18-1657
TAX TYPE: INCOME TAX
DATE SIGNED: 10/29/2019
COMMISIONERS: M. CRAGUN, R. ROCKWELL, L. WALTERS
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-1657 Account No. #### Tax Type: Income Tax Years: 2014, 2015 & 2016 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, 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 MONTH 20, 2019.

TAXPAYER-1 and TAXPAYER-2 ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessments of Utah individual income taxes for the 2014, 2015, and 2016 tax years. On MONTH, 2018, the Division issued Notices of Deficiency and Audit Change to the taxpayers, in which it imposed taxes and interest (calculated as of September 20, 2018),[1] as follows:

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

Year	Tax	Penalties	Interest	Total
2014	$$$$$	$0.00	$$$$$	$$$$$
2015	$$$$$	$0.00	$$$$$	$$$$$
2016	$$$$$	$0.00	$$$$$	$$$$$

The taxpayers are a married couple who filed United States federal returns with a status of married filing jointly for the 2014, 2015, and 2016 tax years. For these three years, the taxpayers also filed Utah nonresident returns with a status of married filing jointly. On these Utah returns, the taxpayers allocated to Utah $$$$$ of their 2014 federal adjusted gross income ("FAGI") of $$$$$; $$$$$ of their 2015 FAGI of $$$$$; and $$$$$ of their 2016 FAGI of $$$$$. The taxpayer indicated that although they have considered FOREIGN COUNTRY to be their place of residence since YEAR, they filed Utah returns for the 2014, 2015, and 2016 tax years to report some Utah source income that they had received for these years.

The Division, however, determined that both taxpayers were domiciled in Utah for all of the 2014, 2015, and 2016 tax years because the taxpayers owned a home in Utah (the "Utah home") that received the residential exemption from property taxation[2] for each of these years and because the taxpayers were registered to vote in Utah during these years. Consequently, the Division determined that the taxpayers were 2014, 2015, and 2016 Utah full-year resident individuals and changed the taxpayers' 2014, 2015, and 2016 Utah nonresident returns to Utah full-year resident returns. As a result, the Division imposed Utah income taxes on all of the taxpayers' income for these years.[3] For these reasons, the Division asks the Commission to sustain its 2014, 2015, and 2016 assessments in their entireties.

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2 Utah Code Ann. §59-2-103(2) (2016) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property[,]" while Utah Code Ann. §59-2-102(36)(a) (2016) defines "residential property" to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that is used as a person's primary residence is only taxed on 55% of its fair market value, while a home that is not a person's primary residence (such as a vacation home) is taxed on 100% of its fair market value. Subsections 59-2-103(2) and 59-2-102(36)(a) were amended and/or renumbered during the tax years at issue. However, any amendment to the language cited in this paragraph was nonsubstantive.

3 If the taxpayers are deemed to be 2014, 2015, and 2016 Utah full-year resident individuals, they would be entitled to claim a credit against their Utah tax liability for income taxes paid to another state of the United

The taxpayers, on the other hand, contend that they were not domiciled in Utah and were not Utah resident individuals for any portion of 2014, 2015, or 2016. The taxpayers do not believe that they should be considered to be domiciled in Utah for these years based solely on their Utah home receiving the residential exemption and/or their being registered to vote in Utah. As a result, the taxpayers ask the Commission to find that they properly filed their 2014, 2015, and 2016 Utah nonresident returns and to reverse the Division's assessment for these years.[4]

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2016)[5], "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.
> . . . .

States, pursuant to Utah Code Ann. §59-10-1003 (2014-2016). The Division explained that this credit would not apply to the taxpayers' circumstances because FOREIGN COUNTRY is not a state of the United States and because no state other than Utah has imposed income taxes on the taxpayers for the years at issue. The taxpayers did not argue otherwise.

