utah home was listed for sale in 2008, the taxpayers' realtor did not show it to a single potential buyer. The taxpayers proffer that their realtor subsequently told them that they would need to reduce the Utah home's price to somewhere in the range of $$$$$ to $$$$$ if they wanted to sell it, or they could take the Utah home off the market and wait until the market had recovered before re-listing it. The taxpayers explain that because they would have lost more than $$$$$ to sell the home in the fall of 2008, they decided to take the home off the market and hold on to it until the market improved.

Around September 2009, the STATE-1 company for whom TAXPAYER-1 worked was purchased, which resulted in TAXPAYER-1 losing the STATE-1 job. The taxpayers did not return to Utah, but remained in STATE-1 while TAXPAYER-1 searched for another job. In late 2009, TAXPAYER-1 obtained a new job in STATE-2 that began in January 2010. At this time, TAXPAYER-1 rented an apartment in STATE-2, while TAXPAYER-2 remained in STATE-1 where the taxpayers' daughter was finishing her senior year of high school. Around April 2010, the taxpayers sold their STATE-1 home and rented an apartment in STATE-1.[11] After the taxpayers' daughter graduated from high school, TAXPAYER-2 moved to STATE-2 to join TAXPAYER-1, while the taxpayers' daughter continued to live in the STATE-1 apartment to go to college ("daughter's apartment").

Around the beginning of 2011, the STATE-2 company for which TAXPAYER-1 was working was restructured, and TAXPAYER-1 lost the STATE-2 job. At this time, the taxpayers did not return to Utah, but returned to STATE-1, where they lived with their daughter in the daughter's apartment for two months before

11 The taxpayers stated that because home prices in Utah were still low in 2010, they were again advised in 2010 to wait before trying to sell their Utah home.

the taxpayers appear to have rented a separate furnished apartment for themselves in STATE-1. For about two months in 2011, the taxpayers visited TAXPAYER-1's family members in STATE-4 (where TAXPAYER-1 grew up).[12] The taxpayers explain that TAXPAYER-1 interviewed for a number of positions in STATE-1, but was not successful in obtaining another job during 2011. As a result, at the end of 2011, the taxpayers decided that they could no longer pay the mortgage on the Utah home and pay rent in STATE-1. In addition, because the market in Utah had still not rebounded, the taxpayers decided that they still could not sell their Utah home without a loss. As a result, at the end of 2011, the taxpayers decided to move back to Utah and live in their Utah home.

The taxpayers stated that when they moved from STATE-2 to STATE-1 in early 2011, they gave some of their furniture to their daughter, sold some of it, and put some of it in storage in STATE-1. When they moved back to Utah at the end of 2011, the taxpayers moved the furniture they had not sold or given away back to Utah. The taxpayers' daughter, who by this time had married, remained with her husband in STATE-1 and, as of the hearing date, still lives in STATE-1. During 2012, TAXPAYER-1 found a job in Utah that lasted about six months, after which he again started looking for employment. Around August 2013, TAXPAYER-1 was offered an OCCUPATION position in STATE-3, at which time he and TAXPAYER-2 moved to and rented an apartment in STATE-3. The taxpayers stated that they decided not to purchase a home in STATE-3 until their Utah home had sold. The STATE-3 apartment was approximately ##### square feet in size and had two bedrooms and two baths.

TAXPAYER-1 received a "relocation package" from his new STATE-3 employer. However, unlike their move to STATE-1 in 2008, the taxpayers did not take all of the furniture and other belongings from their Utah home when they moved to STATE-3 in 2013. They left some furniture at the Utah home in order that it

12 While TAXPAYER-2 grew up in Utah, her parents died before the tax years at issue. TAXPAYER-2 had a brother who lived in Utah during the years at issue. The taxpayers explained, however, that TAXPAYER-2 has had no contact with her brother for many years (including the years at issue) and does not even know the city in which he lives.

would be "staged" once they decided to sell it. The taxpayers explained that they were still consulting with realtors and were told that the home would sell better if it was staged. However, the taxpayers decided not to try to sell the Utah home in August 2013 because they were told that it would not sell for more than $$$$$ at that time.

By the end of 2014, the taxpayers decided that the Utah market had rebounded enough to try to sell the Utah home again. Sometime around the end of 2014, the taxpayers hired a broker at BUSINESS, who initially listed the Utah home "internally" (where the listing was shared with other brokers and agents, but was not put on the Multiple Listing Service ("MLS")). The taxpayers explain that their realtor eventually listed the Utah home on MLS for a short period of time until the taxpayers fired him sometime in early 2015 for not returning their telephone calls and for not performing as he had promised. At the Initial Hearing, the taxpayers stated that they could not recall the exact dates that they had listed the Utah home for sale in 2014 and 2015, nor did they know the dates that the listing appeared on the MLS. The taxpayers stated that they signed a contract with BUSINESS. However, the taxpayers did not provide a copy of the contract, the name of the realtor who listed the Utah home, the price at which the realtor had listed the Utah home for sale, or a copy of the information that appeared on the MLS. The taxpayers also stated that the pictures of the Utah home that the BUSINESS realtor put on MLS for a short period of time also ended up on the Zillow.com website. The taxpayers also did not provide a copy of the Zillow.com information.

Around April 2016, TAXPAYER-2 returned to the Utah home to organize a garage sale to sell the remainder of the furniture at the Utah home that they did not want to move to STATE-3 and to interview new brokers. One person who attended the garage sale asked TAXPAYER-2 if the Utah home was for sale, which eventually led to the taxpayers selling the home to this person. The taxpayers sold the Utah home in April 2016 for $$$$$. In October 2016, the taxpayers purchased a home in STATE-3 for $$$$$. As of the date of the Initial Hearing, both taxpayers still live in STATE-3.

