APPEAL #: 18-484
TAX TYPE: INCOME TAX
TAX YEAR:2014 AND 2015
DATE SIGNED: 2/21/2020
COMMISSIONERS:J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND L.WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-484 Account No. ##### Tax Type: Income Tax Years: 2014 & 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer[1]
TAXPAYER-2, Taxpayer
For Respondent: RESPONDENT'S REP-1, from Auditing Division

[1] On December 26, 2019, the Petitioners contacted the Commission and indicated that they would not be able to attend the Initial Hearing scheduled for January 21, 2020, due, at least in part, to medical hardship. In addition, they indicated that they did not want to continue the hearing and preferred that the Commission issue a decision based on their written information. On January 2, 2020, the Commission issued an order in regards to the taxpayers' request, which provided as follows in pertinent part:

> It is unusual that the Commission would not issue an Order of Default if a taxpayer or a taxpayer's representative does not attend a hearing in person or by telephone. In this one instance, however, the Commission will accommodate the taxpayers' request as follows. The Initial Hearing will proceed as scheduled. However, a default will not be entered against the taxpayers for [their] failure to appear. Further, the Commission will accept as evidence for the hearing the information that either party provides on or before January 7, 2020 (i.e. 10 business days prior to the hearing). The Respondent ("Auditing Division") will have an opportunity to appear at the hearing to present their testimony and evidence and to rebut the taxpayers' evidence.

On January 7, 2020, the taxpayers submitted a packet of written information for the Commission to consider for the Initial Hearing (in addition to the other written information they had previously provided). The taxpayers, however, decided to attend the Initial Hearing and appeared in person.

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on January 21, 2020.

TAXPAYERS ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessments of Utah individual income taxes for the 2014 and 2015 tax years. On February 14, 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 March 16, 2018),[2] as follows:

Year	Tax	Penalties	Interest	Total

REDACTED TABLE

The taxpayers are a married couple who, for each of the 2014 and 2015 tax years, filed a United States federal return ("federal return") with a status of married filing jointly.[3] TAXPAYER-2 is a ETHNICITY-1 citizen who, while not a United States citizen, has been granted permanent residency in the United States. TAXPAYER-1 is a United States citizen who, while not a ETHNICITY-1 citizen, has been granted permanent residency in COUNTRY-1. During 2014 and 2015, the taxpayers spent part of each year in Utah and part of each year in COUNTRY-1. During 2014, TAXPAYER-2 spent 192 days in Utah, and TAXPAYER-1 spent 190 days in Utah. During 2015, each of the taxpayers spent 257 days in

[2] Interest continues to accrue until any tax liability is paid. No penalties were imposed.

[3] The taxpayers initially filed 2014 and 2015 federal returns on which they reported that their federal adjusted gross income ("FAGI") was $$$$$ for the 2014 tax year and $$$$$ for the 2015 tax year. In October 2018, the taxpayers filed amended federal returns on which they reported their FAGI to be $$$$$ for the 2014 tax year and $$$$$ for the 2015 tax year. The taxpayers did not earn any "wages, salaries, tip, etc." during the 2014 and 2015 tax years. Most of their income was attributable to "ordinary dividends" and Schedule C "business income" from a Utah business owned and operated by TAXPAYER-2.

Utah.[4] The taxpayers did not own any real property anywhere during 2014 and 2015. When the taxpayers were present in Utah during 2014 and 2015, they would live in a Utah home owned by a trust of which neither of the taxpayers is a trustee, but of which TAXPAYER-1 is one of the beneficiaries.

For each of the 2014 and 2015 tax years, the taxpayers also filed original and amended Utah part-year returns with a status of married filing jointly. On the taxpayers' original 2014 Utah return, they reported that they were part-year Utah resident individuals from DATE to DATE, and they allocated to Utah $$$$$ of their original 2014 FAGI of $$$$$. On the taxpayers' amended 2014 Utah return (which they filed in 2018), they also reported that they were part-year Utah resident individuals from DATE to DATE; and they allocated to Utah $$$$$ of their amended 2014 FAGI of $$$$$.

