17-1624
TAX TYPE: INCOME TAX
TAX YEAR: 2014
DATE SIGNED: 11/14/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 17-1624 Account No. #### Tax Type: Income Tax Tax Year: 2014 Judge: Chapman

Presiding:
Rebecca L. Rockwell, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Attorney
TAXPAYER-1
TAXPAYER-2
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 3, 2019.

Based upon the evidence and testimony, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax at issue is Utah individual income tax.

2. The tax year at issue is 2014.

3. TAXPAYERS ("Petitioners" or "taxpayers") have appealed the Auditing Division's ("Respondent" or "Division") assessment of Utah individual income taxes for the 2014 tax year.[1]

1 Petitioner's Exhibit 14; Respondent's Exhibit 2.

4. On September 19, 2017, the Division issued a Notice of Deficiency and Audit Change ("Statutory Notice") to the taxpayers, in which it imposed taxes and interest (calculated as of October 19, 2017), as follows:[2]

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

5. On March 21, 2018, the Commission held an Initial Hearing in this matter, and it issued its Initial Hearing Order on September 5, 2018. The taxpayers subsequently requested to proceed to a Formal Hearing.

6. The taxpayers filed a 2014 Utah part-year resident income tax return with a status of married filing jointly. On the Form TC-40B accompanying the return, the taxpayers reported that they were Utah part-year resident individuals from January 23, 2014 to December 31, 2014, and they allocated to Utah $$$$$ of their 2014 federal adjusted gross income ("FAGI") of $$$$$.[3]

7. At the hearing, TAXPAYER-1 testified that the taxpayers' 2014 Utah return incorrectly showed that he and his wife were Utah resident individuals from January 23, 2014 to December 31, 2014.[4] TAXPAYER-1 testified that he and his wife moved from Utah to STATE-1 somewhere between January 24 and 29, 2014, and that they moved back to Utah from STATE-1 on December 24, 2014.[5] TAXPAYER-1 further testified that based on the time that he and his wife lived in STATE-1, they had intended to report on their 2014 Utah return that they were Utah resident individuals from January 1, 2014 to January 23, 2014, and from December 24, 2014 to December 31, 2014 (i.e., they had intended to report that they were not Utah

2 Petitioner's Exhibit 13; Respondent's Exhibit 1. Interest continues to accrue until any tax liability is paid. No penalties were imposed.
3 Respondent's Exhibit 3.
4 TAXPAYER-1 prepared the taxpayers' 2014 Utah return using TurboTax software. Respondent's Exhibit 4 (AUD 015).
5 At most, the taxpayers were absent from Utah for a 334-day period (if they were absent from Utah from January 24, 2014 to December 23, 2014).

resident individuals from January 24, 2014 to December 23, 2014). TAXPAYER-1 further testified that the $$$$$ of 2014 FAGI that they allocated to Utah on the Utah return was supposed to represent the income they received while they were living in Utah during the first 23 days of January 2014 and the last 8 days of December 2014.

8. The Division, however, determined that under Utah Code Ann. §59-10-136 (2014), both taxpayers were domiciled in Utah for all of the 2014 tax year. As a result, the Division also determined that the taxpayers were Utah resident individuals for all of the 2014 tax year (pursuant to UCA §59-10-103(1)(q)(i)(A)), and it imposed Utah income tax on all income that the taxpayers received for the 2014 tax year.[6]

9. The taxpayers married in 2001 and have not since been legally separated or divorced.

10. The taxpayers filed a 2014 federal income tax return with a status of married filing jointly.

11. TAXPAYER-1 is an accountant who, in 2010, was hired by COMPANY-1 ("COMPANY-1") to work in CITY-1, Utah. In 2013, COMPANY-1 offered TAXPAYER-1 a promotion to work in CITY-2, STATE-1, which he accepted in early January 2014.[7] TAXPAYER-1 testified that when he and his family moved to STATE-1 in late January 2014, they had planned to live in STATE-1 indefinitely. In December 2014, however, COMPANY-1 asked TAXPAYER-1 to work in Utah again, which TAXPAYER-1 agreed to. As a result, on December 24, 2014, the taxpayers and their children moved back to Utah, where they lived for the remainder of 2014. The taxpayers lived in Utah until June 2016, when they moved to Colorado. In April 2017, the taxpayers moved back to Utah, where they continue to live.[8]

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6 For the portion of 2014 that the taxpayers are Utah resident individuals, they would be entitled to a credit against their Utah tax liability for income taxes imposed by another state (pursuant to UCA §59-10-1003 (2014)). It does not appear that the Division applied this credit in its assessment because the only state other than Utah in which the taxpayers lived during 2014 was STATE-1 and STATE-1 does not impose a state income tax. In the event the taxpayers are found to be 2014 full-year resident individuals, as proposed by the Division, the taxpayers did not argue that they were entitled to a credit for taxes imposed by another state.