During the July 2008 to late 2011 period that the taxpayers lived in STATE-1 and STATE-2, the taxpayers had neighbors in Utah who would check on the Utah home, and the neighbors' son would mow the grass at the Utah home. In addition, the taxpayers stated that TAXPAYER-2 would travel to Utah a couple of times per year to check on the home. After the taxpayers moved to STATE-3 in August 2013, it appears that TAXPAYER-2 would also travel to Utah occasionally to check on the Utah home. The taxpayers stated that for at least a few months during the August 2013 to April 2016 period that the taxpayers lived in STATE-3 and still owned the Utah home, the taxpayers allowed a friend of TAXPAYER-2's to live in the Utah home and look after it. The taxpayers, however, could not remember the dates that TAXPAYER-2's friend lived in the Utah home and did not indicate whether the Utah home was the friend's primary residence during the period the friend lived in the Utah home. The taxpayers did not disclose whether the friend had another residence at the same time she lived in the taxpayers' Utah home or whether the friend moved the friend's own furniture and other belongings into the Utah home.

The Division indicates that both taxpayers retained their Utah driver's licenses during all of the years at issue. It also indicates that Utah state records show that TAXPAYER-1 last renewed his Utah driver's license in June 2011 (while the taxpayers were still living in STATE-1 and before they returned to Utah at the end of 2011). TAXPAYER-1 was not sure if TAXPAYER-2 ever obtained a STATE-1 driver's license and proffered no evidence to suggest that she did. Because the taxpayers have the burden of proof in this matter, the Commission finds that both taxpayers had Utah driver's licenses during the four tax years at issue and that neither of them obtained a driver's license from another state between 2009 and 2016.

TAXPAYER-1 stated that he could not recall ever having registered to vote in Utah or STATE-1 and that he did not know if TAXPAYER-2 was ever registered to vote in Utah. However, he stated that TAXPAYER-2 made friends in STATE-1 who were interested in voting, which led to TAXPAYER-2 registering to vote and actually voting in STATE-1. He admitted, however, that he never registered to vote in a

state other than Utah during the years at issue. The Division indicated that Utah voting records show that neither taxpayer ever voted in Utah. However, the Division indicates that these Utah voting records do show that TAXPAYER-2 registered to vote in Utah in August 1997 and again in May 2014 (when the taxpayers were living in STATE-3); and that TAXPAYER-1 registered to vote in Utah during November 2010 (when the taxpayers were living in STATE-2) and in May 2014 (when the taxpayers were living in STATE-3). TAXPAYER-1 stated that because he could not recall ever having registered to vote in Utah, he wondered whether the registrations occurred when he renewed his Utah driver's license. Regardless, the taxpayers have the burden of proof in this matter. They have not provided sufficient evidence to show that one or both of them was not registered to vote in Utah during the tax years at issue, nor have they shown that either of them registered to vote or actually voted in STATE-1, STATE-2, or STATE-3 during these years.

The taxpayers stated that when they moved to STATE-1 in August 2008, they took all three of their vehicles with them to STATE-1 and registered them in STATE-1. In addition, the taxpayers stated that once they moved to STATE-2 in January 2010, they only registered one of their vehicles in STATE-2 and continued registering the other two vehicles in STATE-1. The taxpayers stated that when they moved back to Utah at the end of 2011, they left one vehicle in STATE-1 with their daughter, but brought their other two vehicles back to Utah and registered these two vehicles in Utah. The taxpayers stated that when they moved to STATE-3, they initially took one vehicle to STATE-3 (which they registered in STATE-3) and left one vehicle at their Utah home (which they registered in Utah).

The Division stated that it does not have information to show that the taxpayers ever owned three vehicles that were registered in Utah. However, the Division indicates that Utah state records show that the taxpayers registered one of their vehicles in Utah during 2010 (when the taxpayers were living in STATE-2) and that they registered one of their vehicles in Utah during 2015 (when the taxpayers were living in STATE-3). From the information available at the Initial Hearing, the Commission finds that the taxpayers have shown

that they registered all of their vehicles in STATE-1 upon moving there in mid-2008. However, for the years at issue (i.e., 2010, 2011, 2014, and 2015), the Commission finds that the taxpayers not only registered one or more vehicles in the state(s) in which they were living, but that they also registered one vehicle in Utah.

When the taxpayers moved to STATE-1 in mid-2008, they had much of their mail changed to a STATE-1 address. In addition, the taxpayers rented a Utah post office box so any mail that might otherwise have gone to their Utah home would now go to the post office box. The taxpayers also had one of their Utah neighbors check the Utah post office box periodically and mail anything other than junk mail to them in STATE-1. The taxpayers stated that they changed the address concerning the mortgage on their Utah home to STATE-1, but did not change their address with COUNTY in regards to tax notices for the Utah home. As a result, the tax notices on the Utah home were eventually delivered to their Utah post office box, as were the utility bills for the Utah home. Notices and bills associated with their STATE-1 home were sent to their STATE-1 address.

After the taxpayers moved to STATE-1 in mid-2008, they continued to use the address of their Utah home on the federal tax returns they filed. They also used the address of their Utah home on the 2010 STATE-2 part-year/nonresident return they filed in early 2011.[13] TAXPAYER-1 explained that he used TurboTax to prepare his and his wife's tax returns both before and after their move to STATE-1 and that because he did not change the address in the TurboTax program, the program continued to "import" the taxpayers' old Utah address on returns he prepared after their move to STATE-1. The Division also proffered evidence to show that most of the taxpayers' 2010 and 2011 tax documents (such as W-2's and 1099's) were sent to the taxpayers' Utah address in 2011 (when the taxpayers were living in STATE-1) and in 2012 (when the taxpayers were living in Utah). Based on the foregoing, the Commission finds that the taxpayers were using

13 It is unclear whether the STATE-2 return is a part-year resident return or a nonresident return. It does not appear that the taxpayers indicated on this return what other state(s) they may have been residents of during 2010.

both their STATE-1 address and their Utah address for mail they received between mid-2008 (when the taxpayers moved to STATE-1) and the end of 2011 (when the taxpayers moved back to Utah). In addition, for this mid-2008 to 2011 period, the Commission finds that the taxpayers used their Utah address to file state and federal tax returns.

The taxpayers filed a 2013 Utah part-year resident return. On page three of this return, the taxpayers checked the Property Owner's Residential Exemption Termination Declaration, which provides that "[i]f you are a Utah residential property owner and declare you no longer qualify to receive a residential exemption authorized under UC §59-2-103 for your primary residence, check box and enter the county code where the residence is located (see instructions for county codes and additional information)." Not only did the taxpayers check this box, but they also entered county code 18 (which is the code for COUNTY where the taxpayers' Utah home was located).

