18-365
TAX TYPE: INCOME TAX
TAX YEAR: 2015 & 2016
DATE SIGNED: 3/31/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER 1 AND TAXPAYER 2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 18-365 Account No. #### Tax Type: Income Tax Years: 2015 & 2016 Judge: Chapman

Presiding:
Lawrence C. Walters, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioners: REPRESENTATIVE FOR TAXPAYERS, Attorney
TAXPAYER 1, Taxpayer
TAXPAYER 2, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT, Utah Assistant Attorney General
RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 2020. 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 years at issue are 2015 and 2016 (which may be referred to as the "audit period").

3. TAXPAYER 1 and TAXPAYER 2 ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessments of Utah individual income taxes for the 2015 and 2016 tax years.[1]

4. On DATE, 2018, the Division issued Notices of Deficiency and Audit Change ("Statutory Notices") to the taxpayers, in which it imposed taxes and interest (calculated as of DATE, 2018),[2] as follows:

Year	Tax	Penalties	Interest	Total
2015	$$$$$	$$$$$	$$$$$	$$$$$
2016	$$$$$	$$$$$	$$$$$	$$$$$

5. Because the parties agreed to waive an Initial Hearing, this matter proceeded directly to a Formal Hearing.

6. The taxpayers married in 2001, and they have not since been legally separated or divorced.

7. The taxpayers were long-term residents of the STATE 1 ("STATE 1") until 2013, when they moved to Utah because of TAXPAYER 1 employment in Utah with CORPORATION 1 ("CORPORATION"). Upon moving to Utah in 2013, the taxpayers kept the home they owned in CITY 1, STATE 1 (the "STATE 1 home"), in part, so that TAXPAYER 2 could regularly visit the taxpayers' family members, many of whom lived near the taxpayers' STATE 1 home.[3] The taxpayers, however, did not rent out their STATE 1 home when they moved to Utah, and it was empty except when one or both of the taxpayers would visit STATE 1.[4] In addition, upon moving to Utah in 2013, the taxpayers decided to rent instead of buying a home in Utah.

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1 Respondent's Exhibit 3.

2 Respondent's Exhibits 1 and 2. Interest continues to accrue until any tax liability is paid.

3 From 2013, when the taxpayers first moved to Utah, through the 2015 and 2016 tax years at issue, TAXPAYER 1 parents, most of the taxpayers' # grown children, and the taxpayers' only grandchild lived in STATE 1, and none of the taxpayers' relatives lived in Utah. The STATE 1 home was approximately #### square feet in size.

4 After the taxpayers moved to Utah in 2013, a friend of the taxpayers would check on their STATE 1 home once a week. In addition, TAXPAYER 2 would visit STATE 1 and stay in the STATE 1 home about once every # weeks.

8. On DATE, 2015, TAXPAYER 1 employment with CORPORATION 1 unexpectedly ended. Due to this event, the taxpayers decided that after the lease on a home they were renting in CITY, Utah (the "Utah rental") expired,[5] they would move back to and live in their STATE 1 home while TAXPAYER 1 searched for another job somewhere within the United States. The taxpayers moved back to STATE 1 on or about DATE, 2015, and they moved all of their possessions they had in Utah to STATE 1. The taxpayers stated that when they moved back to STATE 1 on DATE, 2015, they had no intention of returning to Utah.

9. Later in 2015, TAXPAYER 1 found employment with CORPORATION 2 ("CORPORATION 2") in STATE 2, and he began working for this company on DATE, 2015. Initially, TAXPAYER 1 worked for CORPORATION 2 remotely from the taxpayers' STATE 1 home (with occasional visits to CITY). However, CORPORATION 2 subsequently decided to open a Utah office, which resulted in the taxpayers' deciding to sell their STATE 1 home, move back to Utah, and purchase a Utah home. On DATE, 2016, the taxpayers not only sold their STATE 1 home, but they also moved back to Utah on this date.[6] On DATE, 2016, the taxpayers purchased a home in CITY 1, Utah (the "Utah home"), which they owned and lived in for the remainder of the audit period.[7] Until the taxpayers purchased the Utah home in DATE 2016, they had never owned any real property in Utah.

10. During the audit period, both taxpayers lived in: 1) Utah from DATE, 2015 to DATE, 2015; 2) STATE 1 from DATE, 2015 to DATE, 2016; and 3) Utah from DATE, 2016 to DATE, 2016.[8] The DATE, 2015 to DATE, 2016 period that the taxpayers were absent from Utah consists of 277 days.

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5 Petitioners' Exhibit 1. The Utah rental was approximately #### square feet in size.

6 Petitioners' Exhibits 6 and 7.

7 During the DATE, 2016 to DATE, 2016 period that the taxpayers were present in Utah prior to the closing of their Utah home, they lived in a hotel in Utah. The Utah home was approximately #### square feet in size.