4 The taxpayers questioned why the Division issued an assessment for the 2014 tax year when the Division's initial inquiry into their Utah tax responsibilities focused on the 2015 and 2016 tax years. The Division explained that Utah law (specifically Utah Code Ann. §59-1-1410(1)(a)) allows the Tax Commission to assess a tax within three years after the day on which a return is filed. The Division asserted that because the taxpayers filed their 2014 Utah return on MONTH 31, 2015, it complied with Utah law when it issued its 2014 assessment on MONTH 21, 2018 (which is within three years of MONTH 31, 2015). The taxpayers did not refute the Division's claim that it issued its 2014 assessment within three years of the date that they filed their 2014 Utah return.

5 All substantive law citations are to the 2016 version of Utah law. Unless otherwise noted, the substantive law remained the same during the 2014, 2015, and 2016 tax years.

3. Effective for tax year 2012 (and applicable to the 2014, 2015, and 2016 tax years 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 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.

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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 2014, 2015 and 2016 tax years that is applicable to this appeal.

(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."[7] 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:[8]

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

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7 *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.

8 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, 2015, and 2016 tax years at issue in this appeal.

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)[9] 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
> (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).

9 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2014, 2015, and 2016 versions of this statute that are pertinent to this appeal.

(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. The Division contends that the taxpayers were Utah resident individuals for all of 2014, 2015, and 2016, while the taxpayers claim that neither of them was a Utah resident individual for any portion of these years. For the 2014, 2015, and 2016 tax years, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the "183 day test").

The Division does not assert that the taxpayers were Utah resident individuals for 2014, 2015, and 2016 under the 183 day. It asserts that they were Utah resident individuals for these years under the domicile test. As a result, the Commission will apply the facts to the domicile law in effect for 2014, 2015, and 2016 to determine whether both taxpayers are considered to be domiciled in Utah during these years (as the Division contends) or whether the taxpayers are not considered to be domiciled in Utah during these years (as the taxpayers contend).

I. Additional Facts.

The taxpayers have been married for many years, and they were not legally separated or divorced during the 2014, 2015 and 2016 tax years at issue. The taxpayers lived in Utah until MONTH YEAR, when TAXPAYER-1 accepted a job with a STATE-1 employer to work in FOREIGN COUNTRY. Since MONTH YEAR, the taxpayers have continued to live in FOREIGN COUNTRY, and TAXPAYER-1 has continued to work for the same employer. TAXPAYER-1 has not been employed since the taxpayers moved to FOREIGN COUNTRY.

Since moving to FOREIGN COUNTRY, TAXPAYER-1 has never returned to the United States (including Utah) for more than 30 days in a calendar year. However, TAXPAYER-1 was present in Utah for more than 30 days in each of the 2014, 2015, and 2016 tax years to visit some of the taxpayers' children and grandchildren who still live in Utah. At the hearing, the taxpayers proffered that TAXPAYER-1 returned to Utah for approximately 40 days per calendar year for most years since YEAR (including 2014 and 2015) and that she returned to Utah for approximately 60 days in 2016 because of an illness in the family.[10] The taxpayers assert that because of the number of years that they have now lived in FOREIGN COUNTRY, they are entitled to live in FOREIGN COUNTRY indefinitely and that they have no intention of ever living in Utah again.

In YEAR, the taxpayers purchased their Utah home (which is located in CITY-1, Utah), which they still own. The Utah home is approximately ##### square feet in size and has four bedrooms. The Utah home received the Utah residential exemption from property taxation for each of the 2014, 2015, and 2016 tax years. When the taxpayers moved to FOREIGN COUNTRY in MONTH YEAR, the taxpayers moved all of their personal belongings from their Utah home to FOREIGN COUNTRY (with the exception of ##### motor

10 On the Domicile Survey the taxpayers completed for the 2015 and 2016 tax years, they certified that TAXPAYER-2 was in Utah from April 20 to June 2 and from October 20 to December 31 for each of these two years (which would be in excess of 110 days for each of these years). Regardless of whether the taxpayers' proffered testimony or the information they provided on the Domicile Survey is correct, it is clear

vehicles and some clothes that they keep at the Utah home). The taxpayers' daughter and son-in-law have lived in the taxpayers' Utah home since the taxpayers moved to FOREIGN COUNTRY. The taxpayers indicate that they allow their daughter and son-in-law to live in the Utah home in exchange for their taking care of the home (i.e., the taxpayers do not charge their daughter and son-in-law rent).[11] When TAXPAYER-1visits Utah, she stays at the taxpayers' Utah home. The taxpayers explained that they will continue to own their Utah home as long as they are alive.[12]

