18-916
TAX TYPE: INCOME TAX
TAX YEAR: 2014 & 2015
DATE SIGNED: 11/13/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

| TAXPAYER-1 & TAXPAYER-2,<br><br>Petitioners,<br><br>v.<br><br>AUDITING DIVISION OF THE<br>UTAH STATE TAX COMMISSION,<br><br>Respondent. | **INITIAL HEARING ORDER**<br><br>Appeal No. 18-916<br><br>Account No. #####<br>Tax Type: Income<br>Tax Years: 2014 & 2015<br><br>Judge: Chapman |
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**Presiding:**
Kerry R. Chapman, Administrative Law Judge

**Appearances:**
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
TAXPAYER-2, Taxpayer (by telephone)
For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on DATE, 2019.

TAXPAYER-1 & 2 ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessments of Utah individual income taxes for the 2014 and 2015 tax years. 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),[1] as follows:

| Year | Tax | Penalties | Interest | Total |
|---|---|---|---|---|

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

| | | | | |
|---|---|---|---|---|
| 2014 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |
| 2015 | $$$$$ | $$$$$ | $$$$$ | $$$$$ |

The taxpayers are a married couple who filed 2014 and 2015 federal, Utah, and STATE-1 returns with a status of married filing jointly. TAXPAYER-1 lived and worked in Utah from DATE, 2014 to DATE, 2014, after which he moved to STATE-1, where he lived and worked for the remainder of 2014 and for all of 2015. TAXPAYER-2 lived in Utah from DATE, 2014 to DATE, 2014, after which she also moved to STATE-1, where she lived for the remainder of 2014 and for all of 2015. TAXPAYER-2 was not employed during either of the years at issue.

For the 2014 tax year, the taxpayers filed a Utah part-year resident return on which they reported that they were Utah resident individuals from DATE, 2014 to DATE, 2014, and on which they allocated to Utah $$$$$ of their 2014 federal adjusted gross income ("FAGI") of $$$$$. They also filed a 2014 STATE-1 part-year resident return on which they reported that they were both STATE-1 residents from MONTH 2014 to MONTH 2014, and on which they allocated to STATE-1 $$$$$ of their 2014 FAGI of $$$$$.[2] The taxpayers explained that they filed their 2014 Utah and STATE-1 returns in this manner to show: 1) that TAXPAYER-1 was a Utah resident individual from DATE, 2014 to DATE, 2014, and that he was a STATE-1 resident from DATE, 2014 to DATE, 2014; 2) that TAXPAYER-2 was a Utah resident individual from DATE, 2014 to DATE, 2014; and that she was a STATE-1 resident from DATE, 2014 to DATE, 2014; and 3) that the income that TAXPAYER-1 received while he was a Utah resident individual was subject only to Utah taxation and that the income that he received while he was a STATE-1 resident was subject only to STATE-1 taxation.

2 The taxpayers only allocated $$$$$ of their total 2014 FAGI of $$$$$ between Utah and STATE-1 ($$$$$ to Utah and $$$$$ to STATE-1). The taxpayers did not allocate $$$$$ of taxable IRA distributions that they received in 2014 to either Utah or STATE-1, nor do they contend that this taxable income should have been allocated to a state other than Utah or STATE-1. TAXPAYER-1 explained that sometime prior to DATE, 2014 (he could not remember the exact date), he withdrew $$$$$ from his 401(1)(k) retirement account so that the taxpayers could purchase a home in STATE-1 (the "STATE-1 home"). TAXPAYER-1 stated that he used BUSINESS-1 to prepare the taxpayers' tax returns and does not know why the software would not have allocated the taxable retirement account withdrawal to Utah or STATE-1.

For the 2015 tax year, the taxpayers filed a Utah nonresident return on which they reported that they were Utah nonresident individuals for all of 2015, and on which they allocated to Utah -$$$$$ of their 2015 FAGI of $$$$$.[3] They also filed a 2015 STATE-1 full-year resident return on which they reported that they were 2015 STATE-1 full-year residents and on which they reported their 2015 FAGI of $$$$$. The taxpayers explained that they filed their 2015 Utah and STATE-1 returns in this manner to show: 1) that neither taxpayer was a Utah resident individual for any portion of 2015; 2) that both taxpayers were STATE-1 residents for all of 2015; 3) that all income that the taxpayers received during 2015 was subject to STATE-1 taxation; and 4) that the only 2015 income and/or losses that should be sourced to Utah are the $$$$$ of Utah source income from BUSINESS-2 and the -$$$$$ of losses associated with their Utah home.

The Division, however, determined that both of the taxpayers are considered to be domiciled in Utah throughout the 2014 tax year and for the DATE, 2015 to DATE, 2015 portion of 2015 (i.e., the first nine months of 2015). As a result, the Division changed the taxpayers' 2014 part-year resident return to a 2014 Utah full-year resident return and imposed Utah tax on all of the taxpayers' 2014 income (subject to a credit for income taxes imposed by STATE-1). In addition, the Division changed the taxpayers' 2015 Utah nonresident return to a 2015 Utah part-year resident return, based on the taxpayers' being Utah resident individuals from DATE, 2015 to DATE, 2015 and based on $$$$$ of the taxpayers' 2015 FAGI of $$$$$ being allocated to Utah.[4] As a result, the Division imposed Utah tax on $$$$$ of the taxpayers' 2015 income

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3 The taxpayers sourced to Utah: 1) $$$$$ of Utah source income from BUSINESS-2("BUSINESS-2"); and 2) a loss of $$$$$ that they claimed on their 2015 federal return in regards to renting out a home in CITY-1, Utah that they owned throughout the 2014 and 2015 tax years at issue (the "Utah home"). The taxpayers did not source to Utah any of the income that TAXPAYER-1 earned while working in STATE-1 during 2015 or any portion of another taxable withdrawal in the amount of $$$$$ that TAXPAYER-1 withdrew from his retirement account in MONTH or MONTH 2015.