8 Petitioners' Exhibits 1, 2, 3, 4, 5, and 7.

11. During the DATE, 2015 to DATE, 2016 period that the taxpayers lived in STATE 1, the only times that either taxpayer returned to Utah were a few days in DATE 2015 (when both taxpayers came to Utah to pick up a dog they had bought from a Utah dog breeder) and a few days in DATE 2015 (when TAXPAYER 1 alone returned to Utah to look for office space for CORPORATION 2).[9] The taxpayers have continued to live in Utah since moving back to Utah on DATE, 2016.

12. For the 2015 and 2016 tax years, the taxpayers filed United States federal income tax returns ("federal returns"), both of which were filed with a status of married filing jointly. The taxpayers did not claim any dependents on either of their 2015 and 2016 federal returns.[10] In addition, neither of the taxpayers attended a Utah institution of higher education during 2015 or 2016.

13. The taxpayers also filed 2015 and 2016 Utah part-year resident returns. On the Form TC-40B accompanying the 2015 Utah return, the taxpayers reported that they were Utah resident individuals from DATE, 2015 to DATE, 2015, and they allocated to Utah $$$$$$ of their total 2015 federal adjusted gross income ("FAGI") of $$$$$$$.[11] At the Formal Hearing, the taxpayers explained that the $$$$$$ of 2015 income that they allocated to Utah on their 2015 Utah return represents the income that TAXPAYER 1 received from his employment in Utah before his job with CORPORATION 1 ended on DATE, 2015.[12] The taxpayers also explained that the $$$$$$ of 2015 income they allocated to Utah does not include any of the 2015 severance pay that TAXPAYER 1 received from CORPORATION 1 twice a month for a year after his CORPORATION 1 employment was terminated; any of the 2015 capital gains that the taxpayers realized after selling CORPORATION 1 stock that TAXPAYER 1 obtained after exercising stock options that he was required to exercise within 90 days of his DATE, 2015 employment termination; or any of the

9 Petitioners' Exhibit 3.
10 Respondent's Exhibits 9 and 11.
11 Respondent's Exhibit 8.
12 TAXPAYER 2 did not work during 2015 or 2016.

2015 income that TAXPAYER 1 received from CORPORATION 2 once his employment with this company began on DATE, 2015.

14. For the 2015 tax year, the taxpayers conceded at the Formal Hearing that they were domiciled in Utah and were Utah resident individuals for the DATE, 2015 to DATE, 2015 period they lived in Utah, but they claim that they were not domiciled in Utah and were not Utah resident individuals for the DATE, 2015 to DATE, 2015 period they lived in STATE 1. As a result, the taxpayers contend that their 2015 Utah part-year resident return should be amended to reflect a Utah residency period from DATE, 2015 to DATE, 2015, and that the amount of their 2015 income that they allocated to Utah on their return should be amended to reflect the income they received during the first four months of 2015. The taxpayers, however, did not indicate how much of their 2015 income should now be allocated to and taxed by Utah.

15. On the Form TC-40B accompanying the taxpayers' 2016 Utah return, the taxpayers reported that they were Utah resident individuals from DATE, 2016 to DATE, 2016, and they allocated to Utah $$$$$$$ of their total 2016 FAGI of $$$$$$$.[13] For the 2016 tax year, the taxpayers conceded at the Formal Hearing that they were domiciled in Utah and were Utah resident individuals for the DATE, 2016 DATE, 2016 period they lived in Utah, but they claim that they were not domiciled in Utah and were not Utah resident individuals for the DATE, 2016 to DATE, 2016 period they lived in STATE 1. As a result, the taxpayers contend that their 2016 Utah return correctly reported the period of their 2016 Utah residency and correctly allocated $$$$$$$ of their 2016 income to Utah.

16. Of the taxpayers' 2016 FAGI of $$$$$$$, they did not allocate to Utah $$$$$$ of this FAGI ($$$$$$$ minus $$$$$$$). At the Formal Hearing, the taxpayers explained that they did not allocate to Utah the CORPORATION 1 severance pay or the CORPORATION 2 wages that TAXPAYER 1 received for the DATE, 2016 to DATE, 2016 portion of 2016 that the taxpayers were living in STATE 1.

13 Respondent's Exhibit 10.

17. The Division determined that under Utah Code Ann. §59-10-136 (2015-2016), both taxpayers are domiciled in Utah for all of 2015 and 2016. As a result, the Division also determined that both taxpayers were Utah resident individuals for all of the 2015 and 2016 tax years (pursuant to UCA §59-10-103(1)(q)(i)(A)), and it imposed Utah income tax on all income that both taxpayers received for the 2015 and 2016 tax years.[14]

18. During the audit period, the taxpayers owned their Utah home from DATE, 2016 to DATE, 2016. However, the taxpayers did not apply for or receive the residential exemption from property taxation on their Utah home for any portion of the 2016 tax year.[15] It appears that the taxpayers did not apply to COUNTY 1, Utah (the county in which the Utah home was located) to receive the residential exemption because of advice they received from their realtor.

19. The taxpayers did not receive a homestead exemption or a similar exemption from property taxes on their STATE 1 home during the portion of the audit period that they owned the home. The taxpayers explained that STATE 1 does not provide an exemption that is similar or equivalent to Utah's residential exemption from property taxation.