On the taxpayers' original 2015 Utah return, they reported that they were part-year Utah resident individuals from DATE to DATE, and they had handwritten that they were living in COUNTRY-1 from DATE to DATE for medical reasons; and they allocated to Utah $$$$$ of their original 2015 FAGI of $$$$$. On the taxpayers' amended 2015 Utah return (which they filed in 2018), they reported that they were part-year Utah resident individuals from DATE to DATE, and from DATE to DATE;[5] and they allocated to Utah $$$$$ of their amended 2015 FAGI of $$$$$.

The Division, however, determined that both taxpayers were domiciled in Utah for all of 2014 and 2015, primarily on the basis that TAXPAYER-1 was registered to vote in Utah throughout these years. As a result, the Division also determined that both taxpayers were Utah resident individuals for all of

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[4] For years prior to and subsequent to the 2014 and 2015 tax years at issue, one or both of the taxpayers were also present in Utah for more than 30 days in a calendar year. Specifically, for 2013, TAXPAYER-1 was present in Utah for 33 days, while TAXPAYER-2 was not present in Utah for any days; and for 2016, both taxpayers were present in Utah for 331 days.

[5] The taxpayers explained that they filed their amended 2015 Utah return in this manner because they were also away from Utah from DATE to DATE.

2014 and 2015 and that all of the taxpayers' 2014 and 2015 income was subject to Utah taxation. Consequently, the Division changed the taxpayers' 2014 and 2015 Utah part-year resident returns to Utah full-year resident returns.

For these reasons, the Division asks the Commission to find that the taxpayers are 2014 and 2015 Utah full-year resident individuals. The Division, however, indicates that its 2014 assessment needs an adjustment because it reflects the 2014 FAGI of $$$$$ that the taxpayers reported on their original 2014 federal and Utah returns and because the Internal Revenue Service ("IRS") has accepted the taxpayers' amended 2014 federal return and the $$$$$ of FAGI reported on it. As a result, if the Commission finds that the taxpayers are 2014 Utah full-year resident individuals, the Division asks the Commission to sustain its 2014 assessment, with the exception of changing the total 2014 FAGI subject to Utah taxation to $$$$$.

As to its 2015 assessment, the Division indicates that this assessment reflects the 2015 FAGI of $$$$$ that the taxpayers reported on their original 2015 federal and Utah returns. Because the IRS has not yet accepted the taxpayers' amended 2015 federal return and the $$$$$ of FAGI reported on it, the Division asks the Commission to sustain its 2015 assessment in its entirety. The Division indicated, however, that should the IRS in the future accept the taxpayers' amended 2015 federal return and reduce their 2015 FAGI to $$$$$, the Division would change the taxpayers' 2015 FAGI to $$$$$ for Utah tax purposes as well.

The taxpayers explained that TAXPAYER-1 has medical problems that require treatment in COUNTRY-1 for part of each year, which requires them to move back and forth between Utah and COUNTRY-1 to "alternately inhabit" each place for periods as suits their needs. The taxpayers claim that their contacts are with COUNTRY-1 when they live in COUNTRY-1. They also claim that being

registered to vote in Utah indicates little about where one is actually domiciled and, as such, should not serve as a "foundation for taxation" within Utah. In addition, the taxpayers believe that they can rebut TAXPAYER-1's being registered to vote in Utah because she was not a ETHNICITY-1 citizen and, thus, was not allowed to register to vote in COUNTRY-1. As a result, the taxpayers claim that they should be considered 2014 and 2015 Utah part-year resident individuals for periods they claimed on their amended 2014 and 2015 Utah returns, specifically that they are Utah resident individuals only for the DATE to DATE portion of 2014; and for the DATE to DATE, and DATE to DATE portions of 2015. In addition, the taxpayers indicate that the IRS has not yet accepted their amended 2015 federal return because of a technicality that will soon be corrected. For these reasons, the taxpayers ask the Commission to accept their amended 2014 and 2015 Utah returns and to reverse the Division's 2014 and 2015 assessments.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2015)[6], "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.
> . . . .

[6] All substantive law citations are to the 2015 version of Utah law. Unless otherwise noted, the law remained the same during the 2014 and 2015 tax years at issue.

3. Effective for tax year 2012 (and applicable to the 2014 and 2015 tax years at issue), UCA §59-10-136 provides for the determination of "domicile," as follows:[7]

> (1) (a) An individual is considered to have domicile in this state if:
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> (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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> (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:

[7] 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 and 2015 tax years that is applicable to this appeal.

(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. UCA §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)[8] 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, UCA §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

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[8] Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2014 and 2015 version of this statute that is pertinent to this appeal.