7 Petitioner's Exhibit 3.

8 Testimony of TAXPAYER-1; Petitioner's Exhibit 1; Respondent's Exhibit 5.

12. TAXPAYER-2 was not employed during the 2014 tax year.

13. During the 2014 tax year, the taxpayers did not own any real property in Utah or STATE-1. Prior to moving to STATE-1 in late January 2014, the taxpayers had rented a duplex in CITY-1, Utah. Upon moving to STATE-1, the taxpayers stopped renting the Utah duplex and rented a home in CITY-2, STATE-1.[9] Upon moving back to Utah in December 2014, the taxpayers stopped renting the STATE-1 home and rented an apartment in CITY-1, Utah.

14. On January 29, 2014, the taxpayers had a moving company move all of their personal belongings from Utah to STATE-1. During the period that the taxpayers were living in STATE-1, none of the taxpayers' personal property was located in Utah.[10]

15. The taxpayers could not remember exactly when between January 24 and 29, 2014 that they moved to STATE-1, but did recall that they returned to Utah on December 24, 2014. In addition, the taxpayers' personal belongings were not moved to STATE-1 until January 29, 2014. Given this information, the Commission finds that the taxpayers lived in Utah from January 1, 2014 to January 28, 2014, and again from December 24, 2014 to December 31, 2014. The taxpayers, who have the burden of proof, have not shown otherwise.

16. The taxpayers have three children whom they declared as dependents on their 2014 federal return. TAXPAYER-1 testified that prior to moving to STATE-1 in late January 2014, one or more of the taxpayers' children attended a Utah public kindergarten, elementary, and/or secondary school; and that none of their children attended school in Utah after late January 2014.[11] In addition, the taxpayers submitted evidence to show that at least two of their children were attending school in STATE-1 during the period that the

9 Petitioner's Exhibit 3.

10 Testimony of TAXPAYER-1; Petitioner's Exhibit 1; Respondent's Exhibit 5.

11 TAXPAYER-1 testified that after the taxpayers and their family returned to Utah in late December 2014, none of the taxpayers' children were enrolled in a Utah public kindergarten, elementary, and/or secondary school until January 1, 2015.

taxpayers were living in STATE-1.[12] The taxpayers, who have the burden of proof in this matter, have not shown when in late January 2014 that none of their children were no longer enrolled in a Utah public kindergarten, elementary, and/or secondary school. As a result, the Commission finds that one or more of the taxpayers' dependent children were enrolled in a Utah public kindergarten, elementary, and/or secondary school from January 1, 2014 to January 28, 2014 (the day before the taxpayers' personal belongings were packed and moved to STATE-1).

17. Neither of the taxpayers were enrolled in an institution of higher education during the 2014 tax year.

18. During the period that the taxpayers lived in STATE-1, they used a STATE-1 bank and/or credit union, obtained medical services and insurance in STATE-1, and paid utilities in STATE-1.[13]

19. TAXPAYER-1 testified that he did not obtain a STATE-1 driver's license while the taxpayers lived in STATE-1 because his Utah driver's license was not expiring in 2014. In addition, TAXPAYER-2 testified that she first obtained a Utah driver's license around 2005 and that she did not remember getting a STATE-1 driver's license while the taxpayers lived in STATE-1. Neither taxpayer has shown that they did not have a Utah driver's license throughout 2014. Accordingly, the Commission finds that each of the taxpayers had a Utah driver's license for all of the 2014 tax year.

20. Throughout 2014, the taxpayers had two motor vehicles. When the taxpayers moved to STATE-1 in late January 2014, their vehicles were registered in Utah, and the taxpayers did not immediately register their vehicles in STATE-1. At the hearing, the taxpayers testified that they did not register their vehicles in STATE-1 until the Utah registrations expired, which they estimated to have occurred in March 2014 for one vehicle and June or July 2014 for the other vehicle. However, on a Domicile Survey that the taxpayers appear to have completed in 2017, the taxpayers certified that they registered one of their vehicles in

12 Petitioner's Exhibits 11 and 12.
13 Petitioner's Exhibits 4, 5, 7, 8, 9 and 10.

STATE-1 in April 2014 and the other one in August 2014.[14] The information the taxpayers provided on their Domicile Survey is more convincing than the testimony the taxpayers provided at the hearing because the taxpayers have submitted a document showing that they registered one of their vehicles in STATE-1 on August 18, 2014.[15] The taxpayers, who again have the burden of proof, have not shown that they registered their other vehicle in STATE-1 prior to the end of April 2014 (prior to April 30, 2014). In addition, no evidence was submitted to suggest that the taxpayers, upon moving back to Utah in December 2014, registered their vehicles again in Utah prior to 2015. As a result, the Commission finds that both of the taxpayers' vehicles were registered in Utah from January 1, 2014 to April 29, 2014; that one of their vehicles was registered in Utah and one in STATE-1 from April 30, 2014 to August 17, 2014; and that both of their vehicles were registered in STATE-1 from August 18, 2014 to December 31, 2014.

