18-1653
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 10/25/2019
COMMISSIONERS: M. CRAGUN, R. ROCKWELL, L. WALTERS
EXCUSED: J. VALENTINE

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-1653 Account No. ##### Tax Type: Income Tax Year: 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER-1, Taxpayer (by telephone)
PETITIONER-2, Taxpayer (by telephone)
For Respondent: REPRESENTATIVE FOR 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 August 20, 2019.

PETITIONERS ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessment of Utah individual income taxes for the 2015 tax year. On August 23, 2018, the Division issued a Notice of Deficiency and Estimated Income Tax ("Statutory Notice") to the taxpayers, in which it imposed taxes, a 10% penalty for failure to timely file, a 10% penalty for failure to timely pay, and interest (calculated as of September 22, 2018),[1] as follows:

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

1 Interest continues to accrue until any tax liability is paid.

The taxpayers are a married couple who decided to live separately during the 2015 tax year. On or around June 1, 2015, PETITIONER-2 moved from STATE-1 (where the taxpayers had lived for many years) to Utah (where she still lives), while PETITIONER-1 remained in STATE-1 (where he still lives). For the 2015 tax year, the taxpayers filed a federal income tax return with a status of married filing jointly, on which they reported their 2015 federal adjusted gross income ("FAGI") to be $$$$$. The taxpayers also filed a 2015 STATE-1 income tax return with a status of married filing jointly, on which they also reported their 2015 FAGI to be $$$$$. It appears that the taxpayers filed their 2015 STATE-1 return as though they were both full-year STATE-1 residents.

In addition, PETITIONER-2 filed a 2015 Utah return with a status of married filing separately, on which she reported her 2015 FAGI to be $$$$$. PETITIONER-2 filed her 2015 Utah return as a Utah full-year resident individual because she did not include with her Utah return a Form TC-40B, on which an individual can claim to be a Utah part-year resident or nonresident and allocate a portion of their total income to Utah. The $$$$$ of 2015 FAGI that PETITIONER-2 reported on her Utah return includes only that income that PETITIONER-2 earned after she moved to Utah on June 1, 2015. The taxpayers proffered that PETITIONER-2 filed her 2015 Utah return in this manner to show: 1) that PETITIONER-2 was a Utah nonresident individual from January 1, 2015 to May 31, 2015, and a Utah resident individual from June 1, 2015 to December 31, 2015; 2) that the only income that PETITIONER-2 earned in 2015 that is subject to Utah taxation is the income she earned while living in Utah from June 1, 2015 to December 31, 2015 (i.e., that none of the income that she earned while living in STATE-1 from January 1, 2015 to May 31, 2015 is subject to Utah taxation); and 3) that PETITIONER-1 was a Utah nonresident for all of 2015 and that none of the income that he earned while living in STATE-1 during 2015 is subject to Utah taxation.

The Division, however, changed PETITIONER-2's separate Utah full-year resident return to a joint Utah part-year resident return from June 1, 2015 to December 31, 2015. The Division took this action after

determining that the taxpayers were required to file a joint 2015 Utah return, that neither of the taxpayers were Utah resident individuals from January 1, 2015 to May 31, 2015, and that both of the taxpayers were domiciled in Utah and were Utah resident individuals from June 1, 2015 to December 31, 2015.[2] As a result, the Division imposed Utah income taxes on all income that both of the taxpayers received from June 1, 2015 to December 31, 2015 (subject to a credit for taxes imposed by STATE-1).[3] The Division asks the Commission to sustain its assessment with one exception. Specifically, the Division proffered that it would not oppose the Commission's waiving the penalties it imposed.

The taxpayers concede that PETITIONER-2 was domiciled in Utah for the June 1, 2015 to December 31, 2015 portion of 2015. However, the taxpayers contend that PETITIONER-1 was domiciled in STATE-1, not Utah, throughout 2015. The taxpayers explained that PETITIONER-1 has never lived in Utah. For these reasons, the taxpayers ask the Commission to reverse the Division's assessment.[4]

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2015)[5], "a tax is imposed on the state taxable income of a resident individual[.]"

2 The Division proffered that both taxpayers are considered to be domiciled in Utah from June 1, 2015 to December 31, 2015 under Utah Code Ann. §59-10-136(2)(c) and 59-10-136(3) (2015).

3 For a Utah resident individual, Utah Code Ann. §59-10-1003 (2015) provides a credit against a taxpayer's Utah income tax liability for income taxes imposed by another state. In its assessment, the Division allowed a credit of $$$$$ for income taxes imposed by STATE-1.