The taxpayers explained that when they moved to FOREIGN COUNTRY, they decided to leave their ##### motor vehicles at their Utah home because the vehicles had little value (both had more than ##### miles) and because they thought that their children might have need to drive the vehicles on occasion. The taxpayers explained that their daughter drove one of the vehicles for about a year around 2011 and that their son (who also lives in Utah but not in the taxpayers' Utah home) drove the other vehicle for a short period of time (the taxpayers could not remember the year in which their son drove one of the vehicles). In addition, the taxpayers explained that TAXPAYER-1 uses one of the vehicles they keep at their Utah home for her own use when she visits Utah (which generally occurs in the spring and fall). The taxpayers further proffered that while TAXPAYER-1 registers one of their two vehicles in Utah for her own use each year, they do not insure either of these vehicles except when TAXPAYER-1 is present in Utah.[13]

Both taxpayers have retained their Utah driver's licenses since they moved to FOREIGN COUNTRY (including the 2014, 2015, and 2016 tax years at issue) because they are allowed to drive in FOREIGN

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that TAXPAYER-2 was present in Utah for more than 30 days for each of the 2014, 2015, and 2016 tax years.

11 The taxpayers explained that except when TAXPAYER-2 and/or TAXPAYER-1 visit Utah, no one other than the taxpayers' daughter and son-in-law live in their Utah home.

12 The taxpayers have rented a home in FOREIGN COUNTRY since living there. While the "FOREIGN COUNTRY home" is smaller in size than the taxpayers' Utah home, the FOREIGN COUNTRY home, like the Utah home, has four bedrooms.

13 On the Domicile Survey the taxpayers completed for the 2015 and 2016 tax years, they certified that both of their vehicles in Utah have remained registered in Utah since they moved to FOREIGN COUNTRY. The taxpayers did not indicate that they owned any motor vehicles in FOREIGN COUNTRY.

COUNTRY with a driver's license from the United States and because of certain privileges they receive by having a driver's license from the United States. In addition, both taxpayers were registered to vote in Utah for all of 2014, 2015, and 2016. The taxpayers proffered that they remained registered to vote in Utah so that they could vote in presidential elections. During the three years at issue, Utah voting records show that TAXPAYER-1 voted in Utah in November 2014 (in person during one of her Utah visits) and in November 2016 (by mail), while TAXPAYER-1 voted in Utah only in November 2016 (by mail).

Because of the Division's audits, the taxpayers have taken several retroactive steps in regards to their Utah voter registration and their Utah home. First, in 2019, the taxpayers asked for their Utah voter registrations to be terminated. Second, in 2019, the taxpayers filed amended 2014, 2015, and 2016 United States income tax returns, on which they removed the Schedule A deductions they had originally claimed for property taxes they had paid on their Utah home for these years.[14]

During 2014, 2015, and 2016, the taxpayers were members of a church and had their church records kept at a FOREIGN COUNTRY unit of their church. The taxpayers were not members of a club or any other such organization during 2014, 2015, or 2016. Since moving to FOREIGN COUNTRY, the taxpayers have only used an FOREIGN COUNTRY address and have filed all United States and Utah returns (including those filed during the 2014, 2015, and 2016 calendar years) using an FOREIGN COUNTRY address. The taxpayers did not claim any dependents on their 2014, 2015, and 2016 United States income tax returns, and neither of the taxpayers attended an institution of higher education during 2014, 2015, or 2016.

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14 At the hearing, the taxpayers ask the Commission if they can avoid being considered to be domiciled in Utah if they were to now ask COUNTY (the county in which their Utah home is located) to remove the residential exemption from their Utah home for 2014, 2015, and 2016, and if they were to pay the additional property taxes that would arise from having the exemption removed for these years. The Commission has previously found that taking such "corrective" actions after the audit process has begun do not negate the actions that were taken during the tax years at issue. *See, e.g., USTC Appeal No. 15-1582* (Initial Hearing Order Aug. 26, 2016). This and other selected Commission decisions can be reviewed in a redacted format on the Commission's website that is located at https://tax.utah.gov/commission-office/decisions.