The instructions concerning the Property Owner's Residential Exemption Termination Declaration provide that "[y]ou must notify the county when you have a primary residential property on which you have claimed the homeowner's exemption and to which you are no longer entitled. You must also report on your Utah income tax return that you no longer qualify for the homeowner's exemption on your primary residence." While the taxpayers reported on their 2013 Utah income tax return that they no longer qualified to receive the residential exemption on their Utah home, they admit that they did not contact COUNTY and inform it that they no longer qualified for the exemption.[14]

After the taxpayers moved to STATE-3 in mid-2013, they again continued to receive mail at their Utah post office box, but they also received some mail at their STATE-3 address. For the 2014 and 2015 tax years, the taxpayers used their STATE-3 address to file all tax returns. As a result, for the 2014 and 2015 tax years,

14 The Division explained that when a taxpayer checks the Property Owner's Residential Exemption Termination Declaration and enters a county code, the Division takes no action concerning the declaration and does not contact the county whose code was entered.

the Commission finds that the taxpayers were using both their STATE-3 address and their Utah address to receive mail and that they used their STATE-3 address to file tax returns.

When the taxpayers moved to STATE-1 in mid-2008, they kept their Utah bank account at FINANCIAL INSTITUTION-1. However, in STATE-1, they started using a FINANCIAL INSTITUTION-2 account that TAXPAYER-1 had opened in STATE-5 around 1999, and TAXPAYER-1 had his paycheck from the STATE-1 company directly deposited into the FINANCIAL INSTITUTION-2 account. In addition, when TAXPAYER-1 worked in STATE-2 during 2010, he continued to have his paycheck directly deposited into the FINANCIAL INSTITUTION-2 account. TAXPAYER-1 explained that the taxpayers also moved their TRADING ACCOUNT from a Utah office to a STATE-1 office. TAXPAYER-1 stated that he would occasionally go into the TRADING ACCOUNT office in STATE-1 to sign documents. Based on this information, the Commission finds that once the taxpayers moved to STATE-1 in mid-2008, they used banks and financial institutions in both Utah and STATE-1.

Once the taxpayers moved back to Utah at the end of 2011, they kept their FINANCIAL INSTITUTION-1 and FINANCIAL INSTITUTION-2 bank accounts and changed their TRADING ACCOUNT back to a Utah office. When they moved to STATE-3 in mid-2013, they kept the same bank accounts and changed their TRADING ACCOUNT to a STATE-3 office. When the taxpayers moved to STATE-1 in mid-2008, they stopped seeing their Utah dentist and doctors and started seeing a STATE-1 dentist and STATE-1 doctors. In addition, when the taxpayers moved to STATE-2 in January 2010, TAXPAYER-1 started to see STATE-2 medical professionals, while TAXPAYER-2 continued to see her medical professionals in STATE-1.

Neither taxpayer has been a member of a church since they married in 2005. In addition, the taxpayers have not been members of any clubs or other organizations since they married, except when they lived in STATE-1 where TAXPAYER-2 got involved with and joined a women's club. Neither of the taxpayers

attended an institution of higher education during any of the tax years at issue. In addition, the taxpayers do not have a will or own a burial plot.

II. Applying the Facts to the Domicile Law in Effect for 2010 and 2011.

For the 2010 and 2011 tax years, the issue of income tax domicile was primarily addressed in Rule 2. Rule 2(1)(a) provides that "[d]omicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home." Once domicile is established, Rule 2(1)(c) provides that domicile "is not lost until there is a concurrence of the following three elements: (i) a specific intent to abandon the former domicile; (ii) the actual physical presence in a new domicile; and (iii) the intent to remain in the new domicile permanently."

The issue is whether the taxpayers have met the three elements necessary to show that they abandoned their Utah domicile and established a new domicile in STATE-1 and/or STATE-2 prior to or during the 2010 and 2011 tax years. First, the Commission will determine whether the taxpayers changed their domicile from Utah to STATE-1 when they moved to STATE-1 in 2008. If they did, the Commission will next need to determine whether the taxpayers changed their STATE-1 domicile back to Utah prior to the end of 2011 (when the taxpayers moved back to Utah). The taxpayers admit that they were domiciled in Utah during 2012 and part of 2013.

In mid-2008, the taxpayers met the second of the three criteria necessary to change their domicile from Utah to STATE-1 because they established an "actual physical presence" in STATE-1 by living there. The other two criteria that must be present for the taxpayers to have changed their Utah domicile to STATE-1 in mid-2008 involve their intent. For domicile to change, Rule 2(A)(3)(a),(c) requires "a specific intent to abandon the former domicile" and "the intent to remain in the new domicile permanently." In addition, Rule 2(A)(1) provides that "[d]omicile is the place where an individual has a permanent home and to which he

intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the **intent** of making a permanent home" (emphasis added).

TAXPAYER-1 stated that he and his wife intended their domicile to be wherever he was working and where they were living, which for the 2010 and 2011 tax years would be STATE-1 and STATE-2. Utah appellate courts have addressed whether an individual is domiciled in Utah for state income tax purposes[15] and have determined that an individual's actions may be accorded greater weight in determining his or her domicile than a declaration of intent.[16] Accordingly, the Commission must consider the totality of the facts and circumstances surrounding the taxpayers' situation in order to determine their intent.

To assist in this determination, Rule 2(A)(2)(a) references the "non-exhaustive list of factors or objective evidence determinative of domicile" that are found in Rule 52(5). Many of these factors are not applicable to the taxpayers in regards to their move to STATE-1. In addition, several of the factors indicate that the taxpayers' domicile might be in either Utah or STATE-1 after the taxpayers moved to STATE-1.[17] Of the remaining factors listed in Rule 52(5), eight indicate a domicile in STATE-1,[18] and five indicate a domicile

15 The issue of domicile for Utah individual income tax purposes has been considered by the Utah Supreme Court and the Court of Appeals. *See Lassche v. State Tax Comm'n*, 866 P.2d 618 (Utah Ct. App. 1993); *Clements v. State Tax Comm'n*, 839 P.2d 1078 (Utah Ct. App. 1995); *O'Rourke v. State Tax Comm'n*, 830 P.2d 230 (Utah 1992); *Orton v. State Tax Comm'n*, 864 P.2d 904 (Utah Ct. App. 1993); and *Benjamin v. State Tax Comm'n,* 2011 UT 14 (Utah 2011).