4 Even if Utah law permitted PETITIONER-2 to file a separate 2015 Utah return, she did not properly complete her 2015 Utah return because she only reported the income she earned from June 1, 2015 to December 31, 2015, yet she claimed tax credits for the entirety of 2015. For a Utah part-year resident individual, Utah Code Ann. §59-10-1002.2(1) (2015) provides for tax credits to also be apportioned. The allocation of income, as well as tax credits, occurs when an individual properly completes a TC-40B and remits it with their Utah return. As a result, even if the Commission were to agree with the taxpayers that PETITIONER-1 was not a Utah resident individual for any portion of 2015, the Commission will not find that PETITIONER-2 properly completed her 2015 Utah return. In this event, the Commission would order the Division to revise its assessment to reflect that PETITIONER-1 was not a Utah resident individual during 2015.

5 All substantive law citations are to the 2015 version of Utah law, unless otherwise noted.

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

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

3. Effective for tax year 2012 (and applicable to the 2015 tax year at issue), UCA §59-10-136 provides for the determination of "domicile," as follows:[6]

> (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

6 Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in Senate Bill 13 (2019) ("SB 13"). However, it is the version of Section 59-10-136 in effect during the 2015 tax year that is applicable to this appeal.

individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:

(i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

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

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any

applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

(b) For purposes of this section, an individual is not considered to have a spouse if:

(i) the individual is legally separated or divorced from the spouse; or

(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

(6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

4. UCA §59-1-401(14) (2019) provides that "[u]pon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

5. Utah Admin. Rule R861-1A-42 ("Rule 42") (2019) provides guidance concerning the waiver of penalties and interest that is authorized under Section 59-1-401(14), as follows in pertinent part:

. . . .

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing…
(b) Wrong Filing Place…
(c) Death or Serious Illness…
(d) Unavoidable Absence…
(e) Disaster Relief…
(f) Reliance on Erroneous Tax Commission Information…
(g) Tax Commission Office Visit…
(h) Unobtainable Records…
(i) Reliance on Competent Tax Advisor…
(j) First Time Filer…
(k) Bank Error…
(l) Compliance History. . . .
(m) Employee Embezzlement…

(n) Recent Tax Law Change…
(4) Other Considerations for Determining Reasonable Cause.
(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:
(i) whether the commission had to take legal means to collect the taxes;
(ii) if the error is caught and corrected by the taxpayer;
(iii) the length of time between the event cited and the filing date;
(iv) typographical or other written errors; and
(v) other factors the commission deems appropriate.
(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.
(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.
(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

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

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

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. The parties agree that PETITIONER-2 was a Utah nonresident from January 1, 2015 to May 31, 2015, and that she was a Utah resident individual from June 1, 2015 to December 31, 2015. The parties, however, disagree on whether PETITIONER-1 was a Utah resident individual during 2015. The Division claims that

PETITIONER-1 was a Utah resident individual for the same period that PETITIONER-2 was a Utah resident individual, specifically June 1, 2015 to December 31, 2015 (which may be referred to as the "period at issue"). The taxpayers, on the other hand, contend that PETITIONER-1 was not a Utah resident individual for any portion of 2015. For 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 PETITIONER-1 is a Utah resident individual from June 1, 2015 to December 31, 2015 under the 183 day test. Instead, the Division contends that PETITIONER-1, like PETITIONER-2, is a Utah resident individual from June 1, 2015 to December 31, 2015 under the domicile test. As a result, the Commission must apply the facts to the Utah domicile law in effect for the 2015 tax year to determine whether both taxpayers are considered to be domiciled in Utah from June 1, 2015 to December 31, 2015 (as the Division contends); or whether PETITIONER-2 is the only one of the taxpayers who is considered to be domiciled for the period at issue (as the taxpayers contend).

I. Additional Facts.

The taxpayers married in 2004 and have not since been legally separated or divorced.[7] Since marrying, the taxpayers both lived in STATE-1 until June 1, 2015, when PETITIONER-2 moved to Utah (where she still lives). PETITIONER-1 has never lived in Utah, and the taxpayers have not seen each other since June 1, 2015. The taxpayers have no children and did not claim any dependents on their joint 2015 federal return. In addition, neither of the taxpayers attended a Utah institution of higher education during 2015.