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 which party has the burden of proof, as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

(a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;

> (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
> (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
> (i) required to be reported; and
> (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. The Division contends that both taxpayers are Utah resident individuals for all of 2014 and 2015. For the 2014 and 2015 tax years, the taxpayers agree that they were Utah resident individuals from DATE to DATE; and from DATE to DATE. The taxpayers, however, contend that they were Utah nonresident individuals from DATE to DATE; from DATE to DATE; and from DATE to DATE. For the 2014 and 2015 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").

The Division does not argue that the taxpayers are Utah resident individuals for all of 2014 and 2015 under the 183 day test. Instead, the Division asserts that the taxpayers are Utah resident individuals for all of 2014 and 2015 under the domicile test. As a result, the Commission will apply the facts to Section 59-10-136 (the Utah domicile statute in effect for the 2014 and 2015 tax years) to determine

whether the taxpayers are Utah resident individuals for all of 2014 and 2015 (as the Division contends); or whether the taxpayers are Utah resident individuals only from DATE to DATE, and DATE to DATE of these years (as the taxpayers contend).

I. Additional Facts.

The taxpayers married in DATE, and they have not since been legally separated or divorced. During the 2014 and 2015 tax years, the taxpayers lived in Utah during portions of these years, while they lived in COUNTRY-1 during other portions of these years. During 2014 and 2015, the taxpayers had no children and claimed no dependents on their 2014 and 2015 federal income tax returns. In addition, during 2014 and 2015, the taxpayers owned no real property. However, when living in Utah, it appears that the taxpayers lived in a home owned by a trust of which TAXPAYER-1 was a beneficiary; and when in COUNTRY-1, the taxpayers lived in a home with TAXPAYER-2's parents that was owned by TAXPAYER-2's parents. The trust that owned the Utah home in which the taxpayers lived in Utah for portions of 2014 and 2015 paid the utilities on the home and did not require the taxpayers to pay rent to live in it. The taxpayers indicated that they did not know the square footage of the Utah home or the home in COUNTRY-1 in which they lived during 2014 and 2015.

The taxpayers stated that during most of 2013 and first part of 2014, both of them were living in COUNTRY-1 while TAXPAYER-2 was trying to get a green card to live in the United States. It appears that TAXPAYER-2 obtained a green card shortly before the DATE date that the taxpayers moved from COUNTRY-1 to Utah.

From DATE to DATE, TAXPAYER-1 was enrolled as a resident student at the SCHOOL-1. However, she was not enrolled in a Utah institution of higher education for any other portion of 2014 or

any portion of 2015. TAXPAYER-2 was not enrolled in a Utah institution of higher education for any portion of 2014 or 2015.

During all of 2014 and 2015, TAXPAYER-2 was registered to vote in COUNTRY-1, and TAXPAYER-1 was registered to vote in Utah. During these years, TAXPAYER-2 could not register to vote in the United States because he was not a United States citizen, and TAXPAYER-1 could not register to vote in COUNTRY-1 because she was not an ETHNICITY-1 citizen. TAXPAYER-1 proffered that United States federal law allows a United States citizen who lives abroad to vote in the United States if the citizen is registered to vote in the last state of the United States in which the citizen lived. TAXPAYER-1 last voted in a Utah election in November 2012. TAXPAYER-1 also contended that she remained registered to vote in Utah once TAXPAYER-2 applied for a green card because this Utah tie strengthened TAXPAYER-2's assertion that the taxpayers were planning to live in the United States should he be granted a green card. In 2017, TAXPAYER-1 had the Utah County Clerk's Office terminate her Utah voter registration.

During all of 2014 and 2015, TAXPAYER-1 had a Utah driver's license, and TAXPAYER-2 had a COUNTRY-1 driver's license. In addition, TAXPAYER-2 obtained a Utah driver's license on DATE, which he retained for the remainder of 2014 and for all of 2015. TAXPAYER-1 did not have a COUNTRY-1 driver's license during 2014 or 2015.

During 2014 and 2015, the taxpayers had motor vehicles in Utah that were registered in Utah. No information was provided as to whether the taxpayers had additional motor vehicles in COUNTRY-1 or other locations and, if so, where these vehicles were registered.

