17-1589
TAX TYPE: INCOME TAX
TAX YEAR: 2014 & 2015
DATE SIGNED: 08/08/2018
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. 17-1589 Account No. ##### Tax Type: Income Tax Years: 2014 & 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Representative (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 June 18, 2018.

TAXPAYERS ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessments of additional income taxes for the 2014 and 2015 tax years. On September 28, 2017, the Division issued Notices of Deficiency and Audit Change ("Statutory Notices"), in which it imposed additional tax and interest (calculated as of October 28, 2017),[1] as follows:

Year	Tax	Penalties	Interest	Total
2014	$$$$$	$$$$$	$$$$$	$$$$$
2015	$$$$$	$$$$$	$$$$$	$$$$$

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

The taxpayers filed 2014 and 2015 federal income tax returns with a status of married filing jointly. During the 2014 and 2015 tax years, TAXPAYER-2 lived and worked primarily in Utah, but performed some work in the State of STATE-1 ("STATE-1"); while TAXPAYER-1 lived and worked only in STATE-1. The taxpayers filed 2014 and 2015 Utah part-year resident returns, on which they reported that they were Utah part-year resident individuals from August 1st to December 31st of each year at issue.[2] On the Form TC-40B acCOMPANY-1ing each of these Utah returns, the taxpayers allocated to Utah $$$$$ of their 2014 total federal adjusted gross income ("FAGI") of $$$$$ and $$$$$ of their total 2015 FAGI of $$$$$.

The Division, however, determined that both taxpayers are considered to be domiciled in Utah for all of 2014 and 2015. As a result, the Division changed the taxpayers' 2014 and 2015 Utah part-year resident individual returns to Utah full-year resident individual returns, which subjected all of their 2014 and 2015 income to Utah taxation.[3]

The taxpayers contend that the 2014 and 2015 income that each of them earned in STATE-1 should not be subject to Utah taxation. As a result, the taxpayers ask the Commission to accept the 2014 and 2015 Utah returns that they filed and to reverse the Division's assessments in their entireties. In the event that the Commission does not reverse the Division's assessments in their entireties, the taxpayers ask the Commission, in the alternative, to reduce the Division's assessments to reflect the Utah tax liabilities that TAXPAYER-2 alone would owe if she filed 2014 and 2015 Utah full-year resident individual returns with a status of married filing separately. Under this alternative proposal, the taxpayers would pay Utah taxes not only on the income

2 The taxpayers proffered that they filed this way to show that the income that TAXPAYER-2 earned in Utah was subject to Utah taxation and that the income that TAXPAYER-1 and TAXPAYER-2 both earned in STATE-1 was not subject to Utah taxation.

3 If the taxpayers are both deemed to be 2014 and 2015 Utah resident individuals and if they had paid income taxes on their 2014 and 2015 income to another state, the taxpayers would be entitled to claim a credit against their Utah tax liability, pursuant to Utah Code Ann. §59-10-1003 (2014-2015). However, because STATE-1 does not impose a state income tax, it does not appear that this credit would be applicable to the taxpayers' circumstances. The taxpayers did not argue otherwise.

that TAXPAYER-2 earned in Utah, but also on the income that she earned in STATE-1; while the taxpayers would not pay any Utah taxes on the income that TAXPAYER-1 earned in STATE-1.

The taxpayers proffered unsigned Utah returns to show what TAXPAYER-2's 2014 and 2015 Utah tax liabilities would be under this alternative. These separate returns show Utah tax liabilities for TAXPAYER-2 based on $$$$$ of 2014 FAGI and $$$$$ of 2015 FAGI. The Utah tax liabilities shown on these separate Utah full-year resident returns for TAXPAYER-2 alone are greater than the tax liabilities shown on the taxpayers' original Utah returns, but are only a fraction of the Utah tax liabilities that the Division has assessed to both taxpayers.

The taxpayers ask the Commission to accept these newly prepared Utah returns for TAXPAYER-2 alone on the basis of "equity" because TAXPAYER-1 is a STATE-1 resident who only lived and worked in STATE-1 and because a large portion of the taxpayers' 2015 income arose from capital gains realized from the 2015 sale of TAXPAYER-1's STATE-1 business. In addition, the taxpayers ask the Commission to accept their alternative proposal because TAXPAYER-1 has serious health issues, which results in their need to resolve this tax matter as quickly as possible.