7 The Commission recognizes that the taxpayers have lived separately since June 1, 2015. For purposes of Section 59-10-136, however, the Commission has found that "legally separated," which generally requires some sort of court action, is not the same as living separately. *See, e.g., USTC Appeal No. 16-1458* (Findings of Fact, Conclusions of Law, and Final Decision Feb. 8, 2019). This and other selected Commission decisions can be reviewed in a redacted format on the Commission's website at https://tax.utah.gov/commission-office/decisions.

Prior to 2015, the taxpayers purchased a home in STATE-1, which, as of the date of the Initial Hearing, both of them still own. The "STATE-1 home" has a main floor that is #### square feet in size (with three bedrooms and two baths), an unfinished basement, and a one-car garage. Neither of the taxpayers owned any real property in Utah during 2015. When PETITIONER-2 moved to Utah on June 1, 2015, her parents initially allowed her to live with them in the parents' home in Utah.[8] In early 2016, PETITIONER-2 moved out of her parents' home and into an apartment in Utah, where she still lives.

The taxpayers proffer that neither of them were registered to vote in Utah during 2015, which the Division did not refute. In addition, both of the taxpayers had STATE-1 driver's licenses throughout 2015. The taxpayers explained that because her STATE-1 driver's license was still valid, PETITIONER-2 did not obtain a Utah driver's license in 2015, which the Division also did not refute. Throughout 2015, the taxpayers owned two motor vehicles that were registered in STATE-1. When PETITIONER-2 moved to Utah in 2015, she brought "her vehicle" with her to Utah, while PETITIONER-1 keep "his vehicle" with him in STATE-1. The taxpayers proffer that PETITIONER-2 did not register her vehicle in Utah until 2016, which the Division did not refute.

PETITIONER-2 was a member of a church throughout 2015, while PETITIONER-1 was not a member of a church during 2015. From January 1, 2015 to May 31, 2015, PETITIONER-2 attended and had her church records kept at a STATE-1 unit of her church. From June 1, 2015 to December 31, 2015, PETITIONER-2 attended and had her church records kept at a Utah unit of her church. Throughout 2015, PETITIONER-1 was a member of an ORGANIZATION in STATE-2 ("STATE-2 ORGANIZATION"). Until PETITIONER-2 moved to Utah on June 1, 2015, she, too, was a member of the STATE-2 ORGANIZATION, but it is unclear whether she remained a member of that organization after moving to Utah.

8 Neither of the taxpayers have ever had an ownership interest in PETITIONER-2's parents' home, and PETITIONER-2 did not rent any portion of her parent's home upon moving to Utah.

Until PETITIONER-2 moved to Utah on June 1, 2015, both taxpayers received their mail in STATE-1. Beginning on June 1, 2015, PETITIONER-2 received her mail in Utah, while PETITIONER-1 continued to receive his mail in STATE-1. During the 2015 tax year at issue, the taxpayers filed all of their 2014 income tax returns using a STATE-1 address. In 2016, the taxpayers used a STATE-1 address to file their joint 2015 federal and STATE-1 returns, while PETITIONER-2 used a Utah address to file her separate 2015 Utah return.

II. Domicile Test for the 2015 Tax Year.

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 2015, 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]

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 a federal income tax return with a status of married filing separately. Neither of these circumstances applies to the taxpayers for any portion of 2015 because the taxpayers were not

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.

legally separated or divorced and because they filed a joint federal return for this year. Accordingly, for the 2015 tax year at issue, each taxpayer is considered to have a spouse for purposes of Section 59-10-136.

Subsection 59-10-136(5)(a) provides that "[i]f 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." Because the taxpayers admit that PETITIONER-2 was domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue, the Division contends that PETITIONER-1 (who is PETITIONER-2's spouse) is also considered to be domiciled in Utah for this period. However, for Subsection 59-10-136(5)(a) to apply to PETITIONER-1, PETITIONER-2 must be considered to have domicile in Utah "in accordance with this section" (i.e., in accordance with Section 59-10-136). As a result, the Commission must analyze the other subsections of Section 59-10-136 to determine whether the taxpayers are considered to be domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.[10]

B. Subsection 59-10-136(4). The taxpayers do not argue that either of them is *not* considered to be a Utah domiciliary for the June 1, 2015 to December 31, 2015 period at issue under Subsection 59-10-136(4). This subsection applies to an individual if the individual and the individual's spouse are both "absent from the state" for at least 761 consecutive days, if a number of listed conditions are all met. While PETITIONER-1 may have been absent from Utah for a 761-day or more period that included the June 1, 2015 to December 31, 2015 period at issue, PETITIONER-2 was not absent from Utah for this period. PETITIONER-2 lived and worked in Utah throughout the June 1, 2015 to December 31, 2015 period. Accordingly, the Subsection 59-10-136(4) exception is not applicable to either taxpayer for the June 1, 2015 to

10 This is consistent with other decisions in which the Commission has found that an *admission* of domicile by one spouse does not automatically result in the other spouse being domiciled in Utah, without first applying the facts to the other subsection(s) of Section 59-10-136 to see how the spouse who admitted to be domiciled in Utah would be considered to be domiciled in Utah. *See, e.g., Appeal No. 16-1458*.