No evidence was provided to suggest that the taxpayers declared on page 3 of their 2014, 2015 or 2016 Utah return (or a prior Utah return) that they no longer qualified to receive the residential exemption for their Utah home. In addition, there is no evidence to show that during any of the tax years at issue, the taxpayers provided a written statement to COUNTY to notify the county that their Utah home did not qualify for the residential exemption.

II. Domicile Test for the 2014, 2015, and 2016 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, 2015, and 2016 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)).[15]

A. Subsection 59-10-136(5)(b). For a married individual, it is often necessary 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." All parties agree that the taxpayers were not legally separated or divorced during 2014, 2015, or 2016. In addition, the taxpayers claimed a filing status of married filing jointly

15 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.

for purposes of filing their 2014, 2015, and 2016 federal income tax returns. Accordingly, for all of 2014, 2015, and 2016, each of the taxpayers is considered to have a spouse for purposes of Section 59-10-136.

B. Subsection 59-10-136(4). The taxpayers do not argue that they are *not* considered to be Utah domiciliaries under Subsection 59-10-136(4) for any of the periods at issue. 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 also met. Although both taxpayers appear to have been absent from Utah for at least 761 days since they moved to FOREIGN COUNTRY in YEAR, they do not meet all of the conditions listed in Subsection 59-10-136(4)(a)(ii) for a 761-day period that includes any of the 2014, 2015, and 2016 tax years at issue.

The taxpayers have not met the Subsection 59-10-136(4)(a)(ii)(A) requirement that neither the individual nor the individual's spouse return to Utah for more than 30 days in a calendar year. Because TAXPAYER-1 returned to Utah for more than 30 days during each of the 2014, 2015, and 2016 calendar years, neither taxpayer meets the Subsection 59-10-136(4)(a)(ii)(A) condition for any portion of the three years at issue.[16] Accordingly, neither taxpayer qualifies not to be considered to be domiciled in Utah for 2014, 2015, or 2016 under Subsection 59-10-136(4). As a result, the Commission need not address the remaining conditions of Subsection 59-10-136(4)(a)(ii) to find that the taxpayers do not meet the Subsection 59-10-136(4) exception. However, it may be helpful to discuss the Subsection 59-10-136(4)(a)(ii)(D) condition and why the taxpayers also do not meet this condition.

An individual does not meet the Subsection 59-10-136(4)(a)(ii)(D) condition if the individual or the individual's spouse claims a Utah residential exemption for that individual's or individual's spouse's primary

16 The Commission recognizes that since YEAR, TAXPAYER-2 has not returned to Utah for more than 30 days in a calendar year. However, the Subsection 59-10-136(4)(a)(ii)(A) condition is not met unless *neither* the individual *nor* the individual's spouse return to Utah for more than 30 days in a calendar year. TAXPAYER-2 is TAXPAYER-1 spouse for purposes of Section 59-10-136, and she returned to Utah for more than 30 days for each of the 2014, 2015, and 2016 tax years. As a result, TAXPAYER-1 also does not meet the Subsection 59-10-136(4)(a)(ii)(A) condition for any portion of the three years at issue.

residence. However, Subsection 59-10-136(6) provides that an individual's claiming the residential exemption for a residential property that is the primary residence of a tenant may not be considered in determining whether the individual is domiciled in Utah or not. As a result, the Commission will first discuss whether the taxpayers have claimed a Utah residential exemption for their primary residence. If they have, the Commission will next determine whether Subsection 59-10-136(6) applies. If the taxpayers have claimed the Utah residential exemption for their primary residence and Subsection 59-10-136(6) applies, the taxpayers will be considered to have met the Subsection 59-10-136(4)(a)(ii)(D) condition. However, if the taxpayers have claimed the Utah residential exemption for their primary residence and Subsection 59-10-136(6) does not apply, the taxpayers will not be considered to have met the Subsection 59-10-136(4)(a)(ii)(D) condition.