21. TAXPAYER-2 testified that she was not registered to vote in Utah or STATE-1 during the 2014 tax year. TAXPAYER-1, on the other hand, was registered to vote in Utah throughout the 2014 tax year (as shown on information that the Division obtained from COUNTY). This information also shows that TAXPAYER-1 last voted in Utah in November 2013.[16] In addition, TAXPAYER-1 did not register to vote in STATE-1 during the 2014 tax year. In an email exchange between TAXPAYER-1 and the Division on September 6, 2017, TAXPAYER-1 indicated that he did not change his Utah voter registration "over to STATE-1."[17] TAXPAYER-1 testified that he did not register to vote in STATE-1 because he did not like the candidates running for office in STATE-1 during 2014 and because he was focused on his job. Furthermore, no evidence was provided to suggest that subsequent to TAXPAYER-1's voting in Utah in November 2013, he ever asked a Utah county clerk to remove his name from the Utah voter registry. Based on the foregoing, the Commission finds that TAXPAYER-2 was not registered to vote in Utah or STATE-1 during 2014; that

14 Respondent's Exhibit 5 (AUD 023).
15 Petitioner's Exhibit 6. The taxpayers did not provide any documentary evidence to show when they registered their other vehicle in STATE-1.
16 Respondent's Exhibit 7.

TAXPAYER-1 was registered to vote in Utah for all of 2014; and that TAXPAYER-1 did not register to vote in STATE-1 for any portion of 2014.

22. In a signed statement, TAXPAYER-1 declared that he and his wife attended a STATE-1 unit of their church while they were living in STATE-1.[18] In addition, on the Domicile Survey previously mentioned, the taxpayers certified that they attended church in STATE-1 from February 2014 through December 24, 2014.[19] For the portions of 2014 that the taxpayers lived in Utah, they did not indicate that they were not members of a church or that they did not attend a Utah unit(s) of their church. For these reasons, the Commission finds that the taxpayers were members of a church in Utah from January 1, 2014 to January 28, 2014, and from December 24, 2014 to December 31, 2014; and that the taxpayers were members of a church in STATE-1 from January 29, 2014 (the date their personal belongings were moved to STATE-1) to December 23, 2014 (the day before they returned to Utah).

23. The taxpayers testified that neither of them was a member of a club or other similar organization during the 2014 tax year.

24. The taxpayers testified that they used a Utah address for the portions of 2014 that they lived in Utah and that they used a STATE-1 address for the portion of 2014 that they lived in STATE-1. As a result, the Commission finds that the taxpayers used a Utah address from January 1, 2014 to January 28, 2014, and from December 24, 2014 to December 31, 2014; and that the taxpayers used a STATE-1 address from January 29, 2014 to December 23, 2014.

25. The taxpayers contend that in March 2014 (while they were living in STATE-1), they probably used a STATE-1 address to file their 2013 federal and Utah income tax returns, which the Division

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17 Respondent's Exhibit 4 (AUD 017-018).

18 Petitioner's Exhibit 1 (p. 2).

19 Respondent's Exhibit 5 (AUD 023). While the taxpayers provided a specific date in December 2014 when they stopped attending church in STATE-1, they did not list a specific date in February 2014 when they

did not contest. As a result, the Commission finds that the taxpayers filed their 2013 income tax returns using a STATE-1 address. In 2015 (while the taxpayers were living in Utah), they filed their 2014 federal and Utah income tax returns using a Utah address.

26. The Division claims that both taxpayers are considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b). The Division claims that the Subsection 59-10-136(2)(b) presumption has arisen for all of 2014 because TAXPAYER-1 was registered to vote in Utah throughout the 2014 tax year. In addition, the Division claims that the Subsection 59-10-136(2)(b) presumption has not been rebutted because the taxpayers have not shown that TAXPAYER-1 registered to vote in STATE-1 while he was living there or that TAXPAYER-1's name was not removed from the Utah voter registry after he asked it to be removed. As a result, the Division asks the Commission to sustain its assessment in its entirety.