20. The taxpayers obtained Utah driver's licenses around DATE 2013, and they both retained their Utah driver's licenses throughout the 2015 and 2016 tax years (including the DATE, 2015 to DATE,

14 For the portions of 2015 and 2016 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 (2015-2016)). The Division did not apply this credit because no state other than Utah imposed income taxes on the taxpayers' 2015 or 2016 income (STATE 1 does not impose a tax on income).

15 Utah Code Ann. §59-2-103(2) (2016) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property[,]" while Utah Code Ann. §59-2-102(36)(a) (2016) defines "residential property" 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. Subsections 59-2-103(2) and 59-2-102(36)(a) were amended and/or renumbered during the 2015 and 2016 tax years at issue. However, any amendment to the language cited in this paragraph was nonsubstantive.

2016 period they lived in STATE 1). The taxpayers explained that they did not obtain STATE 1 driver's licenses after moving back to STATE 1 on DATE, 2015, because their Utah driver's licenses were not expiring anytime soon and because they knew that they would probably be moving to another state once TAXPAYER 1 found another job.[16]

21. The taxpayers both registered to vote in Utah on DATE, 2014. Since registering to vote in Utah in DATE 2014, TAXPAYER 1 has voted in Utah in the DATE 2014 and DATE 2016 elections, while TAXPAYER 1 AND TAXPAYER 2 has voted in Utah during the DATE 2014, DATE 2016, and DATE 2018 elections. Utah voting records also show that since the taxpayers first registered to vote in Utah in DATE 2014, neither of their Utah voter registrations has been placed in an "inactive" status or has been "made removable."[17]

22. TAXPAYER 1 testified that because a COUNTY 2 clerk's office had not changed either of the taxpayers' Utah voter registrations to "made removable" prior to or during the audit period, both taxpayers' Utah voter registrations were in an active status for all of 2015 and 2016 and that both taxpayers were registered to vote in Utah throughout these years.[18] The taxpayers have not refuted TAXPAYR 1

16 TAXPAYER 1 described the period the taxpayers began living in STATE 1 on DATE, 2015 as a "transient time" during which the taxpayers did not know if they would be living in STATE 1 permanently, but during which they knew that they would remain in STATE 1 (where they owned a home) until TAXPAYER 1 found a job and they figured out where they would move next.

17 Respondent's Exhibits 4 and 5.

18 TAXPAYER 1 explained how an individual's Utah voter registration is affected by different actions taken by a COUNTY 2 clerk, based on information he and/or the Division has received from the Utah Lieutenant Governor's office. TAXPAYER 1 explained that an individual who is in an "active" or "inactive" status is registered to vote and can vote in Utah elections, but that a person in "inactive" status can only vote in person. He further explained that an individual whose status has been changed to "made removable" is no longer registered to vote in Utah. This information is consistent with Utah voting information that the Commission has received in prior appeals, specifically: 1) that when a Utah registered voter has little voting activity or when a Utah clerk receives information that a Utah registered voter may have moved, the Utah clerk generally mails the voter a confirmation card on which the clerk informs the voter that records indicate that the voter may have moved and on which the clerk asks for a new address; 2) that if the voter does not respond to the confirmation card, the voter is classified as an "inactive voter;" 3) that an "inactive voter" is still considered to be registered to vote in Utah and can vote if the voter goes to the polls (an "inactive voter," however, will not receive mailings such as voter identification cards and

assertion that both of them were registered to vote in Utah for all of 2015 and 2016. Based on the foregoing, the Commission finds that both taxpayers were registered to vote in Utah throughout the 2015 and 2016 tax years.

23. TAXPAYER 1 stated that he does not know if he was registered to vote in STATE 1 during 2015 or 2016. However, he indicated that he did not register to vote in STATE 1 after the taxpayers moved back to STATE 1 on DATE, 2015. For reasons to be explained later in the decision, the taxpayers have the burden of proof, and they have not shown that they were registered to vote somewhere other than Utah during 2015 or 2016. Accordingly, the Commission finds that neither taxpayer was registered to vote somewhere other than Utah during the audit period.

24. TAXPAYER 1 admitted that he did not ask for his Utah voter registration to be terminated prior to or during the 2015 and 2016 tax years. In addition, TAXPAYER 2 did not indicate that she requested for her Utah voter registration to be terminated prior to or during the 2015 and 2016 tax years. The taxpayers have not met their burden of proof to show that either of them requested for their Utah voter registration to be terminated prior to or during the audit period.

25. The taxpayers did not vote anywhere during the DATE, 2015 to DATE, 2016 period they lived in STATE 1. Both taxpayers indicated that 2015 was not a presidential election year and/or that they generally only voted in presidential election years (even though one or both taxpayers voted in Utah in 2014 and 2018, which are not presidential election years). TAXPAYER 1 stated that during the DATE, 2015 to DATE, 2016 period the taxpayers lived in STATE 1, the last thing on his mind was voting because this

mail-in ballots); and 4) that if an "inactive voter" does not vote within the next four years, the clerk removes the voter from the Utah voter registration rolls (which is the action described as "made removable and placed in state holding area due to inactivity"). *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2019). 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.

period was an interim period during which he was concentrating on other matters, such as searching for another job and taking care of his elderly parents.