4 In the event the taxpayers are found to be Utah resident individuals for the first nine months of 2015, the taxpayers did not contend that the $$$$$ amount that the Division allocated to Utah is incorrect.

(subject to a credit for taxes imposed on this income by STATE-1).[5] For these reasons, the Division asks the Commission to sustain its 2014 and 2015 assessments in their entireties.

The taxpayers, however, contend that TAXPAYER-1 has not been a Utah resident individual since DATE, 2014, and that TAXPAYER-2 has not been a Utah resident individual since DATE, 2014. As a result, the taxpayers ask the Commission to accept their 2014 and 2015 Utah returns as filed and to reverse the Division's 2014 and 2015 assessments in their entireties.[6]

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2015)[7], "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.

5 For a Utah resident individual, Utah Code Ann. §59-10-1003 (2014-2015) provides a credit against the Utah income tax otherwise due for income taxes imposed by another state. In the event both taxpayers are deemed to be Utah resident individuals for all or portions of 2014 and 2015, they would be entitled to a credit for taxes imposed by STATE-1 for the periods that they are Utah resident individuals. In the event the taxpayers are found to be Utah resident individuals for all of 2014 and the first nine months of 2015, the taxpayers did not argue that the Division improperly calculated the credits for taxes imposed by another state that it applied in its 2014 and 2015 assessments.

6 On their Petition for Redetermination, the taxpayers raised an argument that they did not make at the Initial Hearing, specifically that two states cannot tax the same income pursuant to the United States Supreme Court's decision in *Comptroller of the Treasury of Maryland v. Wynne*, 135 S. Ct. 177 (2015). Because the taxpayers did not raise this argument at the Initial Hearing, it is unclear whether the taxpayers have abandoned this argument or not. Regardless, in *Steiner v. Utah State Tax Comm'n*, 2019 UT 47, the Utah Supreme Court recently found that *Wynne* does not preclude the Tax Commission from imposing Utah income taxes on a Utah resident individual for income that is earned outside of Utah and that is taxed by another jurisdiction (subject to Utah allowing a credit for taxes imposed by another state).

7 All substantive law citations are to the 2015 version of Utah law. Unless otherwise noted, the substantive law remained the same during the 2014 and 2015 tax years.

. . . .

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:[8]

> (1) (a) An individual is considered to have domicile in this state if:
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
> (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
> (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
> (i) is the noncustodial parent of a dependent:
> (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
> (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
> (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).
> (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
> (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
> (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
> (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
> (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
> (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

8 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.

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:
(i) begins on the later of the date:
(A) the individual leaves this state; or
(B) the individual's spouse leaves this state; and
(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.
(b) For purposes of this section, an individual is not considered to have a spouse if:
(i) the individual is legally separated or divorced from the spouse; or
(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

> (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
>
> (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

4. In Section 59-10-136, two subsections require the Commission to determine whether the property for which an individual or an individual's spouse claims a residential exemption is that individual's or individual spouse's "primary residence."[9] To assist in determining whether a property is considered the "primary residence" of the individual or individual's spouse who claimed the exemption, the Legislature enacted new property tax provisions at the same time it enacted the new domicile law in Section 59-10-136. Specifically, to assist in the determination of Utah income tax domicile of a property owner, Utah Code Ann §59-2-103.5(4) provides, as follows:[10]

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

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

10 Effective for the 2015 tax year, Subsection 59-2-103.5(4) was renumbered and amended. The amendments to Subsection 59-2-103.5(4) that were effective for tax year 2015 were nonsubstantive. In SB 13 (2019), the Utah Legislature also amended Section 59-2-103.5. Again, however, the SB 13 amendments have no applicability to the 2014 and 2015 tax years at issue in this appeal.

a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.

5. 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)[11] 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.
>
> . . . .

6. 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

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

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

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

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

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

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

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

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

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

_______________________________________________________________

Street City County State Zip

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

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

- 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.

7. For the instant matter, UCA §59-1-1417(1) (2019) provides guidance concerning which party has the burden of proof, as follows:

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

## DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. At issue are which periods during 2014 and 2015 that the taxpayers were Utah resident individuals. The Division claims that the taxpayers were Utah resident individuals for all of 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015. The taxpayers, on the other hand, claim that TAXPAYER-1 was a Utah resident individual only from DATE, 2014 to DATE, 2014; and that he was not a Utah resident individual from DATE, 2014 to DATE, 2014, or for any portion of 2015. For TAXPAYER-2, the taxpayers claim that she was a Utah resident individual only from DATE, 2014 to DATE, 2014; and that she was not a Utah resident individual from DATE, 2014 to DATE, 2014, or for any portion of 2015. For 2014 and 2015, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the "183 day test").