27. REPRESENTATIVE FOR TAXPAYERS, the taxpayers' attorney, contends that the taxpayers have rebutted the Subsection 59-10-136(2)(b) presumption for the period they lived in STATE-1 because the taxpayers have shown that it is more probable than not that they changed their domicile from Utah to STATE-1 for this period. REPRESENTATIVE FOR TAXPAYERS specifically argues that the Division has improperly failed to apply the presumption analysis explained by the Utah Supreme Court in *Barron v. Labor Comm'n*, 2012 UT App 80, and *Burns v. Boyden*, 2006 UT 14. Pursuant to these cases, REPRESENTATIVE FOR TAXPAYERS contends that proof of certain basic facts serves as proof of certain presumed facts, where, in the instant case, the basic fact is voter registration and the presumed fact is Utah domicile. REPRESENTATIVE FOR TAXPAYERS contends that once the basic fact of voter registration is established, then the presumed fact of Utah domicile is established unless the taxpayers prove that it is more probable that the presumed fact of Utah domicile is nonexistent than existent.[20] REPRESENTATIVE FOR

started attending church in STATE-1.

20 Petitioner's Exhibit 17 (chart showing REPRESENTATIVE FOR TAXPAYERS rebuttable presumption analysis).

TAXPAYERS claims that the taxpayers have shown that it is more probable that the presumed fact of Utah domicile is nonexistent than existent and that, as a result, the taxpayers have sufficiently rebutted the Subsection 59-10-136(2)(b) presumption that has arisen. For these reasons, the taxpayers claim that they are not considered to be domiciled in Utah under Subsection 59-10-136(2)(b) for that portion of 2014 that they lived in STATE-1. As a result, the taxpayers ask the Commission to accept the 2014 Utah part-year resident return that they filed and to reverse the Division's assessment.

28. However, when asked how one would show that a Utah domicile was more likely to be nonexistent than existent for purposes of rebutting the Subsection 59-10-136(2)(b) presumption, REPRESENTATIVE FOR TAXPAYERS indicated that the totality of the evidence the taxpayers provided should be used to determine that it was the taxpayers' intent to move to STATE-1. REPRESENTATIVE FOR TAXPAYERS, however, declined to say what criteria should be applied to the evidence and how it should be analyzed in order to determine the probability of Utah domicile. The taxpayers declining to take a position, thus, leaves the Commission trying to guess whether the taxpayers believe the evidence should be applied: to common law domicile principles; to the factors used to determine Utah income tax domicile prior to the 2012 tax year when Section 59-10-136 became effective; to the factors used to determine Utah income tax domicile using the 12 specific but limited factors that are listed in Subsection 59-10-136(3) and discussed later in this decision; or to some other factors or criteria.

29. In addition, the Commission is not convinced that the guidance that the Utah Supreme Court provided in regards to the presumptions that were at issue in *Barron* and *Burns* is particularly helpful when determining the circumstances under which one of the Subsection 59-10-136(2) presumptions is rebutted. Section 59-10-136 provides a number of circumstances under which an individual is considered to be domiciled in Utah, including the rebuttable presumptions of Subsection 59-10-136(2). To say that an individual is not domiciled in Utah under general principles for purposes of rebutting a specific Subsection 59-

10-136(2) presumption because the individual has shown that they are not considered to be domiciled in Utah seems logically circular and, for reasons to be explained in more detail later in the decision, appears to frustrate the plain meaning of Section 59-10-136, especially when the Subsection 59-10-136(2) presumptions are considered in concert with the remainder of the statute.[21] Furthermore, the taxpayers' proposed methodology to rebut a Subsection 59-10-136(2) presumption is contrary to the precedent that the Commission has established in scores, if not hundreds, of Section 59-10-136 income tax domicile decisions issued since Utah's domicile law was substantially revised effective beginning with tax year 2012.

30. As will also be explained in more detail later in the decision, the taxpayers are both considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), because TAXPAYER-1 was registered to vote in Utah throughout 2014 and because the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption. Accordingly, under Subsection 59-10-103(1)(q)(i)(A), both taxpayers are Utah resident individuals for all of 2014.

APPLICABLE LAW

21 To counter the rebuttable presumption cases that the taxpayer provided, the Division referred the Commission to the Utah Supreme Court's decision in *Egbert v. Nissan North America, Inc.*, 2007 UT 64. While the Commission also does not find *Egbert* to be particularly helpful in determining the circumstances under which any one of the Subsection 59-10-136(2) presumptions can be rebutted, the Commission does find *Egbert* helpful in establishing the standard of proof when determining whether these presumptions can be rebutted. In *Egbert*, the Court stated that "proof beyond a reasonable doubt is the standard appropriate for criminal defendants who stand to lose liberty or life upon conviction, while a preponderance of the evidence is the level of proof required in the typical civil case where only money damages are at stake." In addition, the Court stated that "[t]he intermediate standard of proof—clear and convincing evidence—is appropriate when the interests at stake in a civil case are 'particularly important' and 'more substantial than the mere loss of money'" (specifically describing civil cases involving civil commitment, deportation, and denaturalization). The instant matter is the typical civil case where only money damages are at stake. This case clearly does not involve criminal defendants who stand to lose liberty or life upon conviction and is not similar to the "more important" civil cases specifically described by the Court. Accordingly, the Commission finds that the preponderance of the evidence standard is appropriate when determining whether a Subsection 59-10-136(2) presumption has been rebutted (which is the same standard of proof used for all other issues involving Section 59-10-136).