The Division, on the other hand, asks the Commission to find that both taxpayers were Utah resident individuals for all of 2014 and 2015 and not to accept the 2014 and 2015 joint Utah part-year resident returns that the taxpayers originally filed or the 2014 and 2015 separate Utah full-year resident individual returns for TAXPAYER-2 only that the taxpayers proffered at the hearing. As a result, the Division asks the Commission to sustain its 2014 and 2015 assessments in their entireties.

APPLICABLE LAW

1. Utah Code Ann. §59-10-104(1)[4] (2015) provides that "a tax is imposed on the state taxable income of a resident individual[.]"

4 All substantive law citations are to the 2015 version of Utah law, unless otherwise indicated. The 2014 and 2015 versions of the applicable Utah law are the same.

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

> (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
> (B) an individual who is not domiciled in this state but:
>
> (I) maintains a place of abode in this state; and
> (II) spends in the aggregate 183 or more days of the taxable year in this state.

3. Effective for tax year 2012 (and applicable to the 2014 and 2015 tax years at issue), UCA §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.

4. 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."[5] 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) provides, as follows:[6]

> (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

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

6 Effective for the 2015 tax year, Subsection 59-2-103.5(4) was renumbered and amended. The amendments to Subsection 59-2-103.5(4) that were effective for tax year 2015 were nonsubstantive.

> (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.

5. 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 were Utah resident individuals for the 2014 and 2015 tax years. The Division claims that both taxpayers were Utah resident individuals for all of 2014 and 2015. While the taxpayers concede that TAXPAYER-2 was a Utah resident individual for the last ten months of 2014 and all of 2015, they contend that she was not a Utah resident individual for the first two months of 2014. In addition, the taxpayers contend that TAXPAYER-1 was not a Utah resident individual for any portion of 2014 or 2015. For 2014 and 2015, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the "183 day test").

The Division contends that both taxpayers would be considered to be Utah resident individuals for all of 2014 and 2015 under the domicile test. The Division concedes that TAXPAYER-1 would not be considered a Utah resident individual for any portion of 2014 or 2015 under the 183 day test. However, the Division contends that TAXPAYER-2 would also be considered to be a Utah resident individual for all of 2014 and 2015 under the 183 day test. The Commission will first address the domicile issue by applying the facts to the Utah domicile law in effect for 2014 and 2015 and determining whether the taxpayers are considered to be domiciled in Utah for these years (as the Division contends); or whether TAXPAYER-1 is not considered to be domiciled in Utah for any portion of 2014 and 2015 and whether TAXPAYER-2 is not considered to be domiciled in Utah for the first two months of 2014 (as the taxpayers contend). Only if the Commission finds that TAXPAYER-2 is not domiciled in Utah for a portion of 2014 or 2015 will the Commission address whether TAXPAYER-2 is, nevertheless, a Utah resident individual for this portion of 2014 or 2015 under the 183 day test.

I. Facts.

The taxpayers have been married for approximately 40 years, and they were not legally separated or divorced during the 2014 and 2015 years at issue. From 1980 to 2012, both taxpayers lived and worked only in STATE-1. In July 2012, however, TAXPAYER-2 moved to Utah to care for her elderly parents, where she lived until her parents passed away. TAXPAYER-2 moved back to STATE-1 in 2017.

During the 2012 to 2017 period that TAXPAYER-2 lived in Utah, TAXPAYER-1 lived in STATE-1, where he was the managing partner of COMPANY-1, LLC ("COMPANY-1") until he sold the business in 2015. COMPANY-1 was headquartered in CITY-1, STATE-1 and operated solely in STATE-1. While living in Utah, TAXPAYER-2 would go to STATE-1 occasionally to visit her husband and to perform work for COMPANY-1 (where she served as office manager) until the business was sold in 2015. By 2014, TAXPAYER-2 had also obtained a job in Utah, specifically working in the office of COMPANY-2, Inc.,

which is headquartered in CITY, Utah and operates in Utah. During 2014 and 2015, TAXPAYER-1 never worked in Utah, but he would occasionally come to Utah to visit his wife and attend appointments he had at a Utah hospital.