The Division does not argue that the taxpayers were Utah resident individuals for all of 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015 under the 183 day test. Instead, the Division asserts that the

taxpayers are Utah resident individuals for these periods under the domicile test.[12] As a result, the Commission will apply the facts to the domicile law in effect for the 2014 and 2015 tax years to determine whether the taxpayers are considered to be domiciled in Utah throughout 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015 (as the Division contends); or whether for the years at issue, the taxpayers are only considered to be domiciled in Utah from DATE, 2014 to DATE, 2014 (for TAXPAYER-1) and from DATE, 2014 to DATE, 2014 (for TAXPAYER-2) (as the taxpayers contend).

**I. Additional Facts.**

The taxpayers were married in 2000, and they have not since been legally separated or divorced.[13] Both of the taxpayers had lived in Utah for many years until 2014, when they moved in 2014 to STATE-1 (where they still live). The taxpayers have four children, who were born in 2003, 2004, 2009, and 2010. The taxpayers claimed all four of their children as dependents on their 2014 and 2015 federal income tax returns. When TAXPAYER-1 moved to STATE-1 on DATE, 2014 for work, TAXPAYER-2 and the taxpayers' children remained in Utah, at least in part, so that the taxpayers' two oldest children, who attended CITY-1 Elementary School (a public elementary school in CITY-1, Utah), could complete the 2013-2014 school year. During 2014, the taxpayers' oldest two children were enrolled in CITY-1 Elementary School from DATE through DATE of 2014 (i.e., the first five months of 2014). None of the taxpayers' children were enrolled in a Utah public kindergarten, elementary, or secondary school from DATE, 2014 to DATE, 2014, or during 2015

12 As will be discussed later in the decision, the Division indicated that the evidence shows that for the 2015 tax year, the taxpayers are actually considered to be domiciled in Utah from DATE 2015 to DATE, 2015 (i.e., for the first 10 months of 2015). The Division, however, specifically asked the Commission to sustain its 2015 assessment that reflects a Utah domicile for the taxpayers for the first 9 months of 2015 instead of revising the 2015 assessment to reflect a Utah domicile for the taxpayers for the first 10 months of 2015. Even if the evidence shows that the taxpayers are considered to be domiciled in Utah for the first 10 months of 2015, the Commission will grant the Division's request not to revise the Division's 2015 assessment to impose more taxes for 2015 than the Division has requested.

13 The taxpayers indicated that they experienced marital difficulties around 2014 and 2015, which led to their not selling their Utah home when they both moved to STATE-1 in 2014 (in case they did separate and TAXPAYER-2 moved back to Utah). The taxpayers proffer that they have now resolved their marital problems and confirm that they have never been legally separated or divorced since they married in 2000.

or a subsequent tax year. In addition, neither of the taxpayers were enrolled in a Utah institution of higher education during 2014, 2015, or a subsequent tax year.

When TAXPAYER-1 moved to STATE-1 on DATE, 2014, he initially rented a room in a house until the taxpayers were able to purchase a home in STATE-1. On DATE, 2014 (the date the taxpayers purchased their STATE-1 home), TAXPAYER-2 and the taxpayers' four children moved to STATE-1. The STATE-1 home has a main floor that is ##### square feet in size, a basement that is ##### square feet in size, and a three-car garage. The taxpayers still own and live in the STATE-1 home. The taxpayers purchased their Utah home in 2010, which they listed for sale and sold in 2018. The Utah home was not listed for sale during 2014 or 2015. The Utah home is similar to the STATE-1 home in that it also has a main floor that is ##### square feet in size, a basement that is ##### square feet in size, and a three-car garage. The Utah home received the residential exemption from property taxation for both of the 2014 and 2015 tax years.[14]

When the taxpayers moved to STATE-1 in 2014, the Utah home's basement was unfinished. The taxpayers stated that instead of selling the Utah home, they decided to keep the Utah home, finish its basement, and rent it out. The taxpayers acted as their own general contractor to finish the Utah home's basement, and they traveled from STATE-1 to Utah whenever possible to oversee the project. TAXPAYER-2 was primarily responsible for returning to Utah and seeing that the Utah home's basement was finished. The taxpayers proffer that during the DATE, 2014 to DATE, 2014 portion of 2014 that they both lived in STATE-1, TAXPAYER-2 returned to Utah for 24 days, and TAXPAYER-1 returned to Utah for less than 24 days. They also proffer that during the 2015 tax year that they both lived in STATE-1, TAXPAYER-2 returned to Utah for

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14 Utah Code Ann. §59-2-103(2) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a %%%%% reduction in the value of the property[,]" while Utah Code Ann. §59-2-102(35)(a) 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 %%%% 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. Subsection 59-2-103(2) was amended for the 2015 tax year. However, any amendment to the language cited in this paragraph was nonsubstantive.