26. During the DATE, 2015 to DATE, 2015 period the taxpayers lived in Utah, they owned # motor vehicles, specifically: 1) # motor vehicle that they kept at the STATE 1 home and which was registered in STATE 1; and 2) # motor vehicles they kept at the Utah rental and which were registered in Utah. During the DATE, 2015 to DATE, 2016 period the taxpayers lived in STATE 1, the taxpayers continued to own the # vehicles described above; the vehicle that had been registered in STATE 1 remained registered in STATE 1; and the # vehicles that had been registered in Utah remained registered in Utah (the taxpayers explained that the Utah registrations did not expire while they were living in STATE 1). When the taxpayers moved to Utah on DATE, 2016, they only brought the # vehicles that were registered in Utah with them to Utah (they sold the vehicle that had been registered in STATE 1). As a result, the only vehicles that the taxpayers owned during the DATE, 2016 to DATE, 2016 period they lived in Utah were registered in Utah.

27. During the DATE, 2015 to DATE, 2015 and DATE, 2016 to DATE, 2016 portions of the audit period that the taxpayers lived in Utah, they attended a church in Utah. During the DATE, 2015 to DATE, 2016 portion of the audit period that the taxpayers lived in STATE 1, they attended a church in STATE 1. The taxpayers have been members of a STATE 1 country club for many years prior to first moving to Utah in 2013, and they were members of this club throughout the 2015 and 2016 tax years. While the taxpayers added their names to a list to sell their STATE 1 country club membership in early 2016, they have not yet been able to sell the membership. It appears that the taxpayers may have placed their STATE 1 country club membership in a "hold" status (where they did not have to pay membership dues) for those portions of the audit period that they lived in Utah. When the taxpayers purchased their Utah home on DATE, 2016, they also purchased a membership in the COUNTRY Club in CITY 1, of which they were members for the remainder of the audit period.

28. DATE, 2015 to DATE, 2015 period the taxpayers lived in Utah, they received mail at addresses in Utah and STATE 1. During the DATE, 2015 to DATE, 2016 period the taxpayers lived in STATE 1, they received mail only at a STATE 1 address. During the DATE, 2016 to DATE, 2016 period the taxpayers lived in Utah, they received mail only at a Utah address.

29. The taxpayers indicated that they probably filed their 2014 federal and Utah returns around DATE, 2015, using a Utah address. Again, the taxpayers have the burden of proof in this matter. Because the taxpayers have not shown otherwise, the Commission finds that the taxpayers filed their 2014 federal and Utah returns in 2015 using a Utah address. The taxpayers used a Utah address to file their 2015 federal return in DATE 2016 and their 2015 Utah return in DATE 2017.[19] The taxpayers also used a Utah address to file their 2016 federal and Utah returns in DATE 2017.[20]

30. The Division claims that both taxpayers are considered to be domiciled in Utah for all of 2015 and 2016 under Subsection 59-10-136(2)(b). The Division claims that the Subsection 59-10-136(2)(b) presumption has arisen for all of 2015 and 2016 because both taxpayers were registered to vote in Utah throughout these years and because the taxpayers have not rebutted this presumption. The Division claims that the Subsection 59-10-136(2)(b) presumption has not been rebutted because the taxpayers have not shown that the taxpayers registered to vote somewhere other than Utah during these years or that they asked for their names to be removed from the Utah voter registry prior to or during 2015 or 2016. As a result, the Division asks the Commission to sustain its assessment in its entirety.[21]

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19 Respondent's Exhibits 8 and 9.

20 Respondent's Exhibits 10 and 11.

21 In the event that the Commission were to find that the taxpayers were Utah nonresident individuals for the DATE, 2015 to DATE, 2016 period that they lived in STATE 1, the Division stated that portions of the income that the taxpayers received as Utah nonresident individuals would, nevertheless, be Utah source income that would be subject to Utah taxation. The Division, however, did not indicate how much of the income that the taxpayers received during the period they claim to be Utah nonresident individuals would be Utah source income subject to Utah taxation. Regardless, as will be discussed in more detail later in the decision, the Commission is finding that the taxpayers are Utah resident individuals for all of 2015 and 2016. As a result, it is unnecessary for the Commission to determine whether some of the income that the

31. THE TAXPAYERS' attorney, contends that for Utah income tax purposes, "domicile" is not "defined" in Utah law. As a result, he contends that for Utah income tax purposes, the Commission should apply "domicile" in the same manner that the Utah Court of Appeals applied "domicile" in *Mower v. Nibley*, 382 P.3d 614, 2016 UT App 174 (Utah Ct. App. 2016) (which he contends is similar to how "domicile" is applied in a number of federal cases and how the word is defined in Black's Law Dictionary).[22] In *Mower*, the issue before the Court was whether Utah could exercise general personal jurisdiction over an individual who lived in Japan (in regards to a lawsuit filed against this individual in a Utah court). To decide the general personal jurisdiction issue, the Court ruled that it must "look at the individual's domicile" and noted that "under federal jurisprudence, 'an individual has only one domicile,' which 'usually requires bodily presence plus an intention to make the place one's home'" (citations omitted).