1. Under Utah Code Ann. §59-10-104(1) (2014)[22], "a tax is imposed on the state taxable income of a resident individual[.]"

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

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

3. Effective for tax year 2012 (and applicable to the 2014 tax year at issue), UCA §59-10-136 provides guidance concerning the determination of "domicile," as follows:[23]

> (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;

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22 All substantive law citations are to the 2014 version of Utah law, unless otherwise indicated.

23 Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in Senate Bill 13 (2019) ("SB 13"). However, it is the version of Section 59-10-136 in effect during the 2014 tax year that is applicable to this appeal.

(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. Utah Code Ann. §20A-2-305 provides for names to be removed or not be removed from the official voter register, as follows in pertinent part:

(1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.

(2) The county clerk shall remove a voter's name from the official register if:

(a) the voter dies and the requirements of Subsection (3) are met;

(b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;

(c) the county clerk has:

(i) obtained evidence that the voter's residence has changed;

(ii) mailed notice to the voter as required by Section 20A-2-306;

(iii) (A) received no response from the voter; or

(B) not received information that confirms the voter's residence; and

(iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;

(d) the voter requests, in writing, that the voter's name be removed from the official register;

(e)[24] the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;

(f) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or

(g) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

. . . .

5. Where a change of residence occurs, Utah Code Ann. §20A-2-306 provides for names to be removed or to not be removed from the official voter register, as follows in pertinent part:

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:

(a) confirms in writing that the voter has changed residence to a place outside the county; or

(b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and

(ii) has failed to respond to the notice required by Subsection (3).

(2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:

(i) change the official register to show the voter's new address; and

(ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.

(3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE

We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

_____

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

24 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2014 version of Section 20A-2-305 that is applicable to the instant appeal.

- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

_____

Signature of Voter"

. . . .

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the clerk may list that voter as inactive.

(ii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

(iii) A county is not required to send routine mailings to inactive voters and is not required to count inactive voters when dividing precincts and preparing supplies.

6. For the instant matter, UCA §59-1-1417(1) (2019) 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.

. . . .

CONCLUSIONS OF LAW

1. Subsection 59-1-1417(1) provides that the burden of proof is on the petitioner in Tax Commission proceedings, with the exception of three specific circumstances that are not applicable to this appeal. Accordingly, the taxpayers have the burden of proof in this matter.

2. The taxpayers concede that they were Utah resident individuals from January 1, 2014 to January 23, 2014, and from December 24, 2014 to December 31, 2014; but contend that they were not Utah resident individuals from January 24, 2014 to December 23, 2014. The Division, however, contends that the taxpayers were Utah resident individuals for all of 2014. For 2014, 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").

3. The Division does not assert that the taxpayers are Utah resident individuals for all of 2014 under the 183 day test. Instead, the Division contends that the taxpayers are 2014 Utah full-year resident individuals under the domicile test. Accordingly, the Commission must apply the facts to the Utah income tax domicile law that existed during 2014 to determine whether the taxpayers are considered to be domiciled in Utah for all of 2014 (as the Division contends); or whether the taxpayers are only considered to be domiciled in Utah from January 1, 2014 to January 23, 2014, and from December 24, 2014 to December 31, 2014 (as the taxpayers contend).

4. For the 2014 tax year, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered

to have domicile in Utah (Subsection (4)).[25] The Commission will refer to these subsections when determining when during 2014 the taxpayers are considered to be domiciled in Utah.

5. Subsection 59-10-136(5)(b). For a married individual, it is often necessary (as in this case) to first 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: 1) the individual is legally separated or divorced from the individual's spouse; or 2) if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. The taxpayers filed their 2014 federal income tax return with a status of married filing jointly, not separately. In addition, the taxpayers were not legally separated or divorced during any portion of the 2014 tax year. Accordingly, for purposes of Section 59-10-136, each taxpayer is considered to have a spouse for all of the 2014 tax year.