16 *See Clements v. Utah State Tax Comm'n*, 893 P.2d 1078 (Ct. App. 1995); and *Allen v. Greyhound Lines, Inc*., 583 P.2d 613, 614 (Utah 1978).

17 Specifically: 1) the Rule 52(5)(c) factor because the taxpayers' Utah home and their new STATE-1 home were similar in the nature and quality of their living accommodations; 2) the Rule 52(5)(g) factor because the taxpayers used banks and financial institutions in both Utah and STATE-1 after moving to STATE-1; 3) the Rule 52(5)(j)(ii) factor because the taxpayers received mail in both Utah and STATE-1 after moving to STATE-1; and 4) the Rule 52(5)(l) factor because the taxpayers claimed a property tax exemption associated with both their Utah home and their STATE-1 home being their primary residence.

18 Specifically: 1) the Rule 52(5)(b) factor because the taxpayers lived in STATE-1 for 1½ years between mid-2008 and the beginning of 2010, when TAXPAYER-1 started working in STATE-2; 2) the Rule 52(5)(d) factor because the taxpayers' daughter also moved to STATE-1; 3) the Rule 52(5)(e) factor because TAXPAYER-2 also moved to STATE-1 when TAXPAYER-1 obtained a job there; 4) the Rule 52(5)(f) factor because the taxpayers' place of business or sources of income were from STATE-1, not Utah, after the taxpayers moved to STATE-1; 5) the Rule 52(5)(h) factor because the taxpayers initially registered all of their

in Utah.[19] However, the factors listed in Rule 52(5) comprise a "non-exhaustive list." Accordingly, the Commission also may consider other factors when determining the taxpayers' intent.

While no factors not listed in Rule 52(5) indicate a domicile in Utah, three other factors not listed in the rule indicate a domicile in STATE-1.[20] When these 13 Rule 52(5) factors and these 3 other factors are considered together, a majority of the 16 factors (specifically 11 of the 16 factors) point to the taxpayers having had the requisite intent to change their Utah domicile to STATE-1 in mid-2008. For these reasons, the Commission finds that by a preponderance of the evidence, the taxpayers also satisfy the two intent elements of Rule 2(A)(3) to change their Utah domicile to STATE-1 in mid-2008. Accordingly, the taxpayers were domiciled in STATE-1, not Utah, after moving to STATE-1 in mid-2008.

The taxpayers appear to concede that they changed their domicile back to Utah at the end of 2011 when they moved back to Utah. Remaining at issue, however, is whether the taxpayers abandoned the STATE-1 domicile they established in mid-2008 and established a new domicile in Utah while still living in

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vehicles in STATE-1 after moving there in 2008; 6) the Rule 52(5)(i) factor because TAXPAYER-2 joined a women's club in STATE-1, whereas neither taxpayer had been a member of a church, club, or other organization while they lived in Utah; 7) the Rule 52(5)(k) factor because the taxpayers' dependent daughter attended a public school in STATE-1 after the taxpayers moved to STATE-1; and 8) the Rule 52(5)(q) factor because the taxpayers purchased a new residence in STATE-1 soon after moving there.

19 Specifically: 1) the Rule 52(5)(a) factor because the taxpayers have not proffered sufficient evidence to show that either of them voted in STATE-1 after moving there in 2008; 2) the Rule 52(5)(j)(iii) factor because the taxpayers used their Utah address on all federal and state tax returns that they filed after moving to STATE-1 in 2008 and prior to returning to Utah at the end of 2011; 3) the Rule 52(5)(j)(v) factor because the taxpayers kept their Utah driver's licenses after moving to STATE-1 in 2008; 4) the Rule 52(5)(j)(vi) factor because the taxpayers have not proffered evidence to show that TAXPAYER-2 did not remain registered to vote in Utah after the taxpayers moved to STATE-1 in 2008; and because the only evidence proffered of TAXPAYER-1 ever registering to vote is when he registered to vote in Utah in November 2010 (when the taxpayers were living in STATE-2); and 5) the Rule 52(5)(o) factor because neither taxpayer obtained a STATE-1 driver's license; and because the taxpayers have not shown that STATE-1 law allows a long-term STATE-1 resident to legally drive in STATE-1 with a driver's license issued by a state other than STATE-1.

20 Specifically: 1) the taxpayers moved all of their furniture and other belongings to STATE-1 upon moving there in 2008 instead of leaving or storing some of them in Utah; 2) the taxpayers did not keep their Utah dentist and doctors, but obtained a new dentist and new doctors upon moving to STATE-1; and 3) when TAXPAYER-1 lost his STATE-1 job in September 2009, the taxpayers remained in STATE-1 while looking for another job instead of returning to Utah; and when TAXPAYER-1 lost his STATE-2 job in January 2011, the taxpayers initially returned to STATE-1, not Utah, to look for another job.

STATE-1 and STATE-2 in 2010 and most of 2011 (i.e., before moving back to Utah at the end of 2011). If the taxpayers did not take adequate steps to change their domicile back to Utah while they were living in STATE-1 and STATE-2, the Division's 2010 and 2011 assessments will be reversed in their entireties.[21] It is clear that the taxpayers remained domiciled in STATE-1 until January 2010, when TAXPAYER-1 moved to STATE-2 for work. It is unclear whether the taxpayers took sufficient steps to change their STATE-1 domicile to a STATE-2 domicile once the taxpayers moved to STATE-2. Regardless, it does not appear that the taxpayers took sufficient steps to change their STATE-1 and/or STATE-2 domicile back to Utah until they moved back to Utah at the end of 2011.

Admittedly, the taxpayers established some new contacts with Utah during 2010 and 2011, specifically because the taxpayers registered one of their vehicles in Utah in 2010 and because TAXPAYER-1 registered to vote in Utah in November 2010 and renewed his Utah driver's license in June 2011. However, most of the factors that showed that the taxpayers changed their Utah domicile to STATE-1 in 2008 still existed during the 2010 and 2011 tax years. As a result, the taxpayers' contacts with Utah during 2010 and 2011 are insufficient to show that the taxpayers had the requisite intent to change their STATE-1 or STATE-2 domicile back to Utah prior to the end of 2011. For these reasons, the Commission should find that the taxpayers are Utah nonresident individuals until the end of 2011 and should reverse the Division's 2010 and 2011 assessments in their entireties.