32. TAXPAYERS ATTORNEY contends that the Commission should apply "domicile" for Utah income tax purposes in the same manner that the Court applied "domicile" in *Mower* for general personal jurisdiction purposes and find that the taxpayers were not domiciled in Utah for Utah income tax purposes for any portion of the DATE, 2015 to DATE, 2016 period they lived in STATE 1 because: they were physically present in STATE 1 during this period; they intended to make STATE 1 their home until TAXPAYER 1 found new employment and they moved for his new job; and they had no intention of returning to Utah at the time they moved to STATE 1 on DATE, 2015.

33. Because the manner in which the Court applied "domicile" in *Mower* and other federal cases involves intent, a relationship exists between these applications of "domicile" and Utah's pre-2012

taxpayers received during the DATE, 2015 to DATE, 2016 period they lived in STATE 1 is Utah source income.

22 In none of these cases, however, did the courts apply "domicile" for purposes of interpreting Section 59-10-136 (i.e., Utah's income tax law that became effective with tax year 2012).

income tax laws concerning "domicile." Nevertheless, in regards to Section 59-10-136 (Utah's income tax law that became effective for tax year 2012 and is applicable to this appeal), it appears that TAXPAYERS ATTORNEY is suggesting that intent should also be taken into account when determining whether an individual has sufficiently rebutted a presumption found in Section 59-10-136. TAXPAYERS ATTORNEY argues that limiting the factors that can rebut a Subsection 59-10-136(2) presumption to ones that relate to the specific presumption at issue without taking into account the elements of the *Mower* application of "domicile" (which includes intent) is improper, especially where Section 59-10-136 is a tax imposition statute that must be construed strictly in favor of a taxpayer (pursuant to UCA §59-1-1417(2) (2015-2016)).

34. TAXPAYERS ATTORNEY further contends that the taxpayers have rebutted the Subsection 59-10-136(2)(b) presumption for the DATE, 2015 to DATE, 2016 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. TAXPAYERS ATTORNEY specifically argues that the Division has improperly failed to apply the presumption analysis explained by the Utah Supreme Court in *Burns v. Boyden*, 2006 UT 14. It appears that pursuant to this ruling, TAXPAYERS ATTORNEY is contending that once the basic fact of Utah 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. Moreover, it appears that TAXPAYERS ATTORNEY is claiming 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. As a result, the taxpayers claim that they are not considered to be domiciled in Utah under Subsection 59-10-136(2)(b) for the DATE, 2015 to DATE, 2016 period they lived in STATE 1.

35. It is also not entirely clear how TAXPAYERS ATTORNEY would have the Commission

impose the *Mower* application of "domicile" when showing that a Utah domicile was more likely to be nonexistent than existent for purposes of rebutting the Subsection 59-10-136(2)(b) presumption for the DATE, 2015 to DATE, 2016 portion of the audit period. As a result, the Commission is left 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 (i.e., prior to the 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); or to some other general domicile factors or criteria.

36. In addition, the Commission is not convinced that the guidance that the Utah Supreme Court provided in regards to the presumption that was at issue in *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 one of the Subsection 59-10-136(2) rebuttable presumptions by showing that they are not domiciled in Utah under general domicile principles seems logically circular and, for reasons to be explained in more detail later in the decision, frustrates 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.

37. TAXPAYERS ATTORNEY also contends that Section 59-10-136 is unconstitutional. TAXPAYERS ATTORNEY recognizes that the Commission is not authorized to determine whether a Utah statute is unconstitutional, but presented his constitutional arguments in order to preserve these arguments for possible future court proceedings.[23]

23 *See, e.g., Nebeker v. Utah State Tax Comm'n*, 34 P.3d 180, 2001 UT 74 (Utah 2001), in which the Utah Supreme Court stated that "'[i]t is not for the Tax Commission to determine questions of legality or

38. As will be explained in more detail later in the decision, both taxpayers are considered to be domiciled in Utah for all of 2015 and 2016 under Section 59-10-136(2)(b). Accordingly, under Subsection 59-10-103(1)(q)(i)(A), both taxpayers are Utah resident individuals for all of 2015 and 2016.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2016)[24], "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 2015 and 2016 tax years at issue), UCA §59-10-136 provides for the determination of "domicile," as follows:[25]

> (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:

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constitutionality of legislative enactments'" (citations omitted). As a result, the Commission will not discuss the taxpayers' constitutional arguments any further.

24 All substantive law citations are to the 2016 version of Utah law. Unless otherwise noted, the substantive law remained the same during the 2015 and 2016 tax years.

25 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 2015 and 2016 tax years that is applicable to this appeal.