From July 2012 to February 2014, TAXPAYER-2 and her parents lived in TAXPAYER-2's sister's home in CITY, Utah. In 2013, the taxpayers decided to build their own home in CITY that both of them would own and in which TAXPAYER-2 and her parents would live. In February 2014, TAXPAYER-2 and her parents moved into the CITY home that the taxpayers built and owned (the taxpayers' "Utah home"). At the hearing, the taxpayers' representative did not know when the Utah home was initially completed (i.e., she did not know when a Utah local government agency or building department first issued a certificate of occupancy for the taxpayers' Utah home). In addition, the taxpayers proffered no information to show whether COUNTY, Utah (the county in which the taxpayers' Utah home is located) assessed the Utah home on January 1, 2014 (for 2014 property tax purposes) as a partially-completed residence or as a fully-completed residence.

Based on the limited information available at the Initial Hearing, it is possible that the Utah home was completed in February 2014, immediately prior to TAXPAYER-2 and her parents moving into it. On the other hand, it is also possible that the Utah home was completed in 2013, and TAXPAYER-2 and her parents elected not to move into the home until February 2014. The taxpayers, who have the burden of proof in this matter, did not provide sufficient information to show when the Utah home was completed. Accordingly, for purposes of this decision, the Commission finds that the Utah home was completed in 2013 and that TAXPAYER-2 and her parents did not move into it until February 2014.

After TAXPAYER-2 moved from Utah to STATE-1 in 2017, the taxpayers have continued to own the Utah home, which they now use as a rental property. The Utah home is ##### square feet in size. During 2014 and 2015, the taxpayers also owned two homes in STATE-1, one in CITY-2, STATE-1 (the "CITY-2 home") and one in CITY-1, STATE-1 (the "CITY-1 home"). The CITY-2 home, in which TAXPAYER-1

lived during 2014 and 2015, is approximately 2,374 square feet in size. The CITY home, which the taxpayers used as a rental property during 2014 and 2015, is approximately 1,500 square feet in size.

The taxpayers proffer that they did not claim the residential exemption from property taxation on their Utah home during the 2014 and 2015 tax years.[7] The Division, however, proffered that it has received an email from COUNTY, Utah (where the taxpayers' Utah home is located), in which COUNTY indicates that the taxpayers' Utah home received the residential exemption for both 2014 and 2015. The taxpayers, who again have the burden of proof in this matter, have not proffered any tax notices or other information showing that they did not receive the residential exemption on their Utah home for the 2014 and/or 2015 tax year.

The taxpayers have three grown children, none of whom lived in Utah during 2014 or 2015. The taxpayers claimed one dependent on their 2014 federal return, specifically for their youngest son who was attending college in Idaho. The taxpayers did not claim any dependents on their 2015 federal return. Neither of the taxpayers attended an institution of higher education during 2014 or 2015.

TAXPAYER-1 had a STATE-1 driver's license during 2014 and 2015, and he has never had a Utah driver's license. TAXPAYER-2 also had a STATE-1 driver's license until March 9, 2015, when she obtained a Utah driver's license. TAXPAYER-2 kept her Utah driver's license for the remainder of 2015. The taxpayers owned several motor vehicles during 2014 and 2015. Before March 9, 2015, all of the taxpayers' vehicles were registered in STATE-1, including the vehicle that TAXPAYER-2 had brought with her to CITY in 2012 (TAXPAYER-2's "Utah vehicle"). On March 9, 2015, TAXPAYER-2 registered her Utah vehicle in Utah, where it remained registered for the remainder of 2015. The taxpayers' other vehicles were registered in STATE-1 for all of 2014 and 2015.

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7 For both 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(31) 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.

During 2014 and 2015, TAXPAYER-1 attended church in STATE-1, while TAXPAYER-2 attended church in Utah. Neither of the taxpayers were members of any other organizations or clubs during the years at issue. During 2014 and 2015, the taxpayers received most of their mail at a post office box in CITY so that TAXPAYER-2 could answer the mail. The taxpayers explained that while TAXPAYER-2 lived in Utah, they decided not to have their mail sent to a STATE-1 address because it might go unanswered due to TAXPAYER-1's traveling extensively for his work. The taxpayers used a Utah address to file their joint 2014 and 2015 federal returns and their joint 2014 and 2015 Utah part-year resident returns.