During 2014 and 2015, TAXPAYER-2 was a member of a church in COUNTRY-1, while TAXPAYER-1 was not a member of any church. In addition, neither taxpayer was a member of a club or other similar organization during 2014 or 2015.

During 2014 and 2015, it appears that the taxpayers received mail at addresses in both Utah and COUNTRY-1. No information was provided to show whether the taxpayers filed their 2013 federal and Utah returns during the 2014 calendar year and, if so, the address the taxpayers used to file these returns. However, in 2015, the taxpayers used a Utah address to file their original 2014 federal and Utah returns. In addition, in 2016, the taxpayers used a Utah address to file their original 2015 federal and Utah returns. In 2018, however, the taxpayers used a COUNTRY-1 address to file their amended 2014 and 2015 federal and Utah returns.

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

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]" For the 2014 and 2015 tax years, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).[9]

[9] 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.

A. Section 59-10-136(5)(b). For a married individual, it is often necessary, as in this case, to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if the individual is legally separated or divorced from the individual's spouse or if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. Neither of these circumstances applies to the taxpayers for any portion of 2014 or 2015 because the taxpayers were married and were not legally separated or divorced during 2014 or 2015 and because they filed joint 2014 and 2015 federal returns. Accordingly, for all of 2014 and 2015, each taxpayer is considered to have a spouse for purposes of Section 59-10-136.

B. Subsection 59-10-136(4). The taxpayers do not argue that either of them is *not* considered to be a Utah domiciliary under Subsection 59-10-136(4)(a) for any portion of the 2014 and 2015 tax years. This subsection applies if an individual *and* the individual's spouse are both "absent from the state" for at least 761 consecutive days, if a number of listed conditions are all met. The taxpayers do not meet all of the Subsection 59-10-136(4)(a) requirements for a 761-day period that includes any portion of 2014 or 2015.

For purposes of Subsection 59-10-136(4)(a), Subsection 59-10-136(4)(c)(i) provides that an "absence from this state" begins of the later of the date the individual leaves Utah or the date the individual's spouse leaves Utah. It does not appear that TAXPAYER-2 was ever present in Utah until DATE, and that the first time he left Utah after first being present in Utah was DATE (when the taxpayers traveled outside of Utah for approximately six weeks). Because TAXPAYER-2 had never left Utah until DATE, *both* taxpayers would not be considered to have left Utah prior to DATE. Accordingly, the Subsection 59-10-136(4)(a) exception to domicile could not be met for the DATE to DATE portion of

2014, even if all of the other conditions of Subsection 59-10-136(4)(a) had been met. However, as explained below, all of the other Subsection 59-10-136(4)(a) conditions are not met for any portion of 2014 or 2015.

For the Subsection 59-10-136(4)(a) exception to apply, the Subsection 59-10-136(4)(a)(ii)(A) condition provides that *neither* taxpayer can return to Utah for more than 30 days in a calendar year. One or both taxpayers were present in Utah for more than 30 days in 2013, 2014, 2015, and 2016. As a result, the Subsection 59-10-136(4)(a)(ii)(A) condition would not be met for a 761-day period that included any portion of 2014 or 2015. Because all requirements of Subsection 59-10-136(4)(a) are not met for a 761-day period that includes any portion of 2014 or 2015, the Subsection 59-10-136(4) exception to domicile would not apply to the taxpayers for any portion of the 2014 and 2015 tax years at issue.[10]

Accordingly, the Commission must analyze whether the taxpayers *are* considered to be domiciled in Utah for the 2014 and 2015 tax years at issue under one or more of the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found in *any one* of these subsections, that individual is considered to be domiciled in Utah, even if the individual does not meet the criteria found in any of the other subsections. Because the Division relies on Subsection 59-10-136(2)(b) to find that both taxpayers are considered to be domiciled in Utah for all of 2014 and 2015, the Commission will begin its analysis with this subsection.

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[10] It is also noted that neither taxpayer would meet the Subsection 59-10-136(4)(a)(ii)(C) condition for the DATE to DATE portion of 2014 because TAXPAYER-1 was enrolled as a resident student at the SCHOOL-1 during this period. Admittedly, TAXPAYER-2 has never been enrolled in a Utah institution of higher education. Nevertheless, TAXPAYER-2 is an individual who is considered to have a spouse for purposes of Section 59-10-136 for all of 2014 and 2015, and his spouse was enrolled as a resident student at a Utah institution of higher education during 2014. As a result, neither TAXPAYER-2 nor his spouse (i.e., TAXPAYER-1) would meet the Subsection 59-10-136(4)(a)(ii)(C) condition for the portion of 2014 that TAXPAYER-1 was enrolled as a resident student at the SCHOOL-1.