(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. 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)[26] 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

26 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2015 and 2016 versions of this statute that are pertinent to this appeal.

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

- 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) (2020) provides guidance concerning burden of proof and statutory construction, 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.

(2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:

(a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and

(b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

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 Division contends that both taxpayers were Utah resident individuals for all of 2015 and 2016. The taxpayers concede that they were Utah resident individuals for the DATE, 2015 to DATE, 2015 portion of 2015, and the DATE, 2016 to DATE, 2016 portion of 2016. The taxpayers contend, however, that they were not Utah resident individuals for the DATE, 2015 to DATE, 2016 portion of the audit period. For the 2015 and 2016 tax years, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the "183 day test").

3. The Division does not assert that either taxpayer is a Utah resident individual for all of 2015 or 2016 under the 183 day test. Instead, the Division asserts that the taxpayers are Utah resident individuals for all of 2015 and 2016 under the domicile test. As a result, the Commission must apply the

facts to the Utah income tax domicile law that is applicable for the 2015 and 2016 tax years to determine whether the taxpayers are considered to be domiciled in Utah for income tax purposes throughout these years (as the Division contends); or whether the taxpayers are only considered to be domiciled in Utah for income tax purposes for the DATE, 2015 to DATE, 2015 portion of 2015, and the DATE, 2016 to DATE, 2016 portion of 2016 (as the taxpayers contend).

4. For the 2015 and 2016 tax years, Section 59-10-136 contains four subsections addressing when a taxpayer is considered to have income tax domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have income tax domicile in Utah (Subsection (4)).[27] TAXPAYERS ATTORNEY contends that because there is no wording in Section 59-10-136 or any other section of Utah law that "defines" the word "domicile" for Utah income tax purposes, the Commission should look elsewhere to determine the meaning of the word "domicile" for these purposes. Specifically, TAXPAYERS ATTORNEY contends that the Commission should look to the manner in which "domicile" is applied for federal jurisprudence purposes, which is based, in part, on an individual's intent and which the Utah Court of Appeals used for Utah general personal jurisdiction purposes in *Mower*. Even though wording such as "domicile means . . ." is not found in Section 59-10-136, the Commission, nevertheless, finds that Section 59-10-136 does prescribe those circumstances that do constitute and do not constitute "domicile" for Utah income tax purposes.

5. Furthermore, "domicile" is prescribed or applied differently for different Utah purposes. For example, in Utah Code Ann. §41-1a-202(1), the Utah Legislature provides that "domicile" for motor vehicle registration purposes is "the place: (i) where an individual has a fixed permanent home and principal

27 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.

establishment; (ii) to which the individual if absent, intends to return; and (iii) in which the individual and his family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home." Similarly, in Utah Code Ann. §23-13-2(13), the Utah Legislature provides that "domicile" for wildlife resources purposes is, in part, "the place: (i) where an individual has a fixed permanent home and principal establishment; (ii) to which the individual if absent, intends to return; and (iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home." For these specific purposes, the Utah Legislature has provided for "domicile" to be applied in ways where an individual's intent is considered in determining their domicile for these purposes, which is similar to how "domicile" is applied for federal jurisprudence purposes and how it was applied in the pre-2012 Utah income tax laws that the Utah Legislature replaced with Section 59-10-136 beginning with tax year 2012.

6. As a result, the Utah Legislature clearly intended for "domicile" to be prescribed or applied differently for Utah income tax purposes beginning with tax year 2012 than it had been prescribed or applied for this purpose prior to 2012 and is currently prescribed or applied for federal jurisprudence purposes and other Utah purposes. Accordingly, to determine whether the taxpayers are considered to be domiciled in Utah for income tax purposes for the 2015 and 2016 tax years, the Commission will make its determination based on the various income tax domicile provisions found in Section 59-10-136, not the federal jurisprudence application of "domicile" that the Utah Court of Appeals applied in *Mower* for general personal jurisdiction purposes.[28] The Commission will begin its analysis of Section 59-10-136 with a discussion of Subsection 59-10-136(5)(b).

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28 The taxpayers contend that an individual can only be domiciled in one state at any one time. That may be true for federal jurisprudence purposes and may be true for Utah income tax purposes prior to 2012 (when the more traditional application of "domicile" was in effect under Rule 2 and/or Rule 52). However, once the Utah Legislature amended Utah's income tax domicile laws by enacting Section 59-10-136 effective for tax year 2012, an individual may be considered to be domiciled in Utah and in another state at the same time for state income tax purposes (with double taxation concerns mitigated by the credit provided

7. Subsection 59-10-136(5)(b). Throughout the audit period, the taxpayers were married to one another. For a married individual, it is often necessary 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 2015 and 2016 federal income tax returns with a status of married filing jointly, not separately. In addition, the taxpayers were not legally separated or divorced during any portion of 2015 or 2016. Accordingly, for purposes of Section 59-10-136, each taxpayer is considered to be the other taxpayer's spouse for all of 2015 and 2016.