28 days, and TAXPAYER-1 returned to Utah for less than 28 days. The taxpayers also proffer that for subsequent tax years beginning with 2016, they returned to Utah for less days than they had returned to Utah in 2015.[15]

The taxpayers proffer that after the Utah home's basement was finished in August or September 2015 (approximately one year after TAXPAYER-2 moved to STATE-1), they decided to hire a property management company to lease the home. Both taxpayers returned to Utah on or around DATE, 2015, to sign a contract with BUSINESS-3 in CITY-3, Utah ("BUSINESS-3") to lease and manage their Utah home. On DATE, 2015, BUSINESS-3 listed the property for rent and found tenants who moved into the Utah home on DATE, 2015. From DATE, 2015 to DATE, 2015 (i.e., the last two months of 2015), the Utah home was the primary residence of these tenants. In addition, for tax years subsequent to 2015 until the taxpayers sold the Utah home in 2018, the Utah home was the primary residence of tenants.

TAXPAYER-1 obtained a STATE-1 driver's license and registered to vote in STATE-1 within a few weeks of moving to STATE-1 on DATE, 2014. TAXPAYER-2, however, did not obtain a STATE-1 driver's license or register to vote in STATE-1 until 2019. TAXPAYER-2 explained that she initially decided to keep her Utah driver's license and to remain registered to vote in Utah in case she filed for divorce and returned to Utah.

The Division proffered Utah voting information for the taxpayers that showed that the last year in which either of them voted in Utah was 2008. This information also shows that each of the taxpayers was registered in Utah for all of 2014 and 2015. For TAXPAYER-1, the Utah voting information showed several actions taken in regards to his Utah voter registration between 2005 and 2017, including: 1) an action taken on DATE, 2014 that is described as "status was active changed to inactive[;]" and 2) an action taken on DATE , 2017 that is described as "made removable and placed in state holding area due to inactivity." As a result, for

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15 The Division does not contest the taxpayers' assertion that once they had both moved to STATE-1 on DATE, 2014, neither of them has returned to Utah for more than 30 days in a calendar year.

the 2014 and 2015 tax years at issue, TAXPAYER-1's voter registration was in an "active status" from DATE, 2014 to DATE, 2014; and in an "inactive status" from DATE, 2014 to DATE, 2014, and for all of 2015.

The Division indicates that during the period that an individual's Utah voter registration is in an "inactive status," the individual is still registered to vote in Utah and that once an individual's Utah voter registration is "made removable and placed in state holding area due to inactivity," that individual is no longer registered to vote in Utah. The taxpayers have the burden of proof, but have not provided any information to refute the Division's assertion that TAXPAYER-1 would be registered to vote in Utah while his Utah voter registration was in an "inactive status." As a result, the Commission finds that TAXPAYER-1 was registered to vote in Utah while his Utah voter registration was in an "active status" or an "inactive status," which would include all of 2014 and 2015.[16]

For TAXPAYER-2, the Utah voting information showed several actions taken in regards to her Utah voter registration between 2005 and 2017, including: 1) an action taken on DATE, 2014 that is described as "change from active to inactive because of inactivity[;]" and 2) an action taken on DATE, 2017 that is described as "made removable and placed in state holding area due to inactivity." As a result, for the 2014 and 2015 tax years at issue, TAXPAYER-2's voter registration was in an "active status" from DATE, 2014 to DATE, 2014; in an "inactive status" from DATE, 2014 to DATE, 2014, and for all of 2015. Accordingly, the

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16 This finding is consistent with prior Commission decisions in which an individual's Utah voter registration was in an "inactive status." *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2018), where the Commission noted that Subsection 20A-2-306(4)(c)(ii) provides that "[a]n inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter[;]" and that Subsection 20A-2-305(2)(c) provides that a Utah county clerk shall remove a voter's name from the official Utah voter register if: 1) the county clerk obtains evidence that the voter's residence has changed; 2) the county clerk mails notice to the voter as required by Section 20A-2-306; 3) the county clerk receives no response from the voter or does not receive information that confirms the voter's residence; and 4) 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. This and other selected decisions can be reviewed in a redacted format on the Commission's website at https://tax.utah.gov/commission-office/decisions.

Commission also finds that TAXPAYER-2 was registered to vote in Utah while her Utah voter registration was in an "active status" or an "inactive status," which would include all of 2014 and 2015.

During 2014 and 2015, the taxpayers owned two motor vehicles, one driven by TAXPAYER-1 and another driven by TAXPAYER-2. For the vehicle driven by TAXPAYER-1, it was registered in Utah from DATE, 2014 until a few weeks after TAXPAYER-1 moved to STATE-1 on DATE, 2014, after which it was registered in STATE-1 for the remainder of 2014 and all of 2015. For the vehicle driven by TAXPAYER-2, it was registered in Utah for all of 2014 and 2015. Again, the taxpayers explained that TAXPAYER-2 kept the vehicle she drove registered in Utah in case she filed for divorce and returned to Utah.

The taxpayers were members of a church throughout 2014 and 2015. From DATE, 2014 to DATE, 2014, the taxpayers' church records were kept at a Utah unit of their church. From DATE, 2014 to DATE, 2014, and for all of 2015, the taxpayers' church records were kept at a STATE-1 unit of their church. Neither taxpayer was a member of a club or other similar organization during 2014 or 2015.