C. 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. TAXPAYER-1 was registered to vote in Utah for all of 2014 and 2015. As a result, both taxpayers will be considered to be domiciled in Utah for all of 2014 and 2015 under Subsection 59-10-136(2)(b), unless they are able to rebut this presumption.[11] For the periods that the taxpayers were living in COUNTRY-1, they contend that neither of them should be considered to be domiciled in Utah solely on the basis that TAXPAYER-1 was registered to vote in Utah.

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.[12] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. As a result, it is left to the Commission, consistent

[11] Again, the Commission is aware that TAXPAYER-2 has never been registered to vote in Utah. 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. As a result, this presumption arises for *both* taxpayers for all of 2014 and 2015 because of TAXPAYER-1's Utah voter registration. Furthermore, where the presumption has arisen for both taxpayers, the taxpayers cannot rebut the presumption for only one of the taxpayers. Either the presumption is rebutted for both taxpayers, or the presumption is not rebutted for both taxpayers. This conclusion is supported by Subsection 59-10-136(5)(a), which provides that an individual is considered to have domicile in Utah if his or her spouse is considered to have domicile in Utah (under a different provision of Section 59-10-136).

[12] 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).

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.

It appears that the taxpayers may be asking to rebut the Subsection 59-10-136(2)(b) presumption for the periods that they were living in COUNTRY-1 because they intended COUNTRY-1 to be their domicile during these periods. This argument appears to rely on weighing an individual's intent and contacts with various states and/or countries 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 in 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 using the "old" income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in Rule 52 to determine an individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the Legislature's "new" law little or no effect, which the Commission declines to do.[14]

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[13] Some of the 12 factors of Subsection 59-10-136(3) involve a comparison of a specific contact in both Utah and another "state." For reasons to be explained later in the decision, it is not appropriate, in the instant case, to consider the 12 factors of Subsection 59-10-136(3). However, were an analysis of the 12 Subsection 59-10-136(3) factors appropriate, the Commission would consider another "state," for purposes of this comparison, to include not only another state of the United States, but also another country.

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

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

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).

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 2012 (as set forth in Rule 2 and/or Rule 52).[16] In Section 59-10-136, however, the Utah

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[15] This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of the presumptions of Subsection 59-10-136(2) is met.

[16] 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

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).[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). 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.[18] Furthermore, if a Subsection 59-10-136(2)

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of domicile" (emphasis added).

[17] 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 registered to vote in Utah.

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

presumption could be rebutted in this manner, it is unclear what type of domicile test should be used to rebut the presumption.

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.

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.[19] TAXPAYER-1, however, never registered to vote in COUNTRY-1 prior to or during the 2014 and 2015 tax years at issue. In the instant case, TAXPAYER-1 could not register to vote in COUNTRY-1 because she was not an ETHNICITY-1 citizen. However, she was not required to vote in the United States and/or to remain registered to vote in Utah in order to live in COUNTRY-1. Furthermore, it appears that TAXPAYER-1 initially wanted to remain registered to vote in Utah to assist TAXPAYER-2 in receiving his green card. Given these

[19] *See, e.g., USTC Appeal No. 15-720* (Initial Hearing Order Mar. 6, 2016). Redacted versions of this and other Commission decisions can be reviewed on the Commission's website at https://tax.utah.gov/commission-office/decisions.

circumstances, the Commission is not convinced that the taxpayers have sufficiently rebutted the Subsection 59-10-136(2)(b) Utah voter registration presumption based on TAXPAYER-1's not being eligible to register to vote in COUNTRY-1.

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.[20] TAXPAYER-1, however, never asked the Utah County Clerk's Office to remove her name from the Utah voter registry until 2017. Asking to remove one's name from the Utah voter registry subsequent to the 2014 and 2015 tax years at issue is insufficient to rebut the Subsection 59-10-136(2)(b) presumption for these years.

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.[21] The taxpayers, however, have not shown that Utah voting laws provided for TAXPAYER-1's name to be removed from the Utah voter registry at any time prior to or during the 2014 and 2015 tax years.