8. 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 the 2015 or 2016 tax year. 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 the audit period. The DATE, 2015 to DATE, 2016 portion of the audit period that the taxpayers were absent from Utah is only 277 days. Accordingly, the taxpayers do not qualify for the Subsection 59-10-136(4) exception from Utah domicile for any portion of the audit period.

9. As a result, the Commission must analyze whether the taxpayers *are* considered to have domicile in Utah during 2015 and 2016 under one or more of the remaining subsections of Section 59-10-

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under Section 59-10-1003). For example, if an individual is considered to be domiciled in New York for income tax purposes under New York law and if that individual is enrolled as a resident student in a Utah institution of higher education, that individual would also be considered to be domiciled in Utah for income tax purposes under Subsection 59-10-136(1)(a)(ii).

136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found in *any one* of these subsections, that individual is considered to be domiciled in Utah, even if the individual does not meet the criteria found in any of the other subsections. Because the only subsection of Section 59-10-136 under which the Division contends that both taxpayers are considered to be domiciled in Utah for all of 2015 and 2016 is Subsection 59-10-136(2)(b), the Commission will begin the remainder of its analysis with this subsection.

10. 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 both taxpayers were registered to vote in Utah for all of 2015 and 2016. As a result, both taxpayers will be considered to be domiciled in Utah for all of 2015 and 2016 under Subsection 59-10-136(2)(b), unless they are able to rebut this presumption.[29] The taxpayers do not attempt to rebut the Subsection 59-10-136(2)(b) presumption for the portions of the audit period that they lived in Utah, specifically from DATE, 2015 to DATE, 2015, and from DATE, 2016 to DATE, 2016. As a result, the Commission finds that the taxpayers are considered to be domiciled in Utah from DATE, 2015 to DATE, 2015, and from DATE, 2016 to DATE, 2016 under Subsection 59-10-136(2)(b).

11. Still at issue is whether the taxpayers have rebutted the Subsection 59-10-136(2)(b) presumption for the DATE, 2015 to DATE, 2016 portion of the audit period that they lived in STATE 1. Because Subsection 59-10-136(2)(b) involves a rebuttable presumption, the Legislature clearly intended

29 Even if only one of the taxpayers had been registered to vote in Utah for the audit period, the Subsection 59-10-136(2)(b) presumption would have arisen for both taxpayers because 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. 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 their spouse is considered to have domicile in Utah.

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.[30] 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.

12. The taxpayers ask the Commission to find that they have rebutted the Subsection 59-10-136(2)(b) presumption for the DATE, 2015 to DATE, 2016 portion of the audit period because they moved to STATE 1 and demonstrated an intent to change their domicile from Utah to STATE 1 for this period. TAXPAYERS ATTORNEY contends that the taxpayers should be able to rebut a Subsection 59-10-136(2) presumption by showing that they would not be considered to be domiciled in Utah under the federal jurisprudence application of "domicile," which requires a similar analysis as the application of "domicile" in Utah's pre-2012 income tax laws. As a result, the taxpayers' argument relies on intent and a consideration of 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)).

13. 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

30 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).

using the "old" Utah 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.[31]

14. 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).[32]

15. 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 such as the federal jurisprudence application of "domicile" 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).

16. 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

31 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016).

32 *See, 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 the presumptions of Subsection 59-10-136(2) is met.

2012 (as set forth in Rule 2 and/or Rule 52).[33] 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).[34]

17. 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 or the federal jurisprudence test). 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 in Utah 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.[35]

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33 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).

34 The factors that were given greater import in Subsections 59-10-136(1) and (2) are generally 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 registered to vote in Utah.

35 For example, if the taxpayers' position 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

18. Because Section 59-10-136 clearly provides that a Subsection 59-10-136(2) presumption cannot be rebutted by showing that the individual would not be considered to be domiciled in Utah under some more traditional type of domicile test, the Subsection 59-1-1417(2) guidance concerning the statutory construction of a taxing statute is not applicable in reaching this conclusion.

19. 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.

20. 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 elsewhere after moving away from Utah.[36] After the taxpayers moved to STATE 1 in 2015, neither of them registered to vote in STATE 1. Moreover, for reasons previously discussed, the Commission has found that neither taxpayer was registered to vote somewhere other than Utah for any portion of the audit period.

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continue to do so without any Utah income tax consequences if the individual showed that they would be considered to have domicile outside of Utah based on some sort of traditional income tax domicile criteria.

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

21. 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 individual's name from the registry.[37] No evidence was provided to show that either taxpayer asked for their name to be removed from the Utah voter registry prior to or during the 2015 and 2016 tax years.

22. 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.[38] The taxpayers, however, did not argue that Utah voting laws provided for either of the taxpayers' names to be removed from the Utah voter registry prior to or during the audit period.

23. 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 vote and if the individual eventually votes in that state.[39] No evidence was provided to show that STATE 1 allows an individual to vote in a STATE 1 election without first having registered to vote in that state. Furthermore, no evidence was provided to show that the taxpayers ever voted in STATE 1 after they registered to vote in Utah in 2014.