From DATE, 2014 to DATE, 2014, TAXPAYER-1 received his mail in Utah; and from DATE, 2014 to DATE, 2014, and for all of 2015, he received his mail in STATE-1. From DATE, 2014 to DATE, 2014, TAXPAYER-2 received her mail in Utah; and from DATE, 2014 to DATE, 2014, and for all of 2015, she received her mail in STATE-1. In MONTH or MONTH 2014 (before either taxpayer moved to STATE-1), the taxpayers used a Utah address to file their 2013 federal and Utah income tax returns. In 2015 and 2016 (after both taxpayers had moved to STATE-1), the taxpayers used a STATE-1 address to file their 2014 and 2015 federal, Utah, and STATE-1 income tax returns. The taxpayers did not assert Utah as their "tax home" on either of their 2014 or 2015 federal income tax returns.

On their 2014 and 2015 Utah income tax returns, the taxpayers claimed to be Utah resident individuals only for the DATE, 2014 to DATE, 2014 portion of 2014. The taxpayers did not declare that their Utah home no longer qualified for the property tax residential exemption on either of their 2014 or 2015 Utah returns (as

provided on page 3 of the returns). In addition, the taxpayers did not inform COUNTY, Utah (the county in which their Utah home was located) that their Utah home no longer qualified for the property tax residential exemption.

**II. Domicile Test for the 2014 and 2015 Tax Years.**

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "an individual who is domiciled in this state for any period of time during the 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)).[17]

A. Subsection 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 considered to have a spouse for purposes of Section 59-10-136 unless the individual is legally separated or divorced from the individual's spouse or if "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." The taxpayers were married and were not legally separated or divorced during any portion of 2014 or 2015, and the taxpayers claimed a filing status of married filing jointly for purposes of filing their 2014 and 2015 federal returns. Accordingly, for all of 2014 and 2015, each of the taxpayers is considered to have a spouse for purposes of Section 59-10-136.

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17 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.

B. Subsection 59-10-136(4). The taxpayers do not argue that they are *not* considered to be Utah domiciliaries under Subsection 59-10-136(4) for any portion of the 2014 and 2015 tax years. The Division, however, claims that under Subsection 59-10-136(4), the taxpayers are not considered to be domiciled in Utah for the DATE, 2015 to DATE, 2015 portion of 2015 (i.e., that the taxpayers meet all of the Subsection 59-10-136(4) conditions for a 761-day or more period beginning on the DATE, 2015 date that the taxpayers' Utah home became the primary residence of tenants).

Subsection 59-10-136(4) applies to an individual if the individual and the individual's spouse are *both* absent from Utah for at least 761 consecutive days, if a number of listed conditions are also met. Both taxpayers were not absent from Utah until DATE, 2014 (when TAXPAYER-2 moved to STATE-1), and both taxpayers have been absent from Utah ever since (which is significantly more than 761 days). As a result, if the taxpayers were to meet all of the other conditions of Subsection 59-10-136(4) for a 761-day or more period beginning on DATE, 2014, they would not be considered to be domiciled in Utah for the DATE, 2014 to DATE, 2014 portion of 2014, or for any portion of 2015. From the evidence proffered at the Initial Hearing, the taxpayers appear to meet all but one of the other conditions listed in Subsection 59-10-136(4)(a) for a 761-day or more period beginning on DATE, 2014. Specifically, the taxpayers do not meet the Subsection 59-10-136(4)(a)(ii)(D) condition for the DATE, 2014 to DATE, 2015 period that they were both absent from Utah.

Subsection 59-10-136(4)(a)(ii)(D) provides that during a 761-day period that both taxpayers are absent from Utah, neither of the taxpayers "claim a residential exemption . . . for that individual's or individual's spouse's primary residence[.]" While the taxpayers claimed the residential exemption on their Utah home for all of 2014 and 2015, Subsection 59-10-136(6) provides that whether or not an individual claims the residential exemption for a property that is the primary residence of a tenant may not be considered in determining that individual's domicile in Utah. Beginning on DATE, 2015, the taxpayers' Utah home became the primary residence of tenants. As a result, the taxpayers' claiming the residential exemption on their Utah home cannot

be used in determining their Utah domicile for the DATE, 2015 to DATE, 2015 portion of 2015. For this reason, the taxpayers satisfy all of the conditions of Subsection 59-10-136(4) (including the Subsection 59-10-136(4)(a)(ii)(D) condition) for a 761-day or more period beginning on DATE, 2015. Accordingly, under Subsection 59-10-136(4), the taxpayers are not considered to be domiciled in Utah for the DATE, 2015 to DATE, 2015 portion of 2015.

As for the DATE, 2014 to DATE, 2015 period that both taxpayers were absent from Utah and during which their Utah home was not the primary residence of tenants, however, the taxpayers do not meet the Subsection 59-10-136(4)(a)(ii)(D) condition. As already discussed, the taxpayers claimed a residential exemption for their Utah home for the DATE, 2014 to DATE, 2015 period that they were both absent from Utah. In addition, for purposes of Section 59-10-136, the taxpayers' Utah home is considered to be the taxpayers' "primary residence" for all of 2014, and for the DATE, 2015 to DATE, 2015 portion of 2015, regardless of whether TAXPAYER-1 was living in STATE-1 as of DATE, 2014 or whether both taxpayers were living in STATE-1 as of DATE, 2014. When Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered a "primary residence" unless the property owner takes affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; **and** 2) declare on the property owner's Utah individual income tax return for the taxable year for which the property owner no longer qualifies to receive the residential exemption, that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence.