The taxpayers' Utah home received the residential exemption from property taxation for each of the 2014, 2015, and 2016 tax years. As a result, the taxpayers are considered to have claimed the exemption for each of these years.[17] In addition, the taxpayers' Utah home is considered to be their "primary residence" for all of 2014, 2015, and 2016, regardless of whether the taxpayers were living in FOREIGN COUNTRY during these years. 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.

17 Amending a federal income tax return to remove an income tax deduction for property taxes has no effect on whether a residential exemption was claimed or not. In addition, the taxpayers argue that they can "rebut" their claiming the residential exemption on their Utah home for the three tax years at issue. The residential exemption condition found in Subsection 59-10-136(4)(a)(ii)(D), however, is not a rebuttable 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).

Prior to or during the 2014, 2015, or 2016 tax years, the taxpayers did not file a written statement to notify COUNTY that their Utah home did not qualify for the residential exemption for any of these years. In addition, the taxpayers did not declare on page 3 of a Utah return that they filed prior to the Division's audit that they no longer qualified to receive the residential exemption for their Utah home. Accordingly, pursuant to Subsection 59-2-103.5(4), the taxpayers' Utah home is considered to be their "primary residence" during all of 2014, 2015, and 2016. Because the taxpayers received the residential exemption on their Utah home for the 2014, 2015, and 2016 tax years and because the Utah home is considered to be the taxpayers' "primary residence" during these years, the taxpayers will not have met the 59-10-136(4)(a)(ii)(D) condition for any portion of the three years at issue, unless the Subsection 59-10-136(6) exception applies.

Subsection 59-10-136(6) provides that claiming the residential exemption on a property may not be used in determining an individual's Utah domicile if that property is the primary residence of a tenant. For purposes of Subsection 59-10-136, the Commission has found that a "tenant" can include a person who is allowed to live in a property without paying rent (such as a person who is allowed to live in the property in exchange for taking care of the property). However, the Commission has also found that even where the property owner allows a person to use the property as that person's primary residence, the Subsection 59-10-136(6) exception does not apply when a property owner also uses the property on occasion.[18] Although the daughter and son-in-law have lived in the Utah home and used it as their primary residence since YEAR, the taxpayers keep some of their personal property at the Utah home and stay in the Utah home when one or both of them are present in Utah each year. Under these circumstances, the Subsection 59-10-136(6) exception would not apply when determining whether the taxpayers are considered to be domiciled in Utah during 2014, 2015, and 2016.

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18 *See, e.g., USTC Appeal No. 16-117* (Initial Hearing Order Jan. 18, 2017) and *USTC Appeal 17-758* (Initial Hearing Order Jan. 26, 2018).

Because the taxpayers claimed the Utah residential exemption on their primary residence for the 2014, 2015, and 2016 tax years, and because Subsection 59-10-136(6) does not apply, the taxpayers also do not meet the Subsection 59-10-136(4)(a)(ii)(D) exemption for any portion of the three years at issue. Because the taxpayers do not meet all of the Subsection 59-10-136(4) conditions for any portion of the 2014, 2015, and 2016 tax years, the taxpayers do not qualify to *not* be considered to be domiciled in Utah for any portion of these years under Subsection 59-10-136(4).[19]

Accordingly, the Commission must analyze whether the taxpayers *are* considered to have domicile in Utah for 2014, 2015, and 2016 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. For this case, the Commission will begin its analysis with a discussion of the rebuttable presumption found in Subsection 59-10-136(2)(a).[20]

C. 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 or individual's spouse's primary residence, unless the presumption is rebutted. For the presumption to arise for 2014, 2015, and 2016, two elements must exist. First, the Utah home that the taxpayers owned in 2014, 2015, and 2016 must have received the residential exemption for these years. Second, the Utah home that received the residential exemption must be considered the "primary residence" of

19 Even if Subsection 59-10-136(6) had applied (in which case the taxpayers would have met the Subsection 59-10-136(4)(a)(ii)(D) condition), they still would not have satisfied Subsection 59-10-136(4) exception from domicile because they did not meet the Subsection 59-10-136(4)(a)(ii)(A) condition.