24. 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 period for which they are attempting to rebut the presumption. 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

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

could trigger domicile under Subsection 59-10-136(2)(b).[40] As a result, that neither taxpayer voted in Utah during the DATE, 2015 to DATE, 2016 period they lived in STATE 1 is insufficient to rebut the Subsection 59-10-136(2)(b) presumption for this period.

25. The taxpayers explained that they did not register to vote in STATE 1 during the DATE, 2015 to DATE, 2016 period they lived there because they were focused on matters other than voting during this period and because no presidential election occurred in 2015. 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 that other circumstances would be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. The taxpayers, however, have not proffered sufficient arguments to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the DATE, 2015 to DATE, 2016 period that remains at issue.

26. Accordingly, under Subsection 59-10-136(2)(b), both taxpayers are not only considered to be domiciled in Utah for the DATE, 2015 to DATE, 2015, and DATE, 2016 to DATE, 2016 portions of the audit period for which they do not attempt to rebut the presumption; but they are also considered to be domiciled in Utah for the DATE, 2015 to DATE, 2016 period that they unsuccessfully attempted to rebut the presumption. For these reasons, the taxpayers are considered to be domiciled in Utah for all of the 2015 and 2016 tax years under Subsection 59-10-136(2)(b).

27. Because both taxpayers have been found to be domiciled in Utah for all of 2015 and 2016 under Subsection 59-10-136(2)(b), there is no need to analyze the remaining subsections of Section 59-10-136 (i.e., Subsections (1), (2)(a), (2)(c), and (3)) to resolve this case. However, some observations about these remaining subsections may be useful.

40 *See, e.g., USTC Appeal No. 15-720.*

28. Subsection 59-10-136(1). 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)); or if the individual or the individual's spouse is a resident student enrolled in a Utah institution of higher education. The taxpayers did not claim any dependents on their 2015 or 2016 federal return. In addition, neither taxpayer was enrolled in a Utah institution of higher education during 2015 or 2016. Accordingly, neither taxpayer is considered to be domiciled in Utah for any portion of 2015 or 2016 under Subsection 59-10-136(1).

29. 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. The taxpayers did not claim a Utah property tax residential exemption for any portion of 2015 or 2016. Accordingly, neither taxpayer is considered to be domiciled in Utah for any portion of 2015 or 2016 under Subsection 59-10-136(2)(a).

30. 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 2015 Utah return, the taxpayers asserted Utah residency from DATE, 2015 to DATE, 2015. On their 2016 Utah return, the taxpayers asserted Utah residency from DATE, 2016 to DATE, 2016. Accordingly, under Subsection 59-10-136(2)(c), both taxpayers would also be considered to be domiciled in Utah from DATE, 2015 to DATE, 2015, and from DATE, 2016 to DATE, 2016 (unless they attempted and were able to rebut this presumption).

31. 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 the entirety of the audit period under Subsection 59-10-136(2)(b), Subsection 59-10-136(3) has no applicability to this case.

32. Conclusion. Because each taxpayer is considered to be domiciled in Utah for all of 2015 and 2016 under Subsection 59-10-136(2)(b) and is not considered to *not* be domiciled in Utah for any portion of these years under Subsection 59-10-136(4), each taxpayer is considered to be domiciled in Utah for all of 2015 and 2016.

33. The taxpayers indicate that it is unfair that Utah law would consider them to be domiciled in Utah for the DATE, 2015 to DATE, 2016 period they lived in STATE 1 and where they had no intention of returning to Utah after leaving Utah on DATE, 2015. The taxpayers may be suggesting Section 59-10-136, as currently written for the tax years at issue, results in bad tax policy in their situation. While the Commission is tasked with the duty of implementing laws enacted by the Utah Legislature, the Commission is not authorized to amend these laws to achieve what the taxpayers may consider to be a better tax policy. That is the role of the Legislature.[41]

34. Because the taxpayers are considered to be domiciled in Utah for all of 2015 and 2016, they are Utah resident individuals for all of 2015 and 2016, pursuant to Subsection 59-10-103(1)(q)(i)(A). For these reasons, the Commission should sustain the Division's assessments for the 2015 and 2016 tax years in their entireties.

41 As mentioned earlier, the 2019 Legislature amended Section 59-10-136 in SB 13. Among the SB 13 changes, the Legislature amended the Subsection 59-10-136(2)(b) rebuttable presumption by changing the event that would trigger this presumption from being registered to vote in Utah to voting in Utah. The Legislature, however, elected for the SB 13 amendments to take effect beginning with tax year 2018, purposefully electing not to apply the amendments to tax years prior to 2018 (including the 2015 and 2016 tax years at issue in this appeal). While the Commission is tasked with the implementation of Section 59-10-136 and SB 13 changes to this statute, the Commission is not authorized to change the effective date of the bill and apply the SB 13 amendments to the tax years at issue in this appeal.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments for the 2015 and 2016 tax years in their entireties. It is so ordered.

DATED this _____ day of _____, 2020.

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.