The taxpayers did not contact COUNTY (the county in which the taxpayers' Utah home was located) to inform the county that their home no longer qualified for the residential exemption. In addition, the taxpayers did not indicate on their joint 2014 or 2015 Utah income tax return that their Utah home no longer

qualified to receive the residential exemption. Because the taxpayers did not take both of these steps in regards to the Utah home for 2014 or 2015, the property is considered to be the taxpayers' "primary residence" for purposes of Section 59-10-136 for all of 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015 that remains at issue. For these reasons, the taxpayers do not meet the Subsection 59-10-136(4)(a)(ii)(D) condition for any portion of the DATE, 2014 to DATE, 2015 period that both of them were absent from Utah.[18]

Because *both* taxpayers were not absent from Utah from DATE, 2014 to DATE, 2014, and because the taxpayers do not meet the Subsection 59-10-136(4)(a)(ii)(D) condition for the DATE, 2014 to DATE, 2015 period that they were both absent from Utah, the Subsection 59-10-136(4) exception does not apply to the taxpayers for any portion of 2014, or for the DATE, 2015 to DATE, 2015 portion of 2015. Accordingly, under Subsection 59-10-136(4), the taxpayers *are not* considered to not be domiciled in Utah for any portion of 2014 or for the first 10 months of 2015 (i.e., from DATE, 2015 to DATE, 2015); but *are* considered to not be domiciled in Utah from DATE, 2015 to DATE, 2015.

As a result, the Commission must analyze whether the taxpayers *are* considered to have domicile in Utah for all of 2014 and the first 10 months of 2015 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. The Division contends that the only subsection under which the taxpayers are considered to be domiciled in Utah for all of 2014 and for the first 10 months of 2015 is Subsection 59-10-136(2)(b). As a result, the Commission will begin its analysis with a discussion of the rebuttable presumption found in Subsection 59-10-136(2)(b).

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18 The residential exemption *condition* found in Subsection 59-10-136(4)(a)(ii)(D) is not a presumption that can be rebutted (unlike the residential exemption *presumption* found in Subsection 59-10-136(2)(a), which can be rebutted and which will be discussed in more detail later in the decision). Where an individual receives the residential exemption for a property that is not the primary residence of a tenant, the Subsection 59-10-136(4)(a)(ii)(D) condition is not met, regardless of the circumstances that led to the individual's receiving the residential exemption.

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. For reasons discussed earlier, the Commission has found that both taxpayers were registered to vote in Utah for the DATE, 2014 to DATE, 2015 period that remains at issue. As a result, under Subsection 59-10-136(2)(b), both taxpayers will be considered to be domiciled in Utah for all of 2014 and the first 10 months of 2015, unless the taxpayers are able to rebut this presumption.

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.[19] 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.

The taxpayers ask the Commission to find that they have rebutted the Subsection 59-10-136(2)(b) presumption once TAXPAYER-1 moved to STATE-1 on DATE, 2014, because TAXPAYER-1 registered to vote in STATE-1 soon after moving there. However, 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, this presumption arises for *both* taxpayers for all of 2014 and for the first 10 months of 2015 that remain at issue, regardless of whether one or both of them are registered to vote in Utah. As a result, the presumption is either rebutted for *both* taxpayers or it is not rebutted for *both* taxpayers (i.e., the taxpayers

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19 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).

cannot rebut the presumption for only one of them where the presumption has arisen for both of them).[20] Where TAXPAYER-2 was registered to vote in Utah for all of 2014 and for the first 10 months of 2015 that remain at issue and where TAXPAYER-2 did not register to vote in STATE-1 soon after moving there, the taxpayers are not considered to have rebutted the Subsection 59-10-136(2)(b) presumption that has arisen for both of them, regardless of whether TAXPAYER-1 registered to vote in STATE-1 soon after moving there in MONTH 2014.

The taxpayers also ask the Commission to find that they have rebutted the Subsection 59-10-136(2)(b) presumption beginning on DATE, 2014, when TAXPAYER-1 moved to STATE-1 and started changing his contacts from Utah to STATE-1. This argument appears to rely on weighing an individual's contacts between 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 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)).

The Commission, however, 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.[21]

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

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20 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.

21 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.

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).[22] Furthermore, even if considering all contacts were relevant to determining whether a Subsection 59-10-136(2) presumption could be rebutted, the Commission notes that TAXPAYER-2, unlike TAXPAYER-1, did not change many of her contacts to STATE-1 once she moved there. Again, because the Subsection 59-10-136(2)(b) presumption has arisen in regards to both taxpayers, it must be rebutted in regards to both taxpayers.

The taxpayers also ask the Commission to consider that neither of them have voted in Utah since 2008. This, however, is insufficient to rebut the presumption for any portion of the period for which it has arisen.[23] The Commission has also found that an individual can rebut the Subsection 59-10-136(2)(b) presumption by showing that they were registered to vote in Utah only because a Utah county clerk failed to remove their name from the official voter register as required by law.[24] The taxpayers, however, have not argued that a Utah county clerk was required to remove either of the taxpayers' names from the Utah official voter register for any portion of 2014 or for the first 10 months of 2015.

In addition, in *Appeal No. 18-793*, the Commission has found that an individual has not rebutted the Subsection 59-10-136(2)(b) presumption for that period that the individual's voter registration was changed to an "inactive" status. Pursuant to Subsection 20A-2-306(4)(c), a Utah voter on "inactive" status is "allowed to

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22 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.