20 It is clear that under Subsection 59-10-136(1), the taxpayers are not considered to be domiciled in Utah for any portion of 2014, 2015, or 2016, because, during these years, neither taxpayer attended an institution of higher education, and the taxpayers did not claim a dependent on any of their 2014, 2015, and 2016 federal income tax returns. It is also clear that under Subsection 59-10-136(2)(c), the taxpayers are not considered to be domiciled in Utah for any portion of 2014, 2015, or 2016, because, during these years, neither taxpayer asserted Utah residency on a Utah income tax return.

one or both of the taxpayers in accordance with the guidance provided in Subsection 59-2-103.5(4). Furthermore, even if these two elements exist, the Subsection 59-10-136(2)(a) presumption does not arise if Subsection 59-10-136(6) applies. For reasons discussed earlier in regards to Subsection 59-10-136(4)(a)(ii)(D), the two elements exist for the 2014, 2015, and 2016 tax years, and the Subsection 59-10-136(6) exception does not apply for any portion of these years. Accordingly, the Subsection 59-10-136(2)(a) presumption has arisen, and the taxpayers will both be considered to be domiciled in Utah for all of 2014, 2015, and 2016, unless they are able to rebut the presumption.

Because Subsection 59-10-136(2)(a) 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.[21] 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)(a) 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 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; and/or if, under certain circumstances, an individual has declared on a Utah income tax return that their property no longer qualifies for the residential exemption. COUNTY did not fail to remove the residential exemption from the taxpayers' Utah home after receiving a request from the taxpayers to do so. In addition, neither taxpayer declared on their 2014, 2015, or 2016 Utah income tax return

21 The Legislature did not provide that claiming a residential exemption on a primary residence 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).

(or a prior Utah return) that the 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 they were receiving the residential exemption. Similarly, the Commission has found 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).[22]

The taxpayers contend that they have rebutted the Subsection 59-10-136(2)(a) presumption for the 2014, 2015, and 2016 tax years because they lived in FOREIGN COUNTRY during these years and because they had changed many of the contacts from Utah to FOREIGN COUNTRY. This argument appears to rely on weighing an individual's contacts with various locations 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) where an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1) or (2).

The Commission has found that an individual has not rebutted the 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 new law enacted by the Legislature little or no effect, which the Commission declines to do.[23]

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22 *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).

23 The Commission is not precluded from considering certain facts that might be described in Rule 52

Similarly, the Commission has found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[24]

The Commission has also previously found that the Subsection 59-10-136(2)(a) presumption can be rebutted if an individual received the residential exemption for a *vacant* home that was listed for sale and which would qualify for the exemption upon being sold.[25] In the instant case, however, the taxpayers did not list their Utah home for sale during 2014, 2015, or 2016. Furthermore, the Utah home was not vacant during these years because the taxpayers' daughter and son-in-law lived in the home and because the taxpayers would occasionally visit and stay in the home.

The taxpayers ask the Commission to consider that they amended their 2014, 2015, and 2016 federal income tax returns to remove the income tax deductions they had originally claimed for property taxes paid on their Utah home. While the amount of the income tax deductions (and the property tax liabilities on which the deductions were based) would be affected by whether the taxpayers claimed the residential exemption or not, claiming the residential exemption for property tax purposes has no effect on whether the taxpayers qualify for

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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.

24 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.

25 The Commission has found that listing a vacant Utah home for sale 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

this income tax deduction for income tax purposes. As a result, even if the taxpayers had never claimed an income tax deduction for property taxes on their 2014, 2015, and 2016 federal income tax returns, this would be insufficient to rebut the taxpayers' claiming the residential exemption on their Utah home and benefitting from lower Utah property taxes for these years.