6. Subsection 59-10-136(4). The taxpayers do not argue that they are *not* considered to be domiciled in Utah under Subsection 59-10-136(4) for any portion of 2014. This subsection applies to an individual if the individual and the individual's spouse are both "absent from the state" for at least 761 consecutive days, if a number of other listed conditions are also met. Even if the taxpayers meet all of the other conditions that are listed in Subsection 59-10-136(4), they were not absent from Utah for 761 consecutive days that included any portion of 2014. As discussed earlier, the taxpayers were absent from Utah, at most, for 334 consecutive days during 2014. Accordingly, the taxpayers do not qualify for the Subsection 59-10-136(4) exception for any portion of the 2014 tax year.

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

7. As a result, the Commission must analyze whether the taxpayers are considered to have domicile in Utah for the 2014 tax year under one or more of the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1)(a)(i), (1)(a)(ii), (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.

8. Subsection 59-10-136(1)(a)(i). Under this subsection, an individual is considered to be domiciled in Utah if a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school, subject to an exception found in Subsection 59-10-136(1)(b). On the taxpayers' 2014 federal return, the taxpayers claimed their three children as dependents. In addition, for reasons previously discussed, the Commission has found that one or more of the taxpayers' dependent children were enrolled in a Utah public kindergarten, elementary, and/or secondary school from January 1, 2014 to January 28, 2014. Accordingly, both taxpayers will be considered to be domiciled in Utah from January 1, 2014, to January 28, 2014 under Section 59-10-136(1)(a)(i), unless the exception found in Subsection 59-10-136(1)(b) is met.

9. Subsection 59-10-136(1)(b) provides that an individual may not be considered to be domiciled in Utah under Subsection 59-10-136(1)(a)(i) if the individual is the noncustodial parent of a dependent who the individual claimed as a personal exemption on their federal return and who is enrolled in a Utah public kindergarten, elementary, or secondary school; and if the individual is divorced from the custodial parent. For the 2014 tax year, neither taxpayer was the noncustodial parent of a dependent, and neither taxpayer was divorced from the custodial parent of a dependent. Accordingly, the Subsection 59-10-136(1)(b) exception is not applicable to the taxpayers' circumstances. Because the Subsection 59-10-136(1)(b) exception does not apply, both taxpayers are considered to be domiciled in Utah from January 1, 2014 to January 28, 2014 under Subsection 59-10-136(1)(a)(i).

10. Subsection 59-10-136(1)(a)(ii). Under this subsection, an individual is considered to be domiciled in Utah if the individual or the individual's spouse is a resident student enrolled in a Utah institution of higher education. During 2014, neither taxpayer was enrolled in an institution of higher education. Accordingly, neither taxpayer is considered to be domiciled in Utah for any portion of 2014 under Subsection 59-10-136(1)(a)(ii).

11. Subsection 59-10-136(2)(a). Subsection 59-10-136(2)(a) 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.[26] The taxpayers did not own any real property in Utah during 2014 and, thus, did not claim the residential exemption on a Utah residential property during 2014. Accordingly, neither taxpayer is considered to be domiciled in Utah for any portion of 2014 under Subsection 59-10-136(2)(a).

12. Subsection 59-10-136(2)(b). Under this subsection, an individual is presumed to be domiciled in Utah if the individual *or* the individual's spouse is registered to vote in Utah, unless the presumption is rebutted. For reasons discussed earlier, the Commission has found that TAXPAYER-1 was registered to vote in Utah for all of the 2014 tax year. As a result, both taxpayers will be considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), unless they are able to rebut this presumption.[27]

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26 For 2014, 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 UCA §59-2-102(35) 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.

27 The Commission is aware that TAXPAYER-2 was not registered to vote in Utah for any portion of 2014. However, Subsection 59-10-136(2)(b) provides that an individual is presumed to be domiciled in Utah if either that individual *or* that individual's spouse is registered to vote in Utah. Not only is TAXPAYER-1 an individual who was registered to vote in Utah for all of 2014, but TAXPAYER-2 is also an individual whose spouse was registered to vote in Utah for all of 2014. As a result, this presumption arises for *both* taxpayers for all of 2014. 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),

13. Because Subsection 59-10-136(2)(b) 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)(b) presumption. As a result, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

14. The taxpayers ask the Commission to find that they have rebutted the Subsection 59-10-136(2)(b) presumption for the period in 2014 that they lived in STATE-1 because they have demonstrated an intent to change their domicile to STATE-1 for this period. REPRESENTATIVE FOR TAXPAYERS declined to say what criteria the Commission should use to determine whether the taxpayers have demonstrated an intent to change their domicile to STATE-1. Nevertheless, the taxpayers' argument may rely on weighing an individual's contacts with various states when determining whether they are considered to be domiciled in Utah, as was done under Rule 52 (prior to Section 59-10-136 becoming effective for tax year 2012) and is done under Subsection 59-10-136(3)(b) if an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1) or (2).