III. Applying the Facts to the Domicile Law in Effect for 2014 and 2015.

For the 2014 and 2015 tax years, Section 59-10-136 is applicable in determining whether the taxpayers are considered to be domiciled in Utah for income tax purposes for these years. 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

21 At the Initial Hearing, TAXPAYER-1 proffered that he and his wife did not earn any 2011 income after they returned to Utah at the end of 2011, which the Division did not refute. For these reasons, even if the taxpayers were domiciled in Utah and were Utah resident individuals for the last few days of 2011, the Division's 2011 assessment will also be reversed in its entirety.

taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]" For 2014 and 2015, Section 59-10-136 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)).

A. Section 59-10-136(5)(b). For a married individual, it is often necessary 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 2014 or 2015 tax years because the taxpayers were not legally separated or divorced during these years and because they filed joint 2014 and 2015 federal returns. Accordingly, for the 2014 and 2015 tax years, the taxpayers are both considered to have a spouse for purposes of Section 59-10-136.

B. Subsection 59-10-136(4). The taxpayers do not argue that they are *not* considered to be Utah domiciliaries for any of the periods at issue under Subsection 59-10-136(4). This subsection applies to individuals who are "absent from the state" for at least 761 consecutive days, if a number of listed conditions are *all* met. The taxpayers have been absent from Utah for more than 761 days since they moved to STATE-3 in August 2013. However, they have not shown that they do not meet all of the conditions listed in Subsection 59-10-136(4)(a)(ii).

One of the conditions that must be met to satisfy Subsection 59-10-136(4) is that neither the individual nor the individual's spouse "claim a residential exemption . . . for that individual's or individual's spouse's primary residence," pursuant to Subsection 59-10-136(4)(a)(ii)(D). Had the taxpayers had a "tenant" in the Utah home for the 761-day period that they were absent from Utah, the taxpayers could have satisfied the

Subsection 59-10-136(4)(a)(ii)(D) condition because Subsection 59-10-136(6) provides that for purposes of Section 59-10-136, "whether or not an individual or the individual's spouse claims a property tax residential exemption . . . 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."[22] The taxpayers' Utah home, however, was not the primary residence of a tenant for much, if any, of the period that the taxpayers continued to own the Utah home after leaving Utah in August 2013.[23] As a result, the Subsection 59-10-136(4)(a)(ii)(D) condition is not satisfied on the basis that it was the primary residence of a tenant for a 761-day period subsequent to August 2013 when the taxpayers moved to STATE-3.

Remaining at issue is whether the Subsection 59-10-136(4)(a)(ii)(D) condition is met because the Utah home for which the taxpayers received the residential exemption in 2014 and 2015 was not the taxpayers' "primary residence" after they moved to STATE-3 in August 2013. When Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a property on which property owners receive the residential exemption is considered their "primary residence" unless the property owners take *both* of the following affirmative actions: 1) file a written statement with the county board of equalization on a form provided by the county board of equalization to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; and 2) declare on the property owner's Utah

22 In prior appeals, the Commission has found that a "tenant," for purposes of Subsection 59-10-136(6), may include a person who the property owner arranges to live in the property owner's Utah residence in order to maintain and look after it, even if this person has not signed a lease and pays no rent. *See, e.g., USTC Appeal No. 15-1063* (Initial Hearing Order Aug. 26, 2016). Redacted copies of this and other selected decisions can be viewed on the Commission's website at https://tax.utah.gov/commission-office/decisions.

23 The taxpayers claim that a friend of TAXPAYER-2's lived in the Utah home for a short period of time either in 2014 or 2015. The taxpayers, however, provided no information as to whether the Utah home was this person's "primary residence" during the short period of time that the person lived there. For example, the taxpayers did not indicate whether this person also had another residence that was her "primary residence," nor did the taxpayers indicate whether this person moved her own furniture and personal belongings into the taxpayers' Utah home. As a result, the Commission finds that the taxpayers have not met their burden of proof to show that their Utah home was the primary residence of a tenant for any portion of the 761-day period they were absent from Utah after August 2013.

individual income tax return for the taxable year for which the property owner no longer qualifies to receive the residential exemption, that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence.

The taxpayers took the second of these actions when they filed a 2013 Utah part-year or nonresident return on which they declared that they no longer qualified to receive the residential exemption on their Utah home and on which they showed the home to be located in COUNTY. The taxpayers, however, did not take the first action described in the preceding paragraph. Specifically, the taxpayers did not notify the COUNTY Board of Equalization ("COUNTY BOE") on a form approved by the COUNTY BOE that the taxpayers no longer qualified for the residential exemption on their Utah home.

Admittedly, the taxpayers provided a written form to the Tax Commission (i.e., their 2013 Utah return) on which they indicated that they no longer qualified for the residential exemption on their Utah home. Regardless, filing the written statement with the Tax Commission does not satisfy the additional Subsection 59-2-103.5(4) requirement to file the written notice with the COUNTY BOE on a form approved by the COUNTY BOE.[24] Accordingly, the Utah home is considered to be the taxpayers' "primary residence" for purposes of Subsection 59-10-136(4)(a)(ii)(D).[25] Because the taxpayers received the residential exemption on the Utah home during 2014 and 2015 and because the Utah home is their "primary residence" during these years, the taxpayers do not meet the Subsection 59-10-136(4)(a)(ii)(D) condition.[26]

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24 The Commission notes that the instructions for the 2013 TC-40 explain that if a taxpayer has "a primary residential property on which you have claimed the homeowner's exemption and to which you are no longer entitled[,]" that taxpayer must not only notify the county, but must also make a declaration on his or her Utah income tax return.

25 At the hearing, the taxpayers argue that they can "rebut" their claiming the residential exemption on their Utah home. The residential exemption condition found in Subsection 59-10-136(4)(a)(ii)(D), however, is not a rebuttable presumption that can be rebutted (unlike the residential exemption *presumption* found in Subsection 59-10-136(2)(a), which can be rebutted and which will be discussed later in the decision).