December 31, 2015 period at issue, regardless of whether the taxpayers met the other listed conditions or not.[11]

Accordingly, the Commission must analyze whether the taxpayers *are* considered to have domicile in Utah for the June 1, 2015 to December 31, 2015 portion 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.

It is clear that the taxpayers are not considered to be domiciled in Utah during 2015 under Subsection 59-10-136(1) because the taxpayers did not claim any dependents on their 2015 federal return and because neither of the taxpayers attended a Utah institution of higher education during 2015. It is also clear that the taxpayers are not considered to be domiciled in Utah during 2015 under Subsection 59-10-136(2)(a) or 59-10-136(2)(b) because the taxpayers did not own a Utah residence on which they claimed the residential exemption during 2015 and because neither of them was registered to vote in Utah during 2015. Still at issue, however, is whether the taxpayers would be considered to be domiciled in Utah during 2015 under Subsection 59-10-136(2)(c) or 59-10-136(3).

C. 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 return, unless the presumption is rebutted. On her 2015 Utah resident return, PETITIONER-2 asserted a Utah residency for the entirety of 2015 (she did not include a Form TC-40B asserting to be a Utah part-year resident or

11 It appears that both taxpayers were absent from Utah for a 761-day or more period that included the January 1, 2015 to May 31, 2015 portion of 2015. However, because the parties agree that neither taxpayer was domiciled in Utah for the January 1, 2015 to May 31, 2015 portion of 2015, the Commission will not discuss whether the taxpayers would meet all of the conditions necessary to satisfy the Subsection 59-10-136(4) exception for the January 1, 2015 to May 31, 2015 portion of 2015.

nonresident). As a result, under Subsection 59-10-136(2)(c), both taxpayers are presumed to be domiciled in Utah for the entirety of 2015, unless they are able to rebut the presumption.[12]

It appears that the Division has already determined that the taxpayers have rebutted the Subsection 59-10-136(2)(c) presumption for the January 1, 2015 to May 31, 2015 portion of 2015 because the Division assessed the taxpayers as 2015 part-year resident individuals only from June 1, 2015 to December 31, 2015 (the period during which PETITIONER-2 was living and working in Utah). Because the parties are in agreement that neither taxpayer is considered to be domiciled in Utah from January 1, 2015 to May 31, 2015 under Subsection 59-10-136(2)(c), the Commission will not discuss this presumption in regards to the January 1, 2015 to May 31, 2015 portion of 2015 any further. Remaining at issue is whether the taxpayers have rebutted the Subsection 59-10-136(2)(c) presumption for the June 1, 2015 to December 31, 2015 period at issue.

Because Subsection 59-10-136(2)(c) 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.[13] 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)(c) presumption. As a result, it is left to the Commission, consistent with the structure and language of

12 Admittedly, PETITIONER-1 did not assert Utah residency on a Utah return. Nevertheless, the presumption arises for *both* spouses because Subsection 59-10-136(2)(c) provides that the presumption arises if *the individual or the individual's spouse* asserts Utah residency on a Utah return. As a result, the presumption cannot be rebutted for only one of the two individuals who are considered to be spouses for purposes of Section 59-10-136. This conclusion is supported by Subsection 59-10-136(5)(a), which provides that "[i]f 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."

13 The Legislature did not provide that claiming Utah residency on a Utah return 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).

Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

In prior appeals, the Commission has set out a three-part test to rebut the Subsection 59-10-136(2)(c) presumption, specifically finding that this presumption can be rebutted if: 1) neither taxpayer meets any of the other domicile provisions of Section 59-10-136; 2) the Utah resident return that was filed "shows on its face that [the taxpayers] believed that some of their income was not subject to Utah taxation;" and 3) "evidence at the hearing clearly shows that [the taxpayers] believed that one (or both) of them was a Utah nonresident."[14]

In the instant case, the second test is satisfied because PETITIONER-2's 2015 Utah return clearly shows that the taxpayers believed that none of PETITIONER-1's 2015 income was subject to Utah taxation. PETITIONER-1 did not file a Utah return, and PETITIONER-2 filed a separate Utah return. In addition, PETITIONER-2 did not report any of PETITIONER-1's income on her Utah return. The second test is also satisfied because the taxpayers' proffered testimony and their STATE-1 and Utah returns clearly show that the taxpayers believed that PETITIONER-1 was never a Utah resident. Before the taxpayers can rebut the Subsection 59-10-136(2)(c) presumption under this three-part test, however, they need to meet the first test, which is that they would not be considered to be domiciled in Utah under another subsection of Section 59-10-136.

The Division concedes that the taxpayers would not be considered to be domiciled in Utah under Subsections 59-10-136(1), (2)(a), or (2)(b). The Division, however, contends that the taxpayers would not only be considered to be domiciled in Utah under Subsection 59-10-136(2)(c), but also under Subsection 59-10-136(3). As a result, to determine whether the taxpayers are able to rebut the Subsection 59-10-136(2)(c) presumption, the Commission must first determine whether the taxpayers would be considered to be domiciled

14 *See USTC Appeal No. 15-1714* (Initial Hearing Order Aug. 5, 2016) and *USTC Appeal No. 16-1804* (Initial Hearing Order May 10, 2018). Policy reasons as to why the Commission determined that it was appropriate to find that the Subsection 59-10-136(2)(c) presumption was rebutted under these circumstances is found in *Appeal No. 15-1714*.

in Utah under Subsection 59-10-136(3). If the taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(3), then they would not rebut the Subsection 59-10-136(2)(c) presumption, and they will both be considered to be domiciled in Utah for the June 1, 2015 to December 31, 2015 period that remains at issue. However, if the taxpayers are not considered to be domiciled in Utah under Subsection 59-10-136(3), then they will have met all three tests necessary to rebut the Subsection 59-10-136(2)(c) presumption, and neither of them will be considered to be domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.[15]

Subsection 59-10-136(3)(a) provides that an individual is considered to be domiciled in Utah if they have a permanent home in Utah to which they intend to return after being absent and if they have voluntarily fixed their habitation in Utah not for a special or temporary purpose, but with the intent of making a permanent home. Subsection 59-10-136(3)(b) provides that the Commission shall base its determination of whether a taxpayer is domiciled in Utah under Subsection 59-10-136(3)(a) on a preponderance of the evidence, taking into account the totality of 12 specific facts and circumstances.[16] Accordingly, for purposes of determining

15 In this event, the income that PETITIONER-1 received during the June 1, 2015 to December 31, 2015 period at issue would not be subject to Utah taxation because none of it is Utah source income. However, the income that PETITIONER-2 received while working in Utah during the June 1, 2015 to December 31, 2015 period at issue would, nevertheless, be subject to Utah taxation because it is Utah source income.

16 Subsection 59-10-136(3)(b) does not indicate that the facts to be considered "include" the 12 listed facts and circumstances or use some other wording that would suggest that other facts and circumstances may also be considered. The language clearly provides for the determination of domicile under Subsection 59-10-136(3) to be limited to the 12 facts and circumstances listed in Subsection 59-10-136(3)(b).

Furthermore, for purposes of determining an individual's domicile under Subsection 59-10-136(3) based on a "preponderance of the evidence," the Commission notes that in *T-Mobile USA, Inc. v. Utah State Tax Comm'n*, 2011 UT 28 (Utah 2011), the Utah Supreme Court indicated that "preponderance of the evidence" means "more likely than not" and as the "greater weight of the evidence" (*citing Harken Sw. Corp. v. Bd. Of Oil, Gas & Mining*, 920 P.2d 1176 (Utah 1996) and *Alvarado v. Tucker*, 2 Utah 2d 16, 268 P.2d 986 (Utah 1954)). As a result, the Commission will consider whether the greater weight of these 12 facts and circumstances supports a determination that the taxpayers were domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.

whether the taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(3) for the 2015 tax year, only the 12 facts and circumstances listed in Subsection 59-10-136(3)(b) will be considered.[17]