15. The Commission has previously found that an individual has not rebutted a Subsection 59-10-136(2) 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

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which provides that an individual is considered to have domicile in Utah if their spouse is considered to have domicile in Utah.

28 The Legislature did not provide that being registered to vote in Utah is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

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 Legislature's "new" law little or no effect, which the Commission declines to do.[29]

16. 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).[30]

17. To allow an individual to rebut a Subsection 59-10-136(2) presumption by showing that they could be considered to be domiciled outside of Utah using domicile factors found in Rule 2 and/or Rule 52, Subsection 59-10-136(3), or some other source would clearly frustrate the plain meaning of Section 59-10-136. The Subsection 59-10-136(2) presumptions involve three specific factors: 1) claiming the residential exemption on a Utah residential property (the Subsection 59-10-136(2)(a) presumption); 2) being registered to vote in Utah (the Subsection 59-10-136(2)(b) presumption); and 3) asserting Utah residency on a Utah income tax return (the Subsection 59-10-136(2)(c) presumption).

18. Prior to Section 59-10-136 becoming effective for tax year 2012, the three factors that the Utah Legislature described and set forth as rebuttable presumptions in Subsection 59-10-136(2) (as well as the two education factors described in Subsection 59-10-136(1)) had been among the numerous and non-exhaustive list of factors that the Commission had used to determine income tax domicile for years prior to

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29 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016). This and other selected Commission decisions can be reviewed in a redacted format on the Commission's website at https://tax.utah.gov/commission-office/decisions.

30 S*ee, e.g., USTC Appeal No. 15-1857*. This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of

2012 (as set forth in Rule 2 and/or Rule 52).[31] In Section 59-10-136, however, the Utah Legislature established a hierarchy of specific factors described in Subsections 59-10-136(1) and (2) to establish income tax domicile, with the education factors creating an absolute indication of domicile and the three Subsection 59-10-136(2) factors creating rebuttable presumptions of domicile. Thus, each of the factors described in Subsections 59-10-136(1) and (2) were given greater import than they had received in establishing income tax domicile for years prior to 2012 (when each of these factors was merely one of the many factors with which domicile was determined).[32]

19. As a result, it is clear that the Legislature intended that an individual meeting one of the factors described in Subsection 59-10-136(1) would, with limited exception, be considered to be domiciled in Utah; and that an individual meeting one of the factors described and set forth as a rebuttable presumption in Subsection 59-10-136(2) might be considered to be domiciled in Utah, regardless of whether that individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test (such as the one found in Rule 2 and/or Rule 52). To find that a Subsection 59-10-136(2) presumption can be rebutted by showing that the individual would not be considered to be domiciled under some more traditional type of domicile test does not consider the Subsection 59-10-136(2) presumptions in concert with the structure and language of Section 59-10-136 as a whole and would frustrate the plain meaning of Section 59-10-136.[33]

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the presumptions of Subsection 59-10-136(2) is met.

31 Prior to tax year 2012, Rule 2(1)(b) had provided that for purposes of determining income tax 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" and that Rule 52 "provides a *non-exhaustive* list of factors or objective evidence determinative of domicile" (emphasis added).

32 Almost all of the factors that were given greater import in Subsections 59-10-136(1) and (2) are based on an individual or individual's spouse availing themselves of certain benefits of being a resident of Utah, such as having their dependent attend a Utah public school, being enrolled as a resident student at a Utah institution of higher education, receiving a property tax benefit in the form of a residential exemption, or being able to vote in an election in Utah.

33 For example, if the taxpayers' argument were to be accepted, it is arguable that an individual whose only contact with Utah was claiming the residential exemption on a vacation home located in Utah could continue to do so without any Utah income tax consequences if the individual showed that they would be

Furthermore, if a Subsection 59-10-136(2) presumption could be rebutted in this manner, it is unclear what type of domicile test should be used to rebut the presumption, as the taxpayers' counsel declined to indicate what the appropriate test should be.

20. Moreover, relying on the limited and exhaustive list of 12 factors described in Subsection 59-10-136(3)(b) to rebut a Subsection 59-10-136(2) presumption would: 1) be contrary to the express language of Subsection 59-10-136(3)(a), which provides that the Subsection 59-10-136(3)(b) factors should be used to determine domicile only "if the requirements of Subsection (1) or (2) are not met[;]" and 2) be contrary to the plain meaning of Section 59-10-136 as a whole by allowing the hierarchy of factors set forth in Subsection 59-10-136(2) to be rebutted by satisfying a list of factors set forth in Subsection 59-10-136(3) that are lower in the hierarchy of domicile factors established by the Legislature.