26 The Commission further notes that the taxpayers have not provided sufficient evidence to show that they meet another of the Subsection 59-10-136(4) conditions. For Subsection 59-10-136(4) to apply, the taxpayers must show that neither of them returned to Utah for more than 30 days in calendar year during the 761-day period they were absent from Utah, pursuant to Subsection 59-10-136(4)(a)(ii)(A). At the Initial

Because the taxpayers do not meet all of the Subsection 59-10-136(4)(a) conditions during the 761-day period that they were absent from Utah after August 2013, the taxpayers do not qualify to *not* be considered to be domiciled in Utah for the 2014 and 2015 tax years at issue. Accordingly, the Commission must analyze whether the taxpayers *are* considered to have domicile in Utah for the years at issue under one or more of 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.

C. Subsection 59-10-136(1). This subsection provides that an individual is considered to be domiciled in Utah if: 1) 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; or 2) the individual or the individual's spouse is enrolled in a Utah institution of higher education. Neither of these circumstances are applicable to the taxpayers during 2014 or 2015. Accordingly, under Subsection 59-10-136(1), the taxpayers are not considered to be domiciled in Utah during the 2014 and 2015 tax years. The Commission, however, must determine whether the taxpayers are considered to be domiciled in Utah for 2014 and 2015 under another subsection of Section 59-10-136.

D. Subsection 59-10-136(2)(a). This subsection provides that an individual or an individual's spouse is presumed to be domiciled in Utah if the individual or the individual's spouse claims a property tax residential exemption for that individual's or individual's spouse's primary residence, unless the presumption is rebutted. For the presumption to arise, two elements must exist. First, one or both of the taxpayers must have claimed the residential exemption on a Utah home that one or both of them own. Second, the Utah home

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Hearing, the taxpayers explained that one or both of them would occasionally return to Utah to check on the Utah home, but they did not provide the number of days in a calendar year that one or both of them was present in Utah after August 2013. However, even if they had proffered sufficient information to show that they met the Subsection 59-10-136(4)(a)(ii)(A) condition, the Subsection 59-10-136(4) exception would not apply because they did not meet the Subsection 59-10-136(4)(a)(ii)(D) condition.

on which the residential exemption is claimed must be considered the "primary residence" of one or both of the taxpayers in accordance with the guidance provided in Subsection 59-2-103.5(4). For reasons discussed earlier in regards to Subsection 59-10-136(4), both of these elements exists for the entirety of 2014 and 2015. Accordingly, the Subsection 59-10-136(2)(a) presumption has arisen for 2014 and 2015, and the taxpayers will both be considered to be domiciled in Utah for these years unless they are able to rebut the presumption.[27]

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 whose actions give rise to this presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to this presumption *is not* considered to have domicile in Utah.[28] 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 implement the individual's request. For reasons previously discussed, the Subsection 59-10-136(2)(a) presumption does not even arise if an individual asks a county board of equalization to remove the exemption *and* declares on a Utah income tax return that he or she no longer qualified for the exemption.[29] However,

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27 Even if only one of the taxpayers had owned the Utah home during the 2014 and 2015 tax years, the Subsection 59-10-136(2)(a) presumption would still have arisen in regards to both taxpayers because 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. 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."

28 The Legislature did not provide that claiming a residential exemption on a Utah primary residence is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who meets one of the criteria set forth in that subsection).

29 If both of these steps had been taken, the "second element" necessary for the Subsection 59-10-136(2)(a) presumption to arise (which concerns whether the home is the individual's "primary residence") does

where an individual only takes the first of these two steps (i.e., asks the county to remove the exemption because the home no longer qualifies for exemption), the Subsection 59-10-136(2)(a) presumption still *arises* if the county does not remove the exemption because the individual has not taken the second step of declaring on a Utah income tax return that the home no longer qualified for exemption. Regardless, where an individual has taken the first step to have the residential exemption removed and it was not removed, the Commission has found that the individual's actions are sufficient to *rebut* the Subsection 59-10-136(2)(a) presumption that has arisen. The Commission confirms its prior decision that a county's failure to remove a residential exemption at the request of a taxpayer is sufficient to rebut a Subsection 59-10-136(2)(a) presumption.

In the instant case, however, the Commission must decide whether taking the "second step" but not the "first step" is sufficient to rebut the Subsection 59-10-136(2)(a) presumption that has arisen, in part, because the taxpayers did not take both of the steps. The taxpayers took the second step and declared on a Utah income tax return that they no longer qualified for the exemption on their Utah home, but they did not take the first step and notify COUNTY that their Utah home no longer qualified for the exemption. As in the prior case, the taxpayers in the instant case notified a governmental entity (in this case the Tax Commission) that their Utah home no longer qualified for the residential exemption. Furthermore, the taxpayers notified the Tax Commission that their Utah home no longer qualified for the exemption when they filed their 2013 Utah return during 2014.[30] For these reasons and because the Tax Commission's practice, currently, is not to forward such income tax declarations to the applicable county so that the exemption can be removed,[31] the Commission finds that these circumstances are also sufficient to rebut the Subsection 59-10-136(2)(a) presumption.

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not exist, regardless of whether the residential exemption is removed from the home or not.

30 The Commission has previously found that providing notice to a county or the Tax Commission that a home no longer qualifies for the residential exemption *retroactively* (i.e., after the Division has begun its investigation or issued its assessments) is insufficient to prevent the Subsection 59-10-136(2)(a) presumption from arising or to rebut it. The taxpayers, however, provided such notice to the Tax Commission soon after moving from Utah to STATE-3 in mid-2013.

31 The Tax Commission is not precluded from sharing this information with a county, even though the

To find otherwise could allow the Tax Commission to tax an individual's income solely on the basis of that individual receiving a residential exemption where it is possible that the exemption would have been removed had the Tax Commission forwarded to the applicable county the information that the individual provided on his or her Utah return.[32] For these reasons, neither taxpayer is consider to be domiciled in Utah for 2014 or 2015 under Subsection 59-10-136(2)(a).[33] Because the taxpayers are not considered to be domiciled in Utah under Subsection 59-10-136(2)(a), the Commission must consider whether the taxpayers are considered to be domiciled in Utah for 2014 and 2015 under another subsection of Section 59-10-136.