On the 12 Subsection 59-10-136(3)(b) factors, four of them are not relevant to the taxpayers' circumstances during 2015, specifically Subsections 59-10-136(3)(b)(ii), (3)(b)(x), (3)(b)(xi), and (3)(b)(xii). As a result, these four factors will receive no weight in determining the taxpayers' domicile under Subsection 59-10-136(3). The other eight factors, however, are relevant to the taxpayers' circumstances and either: 1) indicate a domicile in Utah; 2) indicate a domicile in a jurisdiction other than Utah; or 3) are neutral (i.e., do not indicate whether domicile is in Utah or in a jurisdiction other than Utah). While the relevant factors that are neutral will receive little or no weight in determining the taxpayers' domicile under Subsection 59-10-136(3)(b), the factors that indicate a domicile in Utah or in a jurisdiction other than Utah will receive the majority of the weight in determining the taxpayers' domicile under this specific subsection. Following is an analysis of the eight relevant factors.

1) *Subsection 59-10-136(3)(b)(i)*. The first relevant factor is "whether the individual or the individual's spouse has a driver license in this state[.]" Neither of the taxpayers had a Utah driver's license during the 2015 tax year. Accordingly, the Subsection 59-10-136(3)(b)(i) factor indicates that both taxpayers are not domiciled in Utah during the June 1, 2015 to December 31, 2015 period at issue.

2) *Subsection 59-10-136(3)(b)(iii)*. The second relevant factor is "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[.]" For the June 1, 2015 to December 31, 2015 period at issue, the taxpayers owned the STATE-1 home in which PETITIONER-1 lived during this period. Although PETITIONER-2's parents allowed her to live with them in their home in Utah from June 1, 2015 to December 31, 2015, neither of the taxpayers had any

17 This conclusion is consistent with prior decisions in which the Commission has discussed Subsection 59-10-136(3) and in which it has determined how various of the 12 factors of Subsection 59-10-136(3)(b) should be interpreted. *See, e.g., USTC Appeal No. 18-300* (Initial Hearing Order Dec. 14, 2018); and *USTC Appeal No. 18-943* (Initial Hearing Order Jul. 30, 2019).

ownership interest in PETITIONER-2's parents' home, and PETITIONER-2 was not leasing any portion of the home from her parents. Where PETITIONER-1 had no living accommodations in Utah, the nature and quality of *his* living accommodations in STATE-1 are clearly superior when compared to his not having any living accommodations in Utah. As to PETITIONER-2, the Commission would generally find living accommodations owned by an individual to be superior to those owned by the individual's parents in which the individual has no ownership interest and in which the parents were allowing their child to temporarily live.[18] Under these circumstances, the nature and quality of the taxpayers' living accommodations in STATE-1 are superior to the nature and quality of the taxpayers' living accommodations in Utah. Accordingly, the Subsection 59-10-136(3)(b)(iii) factor indicates that both taxpayers are not domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.

3) *Subsection 59-10-136(3)(b)(iv).* The third relevant factor is "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[.]" On the taxpayers' joint 2015 federal income tax return, the taxpayers claimed a personal exemption for both PETITIONER-1 and PETITIONER-2. In addition, PETITIONER-2, who was PETITIONER-1's spouse for all of 2015, was present "in this state" (i.e., Utah) from June 1, 2015 to December 31, 2015. Accordingly, the Subsection 59-10-136(3)(b)(iv) factor indicates that both taxpayers are domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.

4) *Subsection 59-10-136(3)(b)(v).* The fourth relevant factor is "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[.]" Under IRC §32(c)(2)(A), "earned income" is defined to mean:

> (i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus

18 It appears that the Division would agree. At the hearing, the Division indicated the Subsection 59-10-136(3)(b)(iii) would support a domicile in STATE-1 for the taxpayers instead of in Utah.

> (ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

On their 2015 federal income tax return, the taxpayers included in their gross income "wages, salaries, tips, etc." of $$$$$, which consisted of wages (which are considered "earned income" under IRC §32(c)(2)).[19] Subsection 59-10-136(3)(b)(v) asks the Commission to determine the physical location of the individual's or the individual's spouse's earned income, which may be in this state or outside of this state. For the June 1, 2015 to December 31, 2015 portion of 2015, the physical location of the earned income that the taxpayers earned was in both STATE-1 and Utah. As a result, for the June 1, 2015 to December 31, 2015 portion of 2015, the Subsection 59-10-136(3)(b)(v) factor is neutral and does not show whether the taxpayers' domicile would be in Utah or in a jurisdiction other than Utah.[20]

5) *Subsection 59-10-136(3)(b)(vi)*. The fifth relevant factor is "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[.]" During the June 1, 2015 to December 31, 2015 period at issue, the taxpayers owned two motor vehicles. Both of these vehicles were registered in STATE-1 (i.e., neither was registered in Utah during 2015). Accordingly, the Subsection 59-10-136(3)(b)(vi) factor indicates that both taxpayers are not domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.