23 *See USTC Appeal No. 15-720* (Initial Hearing Order Mar. 6, 2016), in which the Commission found that the Subsection 59-10-136(2)(b) presumption was not rebutted for the period that an individual was registered to vote in Utah, but had not voted in Utah. The Commission explained that it reached this conclusion, at least in part, because the Utah Legislature elected to use voting registration, not actual voting, as the criterion that could trigger domicile.

24 *See Appeal No. 18-793*.

vote, sign petitions, and have all other privileges of a registered voter[,]" but might not receive "routine mailings." As a result, throughout all of 2014 and for the first 10 months of 2015 that remain at issue, each of the taxpayers were still allowed to vote, sign petitions, and have all other privileges of a Utah registered voter. For these reasons, the Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption for the portions of 2014 and 2015 for which the presumption has arisen but during which one or both of the taxpayers' Utah voter registrations were in an "inactive status."

The Commission has found that there may be other circumstances under which an individual can rebut the Subsection 59-10-136(2)(b) presumption. The taxpayers, however, have not proffered arguments that are sufficient to rebut this presumption for any portion of 2014 or the first 10 months of 2015 still at issue. Accordingly, pursuant to Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for all of 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015.

Because both taxpayers have been found to be domiciled in Utah for all of 2014 and for the first 10 months of 2015 that remain at issue, there is no need to analyze the remaining subsections of Section 59-10-136 (Subsections (1)(a), (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). This subsection provides that an individual is considered to be domiciled in Utah if: 1) a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school; or 2) the individual or the individual's spouse is enrolled in "an institution of higher education described in Section 53B-2-101[.]" While neither of the taxpayers attended an institution of higher education in 2014 or 2015, two of the dependents that the taxpayers claimed on their 2014 federal return (i.e., the taxpayers' oldest two children) were enrolled in a Utah public elementary school for the first five months of

2014. Accordingly, under Subsection 59-10-136(1), both taxpayers would be considered to be domiciled in Utah from DATE, 2014 to DATE, 2014.

E. Subsection 59-10-136(2)(a). This subsection provides that an individual is presumed to be domiciled in Utah if the individual or the individual's spouse claims a property tax residential exemption for that individual's or individual's spouse's primary residence, unless the presumption is rebutted. As discussed earlier, the taxpayers claimed the Utah residential exemption for their Utah home for the 2014 and 2015 tax years, and the Utah home is considered to be the taxpayers' primary residence for all of 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015 that remains at issue. In addition, the Subsection 59-10-136(6) exception does not apply until DATE, 2015. As a result, the Subsection 59-10-136(2)(a) presumption has arisen for both taxpayers for all of 2014 and for the first 10 months of 2015, unless they are able to rebut the presumption.[25]

Because Subsection 59-10-136(2)(a) is a rebuttable presumption, the Legislature also 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. Again, however, because the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(a) presumption, 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.

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25 Again, Subsection 59-10-136(6) provides that whether or not an individual claims the residential exemption for a property that is the primary residence of a tenant may not be considered in determining that individual's domicile in Utah. Because the taxpayers' Utah home was the primary residence of a tenant for the DATE, 2015 to DATE, 2015 portion of 2015, the Subsection 59-10-136(2)(a) presumption does not even arise for the last two months of 2015.

For reasons explained earlier in regards to the Subsection 59-10-136(2)(b) presumption, an individual also cannot rebut the Subsection 59-10-136(2)(a) 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), or because he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b).

The Commission has also previously found that under certain circumstances, the Subsection 59-10-136(2)(a) presumption may be rebutted if an individual received the residential exemption for a home that was listed for sale or lease and which would qualify for the exemption upon being sold or leased.[26] In this case, the taxpayers did not list their home for sale during 2014 or 2015. In addition, the taxpayers' Utah home was not listed for lease during 2014 or during the DATE, 2015 to DATE, 2015 portion of 2015. The taxpayers' Utah home, however, was listed for lease on DATE, 2015 (the date the taxpayers signed the contract with BUSINESS-3) and remained listed for lease through DATE, 2015 (prior to the DATE, 2015 date on which tenants moved into the home). As a result, for the DATE, 2014 to DATE, 2015 period for which the Subsection (2)(a) presumption has arisen, the presumption has been rebutted for the DATE, 2015 to DATE, 2015 portion of this period (i.e., the home was listed for lease).

The Subsection 59-10-136(2)(a) presumption, however, would not be rebutted for the DATE, 2014 through DATE, 2015 period during which the taxpayers were finishing the Utah home's basement prior to their offering the home for lease. The Commission has found that the Subsection 59-10-136(2)(a) presumption *might* be rebutted for the period that a home was under construction and prior to a certificate of occupancy

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26 *See USTC Appeal No. 15-1332* (Initial Hearing Order Jun. 27, 2016); and *USTC Appeal No. 17-758* (Initial Hearing Order Jan. 26, 2018). The Commission has found that listing a vacant Utah home for sale or lease may be sufficient to rebut the Subsection 59-10-136(2)(a) presumption, in part, because Utah Admin. Rule R884-24P-52(6)(f) provides that "[i]f the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied." While Rule 52 is no longer the controlling law for purposes of determining income tax domicile, there may be limited portions of Rule 52 that may be useful when the Commission delineates which circumstances are sufficient or insufficient to rebut a Subsection 59-10-136(2) presumption.

having been issued for the home (i.e., when the home could not be occupied).[27] In the instant case, however, the taxpayers had lived in their Utah home for a number of years prior to moving to STATE-1. As a result, there is no evidence to suggest that the taxpayers' Utah home could not have been occupied during the DATE, 2014 to DATE, 2015 period before the taxpayers had it offered for lease on DATE, 2015.