E. 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. For reasons explained earlier, the Commission has found that both taxpayers were registered to vote in Utah during all of 2014 and 2015. Accordingly, the Subsection 59-10-136(2)(b) presumption has arisen in regards to both taxpayers for these years,[34] and the taxpayers will be considered to be domiciled in Utah for both years under this subsection unless they are able to rebut this presumption.

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information is reported on a Utah income tax return. Utah Code Ann. §59-1-403(3)(t) provides that ". . . the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103."

32 That being said, the Commission acknowledges that the Division or another unit of the Tax Commission is not required by statute to forward property tax residential exemption information it receives on a Utah income tax return to an applicable county.

33 It is noted that the Commission has previously found that the Subsection 59-10-136(2)(a) presumption may also be rebutted for that period that an individual receives the residential exemption for a *vacant* home that was listed for sale and which would qualify for the exemption upon being sold. *See* Utah Admin. Rule R884-24P-52(6)(f). During the 2014 and 2015 tax years at issue, the taxpayers' Utah home was not vacant, and the taxpayers kept a vehicle at the home. In addition, the taxpayers did not provide sufficient information to show when in 2014 and/or 2015 the Utah home was listed for sale. As a result, if the Commission had not already found the Subsection 59-10-136(2)(a) presumption to have been rebutted because of the taxpayers' declaration on their 2013 Utah return, the Commission would not have found the presumption to have been rebutted because of its being listed for sale.

34 TAXPAYER-1 indicates that it is possible that TAXPAYER-2 may *not* have been registered to vote in Utah for all or a portion of the 2014 and 2015 tax years. Because the taxpayers provided no information to support this "possibility," the Commission found that both taxpayers were registered to vote only in Utah during 2014 and 2015. However, even if the taxpayers were able to provide evidence to show that

Because Subsection 59-10-136(2)(b) also involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual *is* considered to have domicile in Utah if this particular presumption arises, but also for there to be circumstances where an individual *is not* considered to have domicile in Utah if this presumption arises. Again, 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)(b) presumption. As a result, it is again left to the Commission to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

Although both taxpayers were registered to vote in Utah throughout 2014 and 2015, neither taxpayer has ever voted in Utah. However, 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. Instead, it provided that being registered to vote in Utah could trigger domicile. For these reasons, the Commission has previously found that an individual cannot rebut the Subsection 59-10-136(2)(b) presumption *solely* by showing that he or she did not vote in Utah despite being registered to do so.

The taxpayers ask the Commission to consider that they were living and working in STATE-3 during the 2014 and 2015 tax years. The Commission, however, declines to find that the Subsection 59-10-136(2)(b) presumption concerning voter registration is rebutted by showing that an individual was living and working outside of Utah during the year(s) at issue. The Commission has previously found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that 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 (which includes factors such as the places at which individuals reside and work).[35] Similarly, the

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TAXPAYER-2 was not registered to vote in Utah for all or a portion of 2014 and 2015, the Subsection 59-10-136(2)(b) presumption would still arise for both taxpayers for all of 2014 and 2015 because TAXPAYER-1 was registered to vote in Utah during these years and because the presumption arises for an individual if *an individual or the individual's spouse* is registered to vote in Utah.

35 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

Commission has previously 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) (which includes factors such as the places at which individuals reside and work).[36] As a result, the Commission declines to find that an individual has rebutted the Subsection 59-10-136(2)(b) presumption by showing that he or she resided and worked in a state other than Utah.

The Commission has suggested in prior decisions that individuals who were registered in Utah might be able to rebut the Subsection 59-10-136(2)(b) presumption if they showed that they also registered to vote in another state after moving away from Utah. However, the taxpayers have not shown that either of them registered to vote in STATE-3 upon moving there in mid-2013 or during the 2014 and 2015 tax years. To the contrary, it appears that both of the taxpayers renewed their Utah voter registrations in May 2014 (nearly a year after they moved to STATE-3 in August 2013). Given these circumstances, the Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption concerning Utah voter registration for any portion of 2014 or 2015. Accordingly, under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for all of the 2014 and 2015 tax years.

Because the Commission has found that both taxpayers are domiciled in Utah under Subsection 59-10-136(2)(b), the Commission need not address the remaining subsections of Section 59-10-136 to resolve this matter. However, a cursory review of the remaining subsections may be helpful.

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effect would be giving the new law enacted by the Legislature little or no effect, which the Commission declines to do. That being said, 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.

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

F. Other Subsections of Section 59-10-136. Under Subsection 59-10-136(2)(c), an individual is presumed to be domiciled in Utah if the individual or the individual's spouse asserts Utah residency on a Utah return. Because the taxpayers did not file a 2014 or 2015 Utah return, neither taxpayer asserted Utah residency on a Utah return for these tax years. Accordingly, neither taxpayer would be considered to be domiciled in Utah for any portion of 2014 and 2015 under Subsection 59-10-136(2)(c).

Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), the individual 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). Neither party addressed these 12 factors. However, for the 2014 and 2015 tax years, a cursory review of the 12 factors indicates that some of the taxpayers' actions indicate a Utah domicile, while some do not. Without a more detailed discussion of these 12 factors, it is unclear whether the taxpayers would also be considered to be domiciled in Utah under Subsection 59-10-136(3) or not for the 2014 and 2015 tax years.

G. 2014 and 2015 Domicile – Summary. Based on the foregoing, both taxpayers are considered to be domiciled in Utah for all of 2014 and 2015. As a result, the taxpayers are both considered to be Utah resident individuals for these years. Accordingly, all income that the taxpayers received during 2014 and 2015 is subject to Utah taxation (subject to a credit for income taxes paid to other states). For these reasons, the Commission should sustain the additional taxes the Division imposed in its 2014 and 2015 assessments.

IV. Taxpayers' Other Arguments.

The taxpayers believe that even if they are deemed to be Utah resident individuals for any year at issue, the Division's assessment for that year should be abated. Because the Commission has reversed the Division's 2010 and 2011 assessments in their entireties, the Commission will address the taxpayers' other arguments as they relate to the 2014 and 2015 tax years.