TAXPAYER-1 was registered to vote in STATE-1 during 2014 and 2015, and he has never been registered to vote in Utah. TAXPAYER-2 was registered to vote in STATE-1 until March 26, 2014, when she registered to vote in Utah. TAXPAYER-2 subsequently voted in Utah elections in November 2015 and June 2016. The taxpayers explain that TAXPAYER-2 decided to register to vote in Utah because she was afraid that if she used a mail-in ballot to vote in STATE-1, the ballot could get lost in the mail or might not be sent back in time so that her vote would be counted. Coincidentally, TAXPAYER-2 used mail-in ballots to vote in the November 2015 and June 2016 Utah elections.

II. Applying the Facts to the 2014 and 2015 Domicile Law.

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]" For the 2014 and 2015 tax years, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).[8]

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

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 and 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 at issue in this appeal, each taxpayer is 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 under Subsection 59-10-136(4) for the 2014 and 2015 tax years. This subsection applies to individuals who are "absent from the state" if certain requirements are met, one of which is that both individuals must be absent from Utah for at least 761 consecutive days. Because TAXPAYER-2 lived in Utah during 2014 and 2015, both taxpayers were not absent from Utah for a period of 761 or more days that included any portion of 2014 or 2015. Accordingly, Subsection 59-10-136(4) does not apply to the taxpayers' circumstances, and the taxpayers are not considered to not be domiciled in Utah during 2014 or 2015 under this subsection.

As a result, the Commission must analyze whether the taxpayers are considered to be domiciled in Utah for the 2014 and 2015 tax years under the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If a person meets the criteria found in *any one* of

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Section 59-10-136 to determine income tax domicile beginning with the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

these subsections, that person is considered to be domiciled in Utah, even if the person does not meet the criteria found in any of the other subsections.[9]

C. Subsection 59-10-136(2)(a). This subsection provides that an individual is presumed to be domiciled in Utah if the individual or the individual's spouse claims a property tax residential exemption for that individual or individual's spouse's primary residence, unless the presumption is rebutted.[10] For the presumption to arise for 2014 and 2015, two elements must exist. First, the Utah home must have received the residential exemption for the 2014 and 2015 tax years. Second, the taxpayers' Utah home 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).

As to the first element, because the taxpayers' Utah home received the residential exemption for 2014 and 2015, the taxpayers are considered to have claimed the exemption for these years, regardless of whether the taxpayers filled out an application to receive the exemption or not. As to the second element, when Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for

9 It is clear that the taxpayers would not be considered to be domiciled in Utah during 2014 and 2015 under Subsection 59-10-136(1) because they had no dependents who attended a Utah public kindergarten, elementary, or secondary school and because neither taxpayer attended a Utah institution of higher education during these years. Regardless, the Commission must determine whether the taxpayers are considered to be domiciled in Utah during 2014 and 2015 under one or more of the other subsections of Section 59-10-136.

10 The Commission notes that Subsection 59-10-136(6) provides that claiming the Utah residential exemption may not be considered when determining an individual's domicile if the exemption is claimed for the primary residence of a *tenant*. Even though TAXPAYER-2's parents were living in the taxpayers' Utah home during the 2014 and 2015 tax years at issue, this exception does not apply to the taxpayers' circumstances because TAXPAYER-2 was also living in the Utah home during these years. This conclusion is consistent with the Commission's prior decisions in *USTC Appeal No. 16-117* (Initial Hearing Order Jan. 18, 2017) and *USTC Appeal 17-758* (Initial Hearing Order Jan. 26, 2018). Redacted copies of these and other selected Commission decisions can be reviewed on the Commission's website at

a primary residence; *and* 2) declare on the property owner's Utah 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 also met the second element because they did not file a written statement informing COUNTY that their Utah home no longer qualified for the residential exemption or declare on page 3 of their 2014 or 2015 Utah return that they no longer qualified to receive the residential exemption for their Utah home. Accordingly, the taxpayers' Utah home is considered to be their "primary residence" during all of 2014 and 2015. Because the taxpayers meet both of these elements for all of 2014 and 2015, the Subsection 59-10-136(2)(a) presumption has arisen for these years, and the taxpayers will both be considered to be domiciled in Utah for all of 2014 and 2015 unless they are able to rebut the presumption.[11]

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.[12] 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.

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https://tax.utah.gov/commission-office/decisions.