21. As a result, when a Subsection 59-10-136(2) presumption is considered in concert with Section 59-10-136 as a whole, the Commission has generally looked to actions or inactions related to the specific factor described in the presumption to determine whether an individual has rebutted the presumption or not. For example, if an individual is registered to vote in Utah, the Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted by showing that the individual registered to vote in the state to which they moved relatively soon after moving there.[34] TAXPAYER-1, however, never registered to vote in STATE-1 during the 11 or so months that he lived there.

22. In addition, the Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted if the individual who is registered to vote in Utah requested for their name to be removed from the Utah voter registry and the local county clerk or other official who received the request did not remove the

considered to have domicile outside of Utah based on some sort of traditional income tax domicile criteria.

34 *See, e.g., USTC Appeal No. 15-720* (Initial Hearing Order Mar. 6, 2016).

individual's name from the registry.[35] No evidence was provided to show that TAXPAYER-1 requested for his name to be removed from the Utah voter registry prior to or during the 2014 tax year.

23. Furthermore, the Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted from the date that Utah voting laws provide for an individual's name to be removed from the Utah voter registry and a local county clerk does not immediately remove their name from the registry.[36] The taxpayers, however, did not argue that Utah voting laws provided for TAXPAYER-1's name to be removed from the Utah voter registry at any time between the November 2013 date that he last voted in Utah and the end of the 2014 tax year.

24. The Commission has also found that it might find that the Subsection 59-10-136(2)(b) presumption is rebutted if an individual moves from Utah to a state that does not require voter registration prior to voting and if the individual eventually votes in that state.[37] The taxpayers, however, have not shown that STATE-1 allows an individual who moves there to vote in a STATE-1 election without having registered to vote in STATE-1. Furthermore, TAXPAYER-1 never voted in STATE-1.

25. On the other hand, the Commission has found that an individual cannot rebut the Subsection 59-10-136(2)(b) presumption by showing that they did not vote in Utah during the tax year at issue. The Commission has reached this decision, at least in part, because the Utah Legislature elected to use voting registration, not actual voting, as the criterion that could trigger domicile under Subsection 59-10-136(2)(b).[38]

26. TAXPAYER-1 explained that he did not register to vote in STATE-1 because he did not like the candidates running for office in STATE-1 during 2014 and because he was focused on his job while living in STATE-1. The Commission, however, does not find these reasons to be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. The Commission has also stated in prior cases that it could find in future cases

35 *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2019).
36 *See, e.g., USTC Appeal No. 18-539* (Initial Hearing Order Apr. 30, 2019).
37 *See, e.g., USTC Appeal No. 17-1552* (Initial Hearing Order Feb. 7, 2019).
38 *See, e.g., USTC Appeal No. 15-720*.

that other circumstances would be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. The taxpayers, however, have not proffered sufficient arguments or evidence to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the 2014 tax year for which it has arisen in regards to both of them. Accordingly, under Subsection 59-10-36(2)(b), both taxpayers are considered to be domiciled in Utah for all of the 2014 tax year, including that portion of the year that they lived in STATE-1.

27. Because both taxpayers have been found to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), there is no need to analyze the remaining subsections of Section 59-10-136 (i.e., Subsections (2)(c) and (3)) to resolve this case. However, some cursory observations about these remaining subsections may be useful.

28. Subsection 59-10-136(2)(c). This subsection 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 income tax return, unless the presumption is rebutted. On their 2014 Utah return, the taxpayers asserted that they were Utah resident individuals from January 23, 2014 to December 31, 2014. Accordingly, under Subsection 59-10-136(2)(c), the taxpayers would also be considered to be domiciled in Utah from January 23, 2014 to December 31, 2014 (unless they were able to rebut the presumption).

29. Subsection 59-10-136(3). Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), 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). Subsection 59-10-136(3), however, is only applicable "if the requirements of Subsection (1) or (2) are not met[.]" Because the Commission has already found that both taxpayers would be considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), Subsection 59-10-136(3) has no applicability to this case.

30. Conclusion - Domicile and Utah Residency. Because each taxpayer is considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b) and is not considered to *not* be domiciled in Utah for any portion of 2014 under Subsection 59-10-136(4), each taxpayer is considered to be domiciled in Utah for all of 2014. Consequently, pursuant to Subsection 59-10-103(1)(q)(i)(A), each taxpayer is a Utah resident individual for all of the 2014 tax year. Based on the foregoing, the Commission should sustain the Division's assessment for the 2014 tax year in its entirety.

_____
Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment for the 2014 tax year in its entirety. It is so ordered.

DATED this _____ day of _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601et seq. and 63G-4-401 et seq.