In addition, the Commission has previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual has asked a county to remove the residential exemption, and the county failed to implement the individual's request; or if an individual has declared on a Utah income tax return that their property no longer qualifies for the residential exemption. The taxpayers did not ask CITY-3 County to remove the residential exemption on their Utah home during 2014 or 2015, and the taxpayers did not declare on a Utah income tax return that their Utah home no longer qualified for the residential exemption. The Commission has also previously found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an individual had never heard of the residential exemption or did not know that he or she was receiving the residential exemption. Similarly, the Commission finds that the Subsection 59-10-136(2)(a) presumption is not rebutted where a taxpayer received the residential exemption on their Utah home even though they did not file an application to receive the exemption (i.e., where a county automatically classifies a home as a primary residence that qualifies for the exemption without the taxpayers having known that they were receiving the exemption).[28]

Again, the Commission has found that there may be other circumstances under which an individual can rebut the Subsection 59-10-136(2)(a) presumption. While the taxpayers have rebutted the presumption from DATE, 2015 to DATE, 2015, they have not proffered arguments that are sufficient to rebut this

27 *See USTC Appeal No. 17-1589* (Initial Hearing Order Aug. 8, 2018).

28 *See; e.g.*, the Commission's decisions in *USTC Appeal No. 15-720* (Initial Hearing Order May 6, 2016); *USTC Appeal No. 17-812* (Mar. 13, 2018); and *USTC Appeal No. 15-1582* (Initial Hearing Order Aug. 26, 2016).

presumption for any portion of 2014 or for the DATE, 2015 to DATE, 2015 portion of 2015 (i.e., the first 9 months of 2015). Accordingly, pursuant to Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for all of 2014 and for the first 9 months of 2015.

F. 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. The taxpayers did not assert Utah residency on their 2015 Utah return. On the taxpayers' 2014 Utah return, however, they asserted Utah residency from DATE, 2014 to DATE, 2014. Accordingly, under Subsection 59-10-136(2)(c), the taxpayers would be considered to be domiciled in Utah from DATE, 2014 to DATE, 2014, unless they were able to rebut this presumption.

G. Subsection 59-10-136(3). Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), he or she may still be considered to be domiciled in Utah based on a preponderance of the evidence relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Subsection 59-10-136(3), however, is only applicable "if the requirements of Subsection (1) or (2) are not met[.]" Because the Commission has already found that both taxpayers would be considered to be domiciled in Utah for all of 2014 and for the first 10 months of 2015 that remain at issue, Subsection 59-10-136(3) has no applicability to this case.

H. Domicile Summary. For reasons discussed above, both taxpayers are considered to be domiciled in Utah for all of 2014 and from DATE, 2015 to DATE, 2015 (pursuant to Subsection 59-10-136(2)(b)). As a result, under Subsection 59-10-103(1)(q)(i)(A), both taxpayers would be considered to be Utah resident individuals for all of 2014 and for the first 10 months of 2015. The Division, however, assessed the taxpayers as being Utah resident individuals for all of 2014 and for only the first 9 months of 2015. For this reason and because the Division asked the Commission not to revise its 2015 assessment so that the taxpayers would also be considered to be Utah resident individuals for the month of MONTH 2015, the

Commission will sustain the Division's assessments and find that the taxpayers are Utah resident individuals for all of 2014 and the first 9 months of 2015.

**III. Other Arguments.**

The taxpayers contend that Utah should not tax the income that TAXPAYER-1 earned while he was working and living in STATE-1. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), however, all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that "a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]" In accordance with Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because both taxpayers have been found to be Utah resident individuals for all of 2014 and for the first 9 months of 2015, Subsection 59-10-117(2)(c) does not apply to either of them for these periods. Accordingly, all of the taxpayers' income for 2014 and the first 9 months of 2015 is subject to Utah taxation, even if it was earned outside of Utah (subject to a credit for taxes imposed by another state).

The taxpayers also proffer that a law that would consider them to be Utah resident individuals after moving to STATE-1 is unfair. The taxpayers may be suggesting Section 59-10-136, as currently written for the tax years at issue, results in bad tax policy in certain situations. While the Commission is tasked with the duty of implementing laws enacted by the 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.

**IV. Conclusion.**

Based on the foregoing, the taxpayers are Utah resident individuals for all of 2014 and for the DATE, 2015 to DATE, 2015 portion of 2015. As a result, the Commission should sustain the assessments that the Division has imposed for the 2014 and 2015 tax years in their entireties.

______________________________________
Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the assessments that the Division has imposed for the 2014 and 2015 tax years in their entireties. It is so ordered.

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

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

or emailed to:

taxappeals@utah.gov

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

DATED this _________ day of ________________________, 2019.

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.