A. Income Earned Outside of Utah. The taxpayers suggest that the income that TAXPAYER-1 earned outside of Utah should not be subject to Utah taxation. The argument is not persuasive, however, because both taxpayers, including TAXPAYER-1, have been found to be Utah resident individuals for the 2014 and 2015 tax years. 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[.]" In accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because TAXPAYER-1 is a Utah resident individual for the 2014 and 2015 tax years, Subsection 59-10-117(2)(c) does not apply to him for these years. Accordingly, all of the taxpayers' 2014 and 2015 income is subject to Utah taxation, even if it was earned outside of Utah.

B. Division's Action. The taxpayers contend that had the Division issued its 2010 and 2011 assessments earlier than it did, the taxpayers could have taken steps to reduce or eliminate their Utah tax liability for the 2014 and 2015 tax years. The taxpayers contend that they have been injured because the Division waited so long to issue the 2010 and 2011 assessments. This argument is also not persuasive.

First, the Division was not required by law to issue its 2010 and 2011 assessments any earlier than it did. Because the taxpayers did not file 2010 and 2011 Utah returns, Utah Code Ann. §59-1-1410(3) permits the Division to assess a tax for 2010 and 2011 "at any time[.]" Second, even if the Division had issued its 2010 and 2011 assessments prior to the 2014 and 2015 tax years, it is unclear whether an earlier resolution of the 2010 and 2011 tax years under the "old" domicile law would have alerted the taxpayers to take different steps for 2014 and 2015, which are governed by the "new" domicile law. As discussed in detail earlier in the decision, the analysis for 2010 and 2011 is much different than the analysis for 2014 and 2015.

Third, the taxpayers should have been aware of Utah's "new" domicile law prior to the 2014 and 2015 tax years because the taxpayers filed a 2012 Utah return in 2013 and a 2013 Utah return in 2014. The instructions for both the 2012 and 2013 TC-40 provided a detailed definition of Utah's "new" domicile law and specifically informed taxpayers that "[t]here is a rebuttable presumption that an individual or a spouse is domiciled in Utah if: They claim a residential exemption for a primary residence [or] They are registered to vote in Utah[.]" Furthermore, the 2012 instructions for the TC-40 specifically instructed taxpayers in the "What's New" section of the instructions that "Utah law defining domicile has changed." For these reasons, the Commission is not persuaded that the Division's 2014 and 2015 assessments should be abated due to the Division's 2010 and 2011 assessments not being issued prior to the 2014 and 2015 tax years.

C. Payment of Taxes Other than Income Taxes to STATE-1 and STATE-3. The taxpayers contend that it is not fair to allow a credit against Utah income taxes for income taxes paid to those states that impose a state income tax, but not to allow a credit for other taxes paid to those states that do not impose a state income tax. The taxpayers contend that the states that do not impose a state income tax impose higher property taxes and sales and use taxes to make up for the lack of a state income tax. As a result, the taxpayers contend that the amounts of property, sales and use, and other taxes they paid to STATE-3 during the 2014 and 2015 tax years should be sufficient to warrant an abatement of their 2014 and 2015 Utah tax liability.

As explained earlier, Subsection 59-10-1003(1) only allows a credit for income taxes paid to another state. The taxpayers, in effect, are asking the Commission to expand the Section 59-10-1003 credit to include other taxes paid to another state. The Commission's role, however, is to implement the law. The Commission is not authorized to change the law to achieve what the taxpayers may consider a better tax policy for their specific circumstances. That is the role of the Utah Legislature. Accordingly, the taxpayers have not shown that the Division's 2014 and 2015 assessments should be abated due to the relatively higher property taxes and sales and use taxes the taxpayers may have paid to STATE-3 for these years.

V. Waiver of Penalties and Interest.

Because the Commission has abated the Division's 2010 and 2011 assessments, the Commission will only address whether the penalties and interest imposed for the 2014 and 2015 tax years may be waived. The applicable law to determine whether the penalties and interest assessed to the taxpayers for 2014 and 2015 may be waived is found in Subsection 59-1-401(14) and Rule 42.[37] In Subsection 59-1-401(14), the Commission is authorized to waive penalties and interest upon a showing of reasonable cause. The Commission has adopted Rule 42 to provide guidance as to when reasonable cause exists to waive penalties and interest.

Rule 42(2) provides that interest is waived only if a taxpayer shows that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the taxpayer's error.[38] The taxpayers have not asserted that they failed to pay Utah income taxes for 2014 or 2015 because of erroneous advice they received from the Tax Commission. However, the taxpayers contend that their error concerning their 2014 and 2015 tax liability is due, at least in part, to the Division's not issuing its 2010 and 2011 assessments prior to 2014. For reasons discussed earlier, the Division's issuance of its 2010 and 2011 assessments in 2017 is not Tax Commission error. As a result, this action of the Division does not constitute reasonable cause to waive the interest imposed for 2014 and 2015. Accordingly, the Commission should sustain the interest the Division has imposed in its 2014 and 2015 assessments.

Pursuant to Subsection 59-1-401(14) and Rule 42, the Commission generally waives penalties in domicile cases because of the complexity of the issues. In addition, the Division stated at the hearing that it

37 Effective for tax year 2012, Subsections 59-10-136(4)(d) and (4)(e) address the imposition and/or waiver of interest and penalties in domicile cases under certain circumstances. Those circumstances, however, are not present in this case. As a result, Subsections 59-10-136(4)(d) and (4)(e) are not applicable, and the only applicable law concerning the waiver of penalties and interest for 2014 and 2015 is found in Section 59-1-401(14) and Rule 42.

38 The Rule 42 criteria to waive interest are more stringent than the rule's criteria to waive penalties because a taxpayer has had use of money that should have been paid to the state and because of the time value of this money.

would not object to the Commission waiving any of the penalties it imposed. Accordingly, reasonable cause exists to waive all penalties imposed for the 2014 and 2015 tax years.

VI. Conclusion.

Based on the foregoing, the Commission should find that both taxpayers are Utah resident individuals for the 2014 and 2015 tax years, but not the 2010 and 2011 tax years. Accordingly, the Commission should reverse the Division's 2010 and 2011 assessments, but sustain the Division's 2014 and 2015 assessments (except for waiving the penalties imposed for 2014 and 2015).

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission reverses the Division's 2010 and 2011 assessments in their entireties. For the 2014 and 2015 tax years, the Commission sustains the Division's assessments of additional taxes and interest, but waives all penalties that the Division imposed. 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.