The Commission has also indicated that there may be other circumstances to be raised in future cases that will be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. However, based on the information available at the Initial Hearing, the taxpayers have not proffered any convincing arguments to rebut the Subsection 59-10-136(2)(a) presumption that has arisen for all of 2014, 2015, and 2016. Accordingly, under Subsection 59-10-136(2)(a), both taxpayers are considered to be domiciled in Utah for the three years at issue.

Because the Commission has found that the taxpayers are considered to be domiciled in Utah for all of 2014, 2015, and 2016 under Subsection 59-10-136(2)(a), the Commission need not discuss the other subsections of Section 59-10-136 to reach a decision in this matter. Nevertheless, it may be helpful to make some comments about the remaining subsections (i.e., Subsections 59-10-136(2)(b) and (3)).

D. 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. Both of the taxpayers were registered to vote in Utah throughout 2014, 2015, and 2016. As a result, the Subsection 59-10-136(2)(b) presumption has arisen in regards to both taxpayers for the three years at issue. Accordingly, both taxpayers will also be considered to be domiciled in Utah for all of 2014, 2015, and 2016 under Subsection 59-10-136(2)(b), unless this presumption is rebutted in regards to both taxpayers.

For reasons explained earlier in regards to Subsection 59-10-136(2)(a), the Commission has also found that the Subsection 59-10-136(2)(b) presumption cannot be rebutted because an individual would not be considered to be domiciled in Utah under Rule 52 or under the 12 factors listed in Subsection 59-10-136(3)(b).

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to rebut a Subsection 59-10-136(2) presumption.

In addition, the Commission has previously found that registering to vote in a jurisdiction other than Utah may be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. The taxpayers, however, have not shown that either of them registered to vote somewhere other than Utah after they began living in FOREIGN COUNTRY in YEAR.

The taxpayers ask the Commission to consider that neither of them voted in all three of the tax years at issue. The Commission, however, has found that not voting in Utah despite being registered to do so is insufficient to rebut the Subsection 59-10-136(2)(b) presumption because "[h]ad the Legislature intended actual voting in Utah to be the event that triggered domicile in Utah, it could have easily stated so, but it did not."[26]

In addition, the taxpayers ask the Commission to consider that in 2019, they asked a Utah county clerk to remove their names from the Utah voter registry. This "corrective" action occurred more than two years after 2016 (the last of the three years at issue) and is also insufficient to rebut the Subsection 59-10-136(2)(b) presumption. Even though the taxpayers' names were removed from the Utah voter registry in 2019, they were still registered to vote in Utah during the 2014, 2015, and 2016 tax years. Furthermore, TAXPAYER-1 voted in Utah in 2014 and 2016, and TAXPAYER-1 voted in Utah in 2016. Under these circumstances, the Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption. As a result, even if the Commission had not already found the taxpayers to be domiciled in Utah for all of 2014, 2015, and 2016 under Subsection 59-10-136(2)(a), it would find that they are considered to be domiciled in Utah for these years under Subsection 59-10-136(2)(b).

E. 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-

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

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 the 2014, 2015, and 2016 tax years under Subsection 59-10-136(2)(a), Subsection 59-10-136(3) has no applicability to this decision.

F. Domicile Summary. For reasons discussed above, both taxpayers are considered to be domiciled in Utah for all of 2014, 2015, and 2016. As a result, under Subsection 59-10-103(1)(q)(i)(A), both taxpayers are Utah resident individuals for all of 2014, 2015, and 2016.

III. Other Arguments.

The taxpayers suggest that Utah should not tax the income that TAXPAYER-1 earned outside of Utah (i.e., the income he earned in FOREIGN COUNTRY). 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, 2015, and 2016, Subsection 59-10-117(2)(c) does not apply to either of them for these years. Accordingly, all of the taxpayers' 2014, 2015, and 2016 income is subject to Utah taxation, even if it was earned outside of Utah.

The taxpayers also contend that the Commission should not find that individuals such as themselves are domiciled in Utah, regardless of whether they are considered to be domiciled in Utah under a provision of Section 59-10-136. The taxpayers may be suggesting Section 59-10-136, as written, 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, 2015, and 2016. As a result, the Commission should sustain the assessments that the Division has imposed for these three tax years.

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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, 2015, and 2016 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.