11 Even if TAXPAYER-2 had been the only one of the taxpayers to own the Utah home, the Subsection 59-10-136(2)(a) presumption would still have arisen for both taxpayers because this subsection provides that an individual is presumed to be domiciled in Utah if either that individual *or* that individual's spouse claims a Utah residential exemption for the individual's *or* individual's spouse's primary residence. Furthermore, where the presumption has arisen for both taxpayers, the taxpayers cannot rebut the presumption for only one of the taxpayers. Either the presumption is rebutted for both taxpayers, or the presumption is not rebutted for both taxpayers. This conclusion is supported by Subsection 59-10-136(5)(a), which provides that an individual is considered to have domicile in Utah if his or her spouse is considered to have domicile in Utah.

12 The Legislature did not provide that claiming a residential exemption on a primary residence is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah institution of higher education or, with certain exceptions, has a dependent enrolled

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. During 2014 and 2015, COUNTY did not fail to remove the residential exemption from the taxpayers' Utah home after receiving a request from the taxpayers to do so. The Commission has also previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual received the residential exemption for a *vacant* home that was listed for sale and which would qualify for the exemption upon being sold.[13] In the instant case, however, the taxpayers did not list their Utah home for sale or for rent during any portion of 2014 or 2015.

Furthermore, the Commission has also found that the Subsection 59-10-136(2)(a) presumption is not rebutted where an individual had never heard of the residential exemption or did not know that he or she was receiving the residential exemption. The Commission has also found that an individual has not rebutted the presumption because he or she would not be considered to be domiciled in Utah under Rule 52, the property tax rule used to determine income tax domicile for tax years prior to 2012. It is arguable that using the "old" income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in Rule 52 to determine an individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the new law enacted by the Legislature little or no effect, which the Commission declines to do.[14]

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in a Utah public kindergarten, elementary, or secondary school).

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

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

Similarly, the Commission has found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[15]

Because TAXPAYER-2 did not move into the Utah home until February 2014, it is possible that the home was still under construction during January 2014. If a certificate of occupancy or some other information had been provided to show that the Utah home was still under construction during January 2014, perhaps this information would have been sufficient to rebut the exemption for the first month of 2014. However, for reasons explained earlier, the taxpayers have not provided sufficient information to show that their Utah home was not completed in 2013. In addition, the taxpayers have not proffered any other convincing arguments to rebut the Subsection 59-10-136(2)(a) presumption that has arisen for all of 2014 and 2015. Accordingly, both taxpayers are considered to be domiciled in Utah for all of 2014 and 2015 under Subsection 59-10-136(2)(a).

D. Other Subsections of Section 59-10-136. Based on the information proffered at the Initial Hearing, both taxpayers have been found to be domiciled in Utah for all of 2014 and 2015 under Subsection 59-10-136(2)(a). As a result, the Commission need not address the other subsections of Section 59-10-136 to reach a decision on the information currently before the Commission. However, for reasons explained earlier, it is not implausible that the taxpayers could provide additional information at a subsequent proceeding and rebut the Subsection 59-10-136(2)(a) presumption for a portion of 2014. As a result, it may be helpful to make some cursory observations about these other subsections. It appears that even if the taxpayers were not considered to be domiciled in Utah for all of 2014 and 2015 under Subsection 59-10-136(2)(a), both taxpayers

15 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

would, nevertheless, be considered to be domiciled in Utah for all of 2014 and 2015 under one or a combination of the remaining subsections of Section 59-10-136.

Subsection 59-10-136(2)(b) 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. While TAXPAYER-1 has never been registered to vote in Utah, TAXPAYER-2 registered to vote in Utah on March 26, 2014, and she remained registered to vote in Utah for the remainder of 2014 and all of 2015. As a result, under Subsection 59-10-136(2)(b), both taxpayers would also be considered to be domiciled in Utah for the March 26, 2014 to December 31, 2014 portion of 2014, and for all of 2015, unless they were able to rebut the presumption.[16]

Subsection 59-10-136(2)(c) provides that an individual is presumed to be domiciled in Utah if the individual or the individual's spouse asserts Utah residency on a Utah return. On their 2014 and 2015 Utah returns, the taxpayers asserted that they were Utah resident individuals from August 1, 2014 to December 31, 2014, and from August 1, 2015 to December 31, 2015. As a result, under Subsection 59-10-136(2)(c), the taxpayers would be considered to be domiciled in Utah from August 1, 2014 to December 31, 2014 of the 2014 tax year, and from August 1, 2015 to December 31, 2015 of the 2015 tax year, unless they were able to rebut this particular presumption.

Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), he or she may still be considered to be domiciled in Utah based on a preponderance of the evidence relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Neither party specifically addressed these 12 factors. However, a cursory review of the 12 factors suggests that the taxpayers' actions

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not apply.

16 The Commission acknowledges that TAXPAYER-2 did not vote in Utah until November 2015. The Utah Legislature, however, elected to use voting registration, not actual voting, as the criterion that could trigger domicile. As a result, the Commission would not be inclined to find that the taxpayers rebutted the Subsection 59-10-136(2)(b) presumption for the period that TAXPAYER-2 was registered to vote in Utah, but had not yet voted in Utah. *See USTC Appeal No. 15-720* (Initial Hearing Order Mar. 6, 2016).

would meet a slight preponderance of the relevant factors during all of 2014 and from January 1, 2015 to March 8, 2015, and an even greater preponderance of the relevant factors from March 9, 2015 (the date TAXPAYER-2 obtained a Utah driver's license and registered the Utah vehicle in Utah) to December 31, 2015.[17] However, because neither party addressed the 12 factors of Subsection 59-10-136(3)(b) and because the Commission has already found both taxpayers to be domiciled in Utah for all of 2014 and 2015 under another subsection of Section 59-10-136, the Commission will not address the 12 factors of Subsection 59-10-136(3)(b) any further.

E. Domicile – Summary. Based on the foregoing, both of the taxpayers are considered to be domiciled in Utah for all of the 2014 and 2015 tax years at issue. As a result, both taxpayers are Utah resident individuals for all of 2014 and 2015. Given these conclusions, the Commission need not determine whether TAXPAYER-2 is a Utah resident individual for all of 2014 and/or 2015 under the 183 day test.

III. Taxpayers' Other Argument.

The taxpayers contend that Utah should not tax income that either of them earned outside of Utah. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), however, 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-

17 For example, when determining whether an individual is considered to be domiciled in Utah under Subsection 59-10-136(3)(b), the first factor to be considered is "whether the individual or the individual's spouse has a driver license in this state" (pursuant to Subsection 59-10-136(3)(b)(i)). Because of the use of the word "or" in Subsection 59-10-136(3)(b)(i), an individual meets this factor if either the individual or the individual's spouse has a Utah driver's license. For all of 2014 and for the January 1, 2015 to March 8, 2015 portion of 2015, neither of the taxpayers had a Utah driver's license, and this factor would suggest a domicile outside of Utah. However, for the March 9, 2015 to December 31, 2015 portion of 2015, TAXPAYER-2 had a Utah driver's license. As a result, both taxpayers would meet the Subsection 59-10-136(3)(b)(i) factor for the March 9, 2015 to December 31, 2015 portion of 2015. Again, this conclusion is supported by Subsection 59-10-136(5)(a), which provides that an individual is considered to have domicile in Utah if his or her spouse is

117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because both taxpayers have been found to be Utah resident individuals for all of 2014 and 2015, Subsection 59-10-117(2)(c) does not apply to either of them 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.

In addition, the taxpayers ask the Commission not to tax TAXPAYER-1's 2014 and 2015 income, in part, because it would be inequitable for the Commission to impose Utah tax on the capital gains that TAXPAYER-1 realized from the 2015 sale of his STATE-1 business. For reasons explained earlier, because TAXPAYER-1 has been found to be a Utah resident individual for all of 2014 and 2015, all of the income he received during these years is subject to Utah taxation, including the capital gains he realized from the sale of his business. The taxpayers may be suggesting that the Commission should change Utah law to achieve what the taxpayers consider to be a better tax policy. The Commission, however, is tasked with implementing Utah law. It is not authorized to change the law. That is the role of the Utah Legislature. Accordingly, the taxpayers' arguments do not warrant a complete or partial abatement of the Division's assessments.

IV. Conclusion.

Based on the information proffered at the Initial Hearing, the Division properly determined that both taxpayers were Utah resident individuals for all of 2014 and 2015. Accordingly, the Commission should sustain the Division's 2014 and 2015 assessments in their entireties.

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Kerry R. Chapman
Administrative Law Judge

considered to have domicile in Utah.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2014 and 2015 assessments in their entireties. 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.