6) *Subsection 59-10-136(3)(b)(vii)*. The sixth relevant factor is "whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state[.]" During the June 1, 2015 to December 31, 2015 period at issue, PETITIONER-2 was a member of a church in Utah. For this reason and because PETITIONER-1 is PETITIONER-2's spouse, the Subsection 59-10-136(3)(b)(vii)

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19 No evidence was proffered to suggest that the taxpayers had any net earnings from self-employment for any portion of the 2015 tax year.

20 Subsection 59-10-136(3)(b)(v) does not ask the Commission only to determine whether earned income was earned by the individual or the individual's spouse "in this state." If it had, a different conclusion might have been reached for this factor for the June 1, 2015 to December 31, 2015 period that remains at issue.

factor indicates that both taxpayers are domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue.[21]

7) *Subsection 59-10-136(3)(b)(viii).* The seventh relevant factor is "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[.]" During the June 1, 2015 to December 31, 2015 period at issue, PETITIONER-2 used a Utah address. For this reason and because PETITIONER-2 is PETITIONER-1's spouse throughout 2015, the Subsection 59-10-136(3)(b)(viii) factor indicates that both taxpayers are domiciled in Utah during the June 1, 2015 to December 31, 2015 period at issue.[22]

8) *Subsection 59-10-136(3)(b)(ix).* The eighth relevant factor is "whether the individual or the individual's spouse lists an address in this state on a state or federal tax return[.]" The taxpayers listed a STATE-1 address on all of the 2014 state and federal tax returns that they filed during the 2015 tax year at issue. As a result, the Subsection 59-10-136(3)(b)(ix) factor indicates that both taxpayers are domiciled outside of Utah during 2015 (including the June 1, 2015 to December 31, 2015 period at issue).[23]

Summary of the Subsection 59-10-136(3)(b) Factors. To decide whether the taxpayers are considered to be domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue under Subsection 59-10-136(3), Subsection 59-10-136(3)(b) requires the Commission to determine whether a preponderance or greater weight of the evidence concerning 12 specific factors shows a Utah domicile. As previously mentioned, four

21 Admittedly, PETITIONER-1 was not a member of a Utah church or club or other similar organization during any portion of 2015, and both taxpayers were members of a club located outside of Utah. However, the Subsection 59-10-136(3)(b)(vii) factor asks the Commission to determine whether an *individual or an individual's spouse* was a member of a church, a club, or other similar organization in Utah. PETITIONER-2 was a member of a church in Utah during the June 1, 2015 to December 31, 2015 period at issue. As a result, both taxpayers are considered to be domiciled in Utah for the period at issue under this factor.

22 Again, even though PETITIONER-1's actions alone would not satisfy this factor, he is the spouse of PETITIONER-2, and her actions satisfy this factor. As a result, both taxpayers are also considered to be domiciled in Utah under this factor.

23 Admittedly, PETITIONER-2 listed a Utah address on the 2015 Utah return that she filed in 2016. However, the address listed on a tax return filed during 2016 is more relevant to determining an individual's domicile for the 2016 tax year, not the tax year for which the return was filed.

of the Subsection 59-10-136(3)(b) factors are not relevant to either of the taxpayers' circumstances for any portion of 2014. These four factors will receive no weight in the analysis.

From June 1, 2015 to December 31, 2015, the remaining eight Subsection 59-10-136(3)(b) factors are relevant to the taxpayers' circumstances. For this period, one of the eight relevant factors (the Subsection 59-10-136(3)(b)(v) factor) is neutral and will receive no weight in the analysis. Of the seven relevant, non-neutral factors, three of them show a Utah domicile for the June 1, 2015 to December 31, 2015 period at issue (the Subsection 59-10-136(3)(b)(iv), (3)(b)(vii), and (3)(b)(viii) factors), while four of them show a domicile outside of Utah for this period (the Subsection 59-10-136(3)(b)(i), (3)(b)(iii), (3)(b)(vi), and (3)(b)(ix) factors). As a result, a greater weight of the seven relevant, non-neutral factors indicates that both taxpayers are not considered to be domiciled in Utah for the June 1, 2015 to December 31, 2015 period at issue under Subsection 59-10-136(3).