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.[22] Regardless of whether COUNTRY-1 requires an individual to register to vote prior to voting, TAXPAYER-1 has not become a ETHNICITY-1 resident who can vote in COUNTRY-1. As a result, she has never voted in COUNTRY-1.

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

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(s) 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 the 2014 and 2015 versions of Subsection 59-10-136(2)(b).[23] In summary, the taxpayers have not proffered sufficient arguments to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the 2014 and 2015 tax years for which it has arisen in regards to both of them. Accordingly, under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for all of 2014 and 2015.

Because both taxpayers have been found to be domiciled in Utah under Subsection 59-10-136(2)(b) for all of 2014 and 2015, there is no need to analyze the remaining subsections of Section 59-10-136 (i.e., Subsections (1)(a)(i), (1)(a)(ii), (2)(a), (2)(c) and (3)) to resolve this case. However, some observations about these remaining subsections may be useful.

D. 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). The taxpayers claimed no dependents on their 2014 and 2015 federal returns. As a result, under Subsection 59-10-136(1)(a)(i), the taxpayers would not be considered to be domiciled in Utah for any portion of 2014 or 2015.

E. 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. The only portion of 2014 or 2015 that either taxpayer was enrolled as a

[23] *See, e.g., USTC Appeal No. 15-720*.

resident student in a Utah institution of higher education was from DATE to DATE, when TAXPAYER-1 was enrolled in the SCHOOL-1. Accordingly, under Subsection 59-10-136(1)(a)(ii), both taxpayers would be considered to be domiciled in Utah from DATE to DATE, but would not be considered to be domiciled in Utah for any other portion of 2014 or 2015.

F. 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.

During 2014 and 2015, neither taxpayer owned real property in Utah. Accordingly, under Subsection 59-10-136(2)(b), the taxpayers would not be considered to be domiciled in Utah for any portion of 2014 or 2015.

G. 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 original and amended 2014 Utah returns, the taxpayers reported that they were Utah resident individuals from DATE to DATE. On their original and amended 2015 Utah returns, the taxpayers reported (cumulatively from both returns) that they were Utah resident individuals from DATE to DATE, and from DATE to DATE. Accordingly, under Subsection 59-10-136(2)(c), the taxpayers would also be considered to be domiciled in Utah from DATE to DATE, and from DATE to DATE (unless they rebutted the presumption).

H. 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 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 and 2015 under Subsection 59-10-136(2)(b), Subsection 59-10-136(3) has no applicability to this case.

I. Domicile and Utah Residency - Conclusion. Based on the foregoing, both taxpayers are considered to be domiciled in Utah for all of 2014 and 2015. As a result, both taxpayers are also Utah resident individuals for all of 2014 and 2015, pursuant to Subsection 59-10-103(1)(q)(i)(A).

III. Other Arguments.

The taxpayers contend that a large portion of their income consists of intangible dividend income that TAXPAYER-1 receives on her stock holdings. The taxpayers contend that because stock dividends are not sourced to any specific location, they properly allocated TAXPAYER-1's dividend income to Utah based on the number of days that she was in Utah during 2014 and 2015. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), however, all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. Accordingly, any income that either of the taxpayers received in 2014 and 2015 is subject to Utah taxation, even if it was not earned in or sourced to Utah.

The taxpayers also contend that it is unfair to find that they were domiciled in Utah for periods that they did not live in Utah. The taxpayers may be suggesting that Section 59-10-136, as currently written, results in bad tax policy in certain situations such as their own. The Commission, however, is tasked with implementing the laws that the Legislature enacts. It 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.

IV. Conclusion.

Based on the foregoing, the Commission should find that both taxpayers are Utah resident individuals for all of 2014 and 2015. As a result, the Commission should sustain the Division's 2014 assessment, with the exception of changing the taxpayers' 2014 FAGI to the $$$$$ amount that the taxpayers reported on their amended 2014 returns and that the IRS has accepted. However, because the IRS has not yet accepted the taxpayers' amended 2015 federal return, the Commission should sustain the Division's 2015 assessment in its entirety.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2015 assessment in its entirety. The Commission also sustains the Division's 2014 assessment, with the exception of changing the taxpayers' 2014 FAGI to $$$$$. The Division is ordered to revise its 2014 assessment accordingly. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed, or emailed, to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.