Because the taxpayers are not considered to be domiciled in Utah under Subsection 59-10-136(3), they also meet the first test necessary to rebut the Subsection 59-10-136(2)(c) presumption for the June 1, 2015 to December 31, 2015 portion of 2015. As a result, for the June 1, 2015 to December 31, 2015 period still at issue, the taxpayers meet all three tests necessary to rebut the Subsection 59-10-136(2)(c) presumption and, thus, are also not considered to be domiciled in Utah under Subsection 59-10-136(2)(c).[24] Accordingly, the taxpayers are not considered to be domiciled in Utah under any subsection of Section 59-10-136 for any portion of 2015, including the June 1, 2015 to December 31, 2015 period at issue.

E. Domicile – Summary. Based on the foregoing, neither taxpayer is considered to be domiciled in Utah for any portion of 2015, including the June 1, 2015 to December 31, 2015 period at issue. As a result, PETITIONER-1 is not a Utah resident individual for any portion of 2015. PETITIONER-2, however,

24 For reasons explained more fully in *Appeal No. 15-1714*, the Commission declines to find that PETITIONER-1's income is subject to Utah taxation solely because PETITIONER-2 followed Utah law and filed a 2015 Utah resident return (as opposed to not following the law by not filing a 2015 Utah return, which would have resulted in the Subsection 59-10-136(2)(c) presumption not even arising).

concedes that she is a Utah resident individual for the June 1, 2015 to December 31, 2015 portion of 2015 that she was living and working in Utah. Accordingly, the Commission finds that PETITIONER-2 was a Utah resident individual for the June 1, 2015 to December 31, 2015 period at issue. For these reasons, the Division should revise its assessment to reflect that PETITIONER-2 was a Utah resident individual for the June 1, 2015 to December 31, 2015 portion of 2015 and that PETITIONER-1 was not a Utah resident individual for any portion of 2015.

III. Penalties and Interest.

For this case, the applicable law to determine whether the penalties and interest assessed to the taxpayers may be waived is found in Subsection 59-1-401(14) and Rule 42.[25] In Subsection 59-1-401(14), the Commission is authorized to waive penalties and interest upon a showing of reasonable cause. The Commission has adopted Rule 42 to provide guidance as to when reasonable cause exists to waive penalties and interest. Rule 42(2) provides that interest is waived only if a taxpayer shows that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the taxpayer's error.[26] The taxpayers did not fail to pay any Utah income taxes that may still be due for 2015 because of Tax Commission error or erroneous advice. As a result, reasonable cause does not exist to waive any of the interest that may exist after the Division has revised its assessment.

Pursuant to Subsection 59-1-401(14) and Rule 42, the Commission generally waives penalties in domicile cases because of the complexity of the issues and due to equitable considerations. In addition, the Division stated at the hearing that it would not object to the Commission waiving the penalties it imposed.

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25 Different criteria concerning the imposition and/or waiver of penalties and interest are provided in Subsections 59-10-136(4)(d) and (4)(e), which apply if an individual did not file a Utah return based on a belief that he or she was not considered to be domiciled in Utah under Subsection 59-10-136(4)(a). Because the limited circumstances described in Subsections 59-10-136(4)(d) and (4)(e) are not present in this case, these specific provisions are not applicable in determining whether the penalties and interest assessed to the taxpayers may be waived.

26 The Rule 42 criteria to waive interest are more stringent than the rule's criteria to waive penalties because a taxpayer has had use of money that should have been paid to the state and because of the time value

Accordingly, reasonable cause exists to waive all penalties that the Division imposed for the 2015 tax year that may still exist after the Division has revised its assessment.

IV. Conclusion.

Based on the foregoing, PETITIONER-2 is a Utah resident individual only from June 1, 2015 to December 31, 2015, and PETITIONER-1 is not a Utah resident individual for any portion of 2015. The Commission should order the Division to adjust its assessment in accordance with this decision. In addition, the Commission should waive any penalties that may still exist once the Division revises its assessment in accordance with this decision.

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Kerry R. Chapman
Administrative Law Judge

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of this money.

DECISION AND ORDER

Based on the foregoing, the Commission finds that PETITIONER-2 was a Utah nonresident from January 1, 2015 to May 31, 2015, and a Utah resident individual from June 1, 2015 to December 31, 2015; and that PETITIONER-1 was not a Utah resident individual for any portion of 2015. The Division is ordered to revise its assessment accordingly. In addition, if any penalties still exist after the Division revises its assessment, the Commission waives those penalties. 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.