18-1717
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 9/20/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-1717 Account No. #### Tax Type: Income Tax Year: 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, Representative
NAME-1, Witness[1]
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 July 22, 2019.

TAXPAYERS ("Petitioners" or "taxpayers") have appealed Auditing Division's (the "Division") assessment of Utah individual income taxes for the 2015 tax year. On August 30, 2018, the Division issued a Notice of Deficiency and Estimated Income Tax ("Statutory Notice") to the taxpayers, in which it imposed

1 NAME-1 is TAXPAYER-2's daughter from a prior marriage. NAME-1 appeared at the Initial Hearing to proffer information about a home that her mother owned in Utah and in which NAME-1 lived after her mother moved from Utah to STATE-1. Because NAME-1 did not have a power of attorney to represent either of the taxpayers, she only attended that portion of the hearing at which she provided this information.

taxes, a 10% penalty for failure to timely file, a 10% penalty for failure to timely pay, and interest (calculated as of September 29, 2018),[2] as follows:

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

The taxpayers married on March 17, 2015. TAXPAYER-1 has never lived in Utah, but lived in STATE-1 for many years before and after the 2015 tax year at issue. TAXPAYER-2 lived in Utah for many years prior to her marriage to TAXPAYER-1, and she moved to STATE-1 on August 1, 2015, where she and TAXPAYER-1 have lived ever since. The taxpayers filed a 2015 federal return with a status of married filing jointly, on which they reported their 2015 federal adjusted gross income ("FAGI") to be $$$$$. TAXPAYER-2 filed a 2015 Utah part-year resident return with a status of married filing separately, while TAXPAYER-1 did not file a 2015 return with any state. On the separate 2015 Utah return that TAXPAYER-2 filed, she reported her 2015 FAGI to be $$$$$ and that she was a Utah resident individual from January 1, 2015 to June 1, 2015. On her Utah return, TAXPAYER-2 allocated to Utah $$$$$ of the $$$$$ of 2015 FAGI that she reported.

At the hearing, the taxpayers admit that TAXPAYER-2 improperly filed a separate Utah return for the 2015 tax year; that the dates of residency that were listed on the return are incorrect; and that TAXPAYER-2 improperly allocated her 2015 income to Utah. Also at the hearing, the taxpayers conceded that TAXPAYER-2 was a Utah part-year resident from January 1, 2015 to August 9, 2015 (the effective date of TAXPAYER-2's reassignment as EMPLOYMENT from AIR FORCE BASE-1 in Utah to AIR FORCE BASE-2 in STATE-1) and that all of the income that she earned during this portion of 2015 is subject to Utah taxation. The taxpayers, however, contend that TAXPAYER-1 was not a Utah resident individual for any portion of 2015 because he lived in STATE-1 and was only present in Utah for short periods in March 2015 (to marry TAXPAYER-2) and around August 1, 2015 (to move TAXPAYER-2 and her furniture and other personal

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

belongings to STATE-1). As a result, the taxpayers ask the Commission to revise the Division's assessment to reflect that TAXPAYER-2 was a Utah resident individual from January 1, 2015 to August 9, 2015, and that TAXPAYER-1 was not a Utah resident individual for any portion of 2015.

The Division originally determined that both taxpayers were domiciled in Utah from January 1, 2015 to December 8, 2015 (the date that TAXPAYER-2 sold a home in CITY-1, Utah that she had owned for many years (the "Utah home")), because TAXPAYER-2's Utah home received the residential exemption from property taxation during 2015.[3] As a result, the Division originally assessed both taxpayers as Utah part-year residents from January 1, 2015 to December 8, 2015, and imposed Utah income taxes on all income that both taxpayers received during this portion of 2015.

Since issuing its assessment, however, the Division indicates that it has discovered additional information that shows that its assessment is incorrect. First, the Division indicates that it has discovered that the taxpayers were not married until March 17, 2015. Second, the Division indicates that other information shows that the Utah Code Ann. §59-10-136(2)(a) presumption concerning the residential exemption does not arise and/or is rebutted for a portion of the 2015 tax year that TAXPAYER-2 owned the Utah home. For these reasons and because the taxpayers concede that TAXPAYER-2 is a Utah resident individual from January 1, 2015 to August 9, 2015, the Division asks the Commission to find: 1) that TAXPAYER-2 is considered to be domiciled in Utah and is a Utah resident individual from January 1, 2015 to August 9, 2015; 2) that TAXPAYER-1 is considered to be domiciled in Utah and a Utah resident individual from March 17, 2015 to August 9, 2015 (i.e., for that portion of 2015 that he was married to TAXPAYER-2 and that TAXPAYER-2 is considered to be domiciled in Utah); and 3) that its assessment should be revised accordingly.

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3 Utah Code Ann. §59-2-103(2) (2015) 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(35)(a) (2015) 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

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2015)[4], "a tax is imposed on the state taxable income of a resident individual[.]"

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

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

3. Effective for tax year 2012 (and applicable to the 2015 tax year at issue), UCA §59-10-136 provides for the determination of "domicile," as follows:[5]

> (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).

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that is not a person's primary residence (such as a vacation home) is taxed on 100% of its fair market value.

4 All substantive law citations are to the 2015 version of Utah law, unless otherwise indicated.

5 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.

(2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:

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

(b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) begins on the later of the date:

(A) the individual leaves this state; or

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

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

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

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

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

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

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.
(b) For purposes of this section, an individual is not considered to have a spouse if:
(i) the individual is legally separated or divorced from the spouse; or
(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

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

4. 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."[6] 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

6 *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.

§59-2-103.5(4) provides, as follows:[7]

> (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.

5. UCA § 59-10-116 provides for the imposition of Utah individual income tax on a Utah nonresident individual, as follows in pertinent part:

> (1) Except as provided in Subsection (2), a tax is imposed on a nonresident individual in an amount equal to the product of the:
>
> (a) nonresident individual's state taxable income; and
>
> (b) percentage listed in Subsection 59-10-104(2).

6. UCA §59-10-117 provides guidance as to which items of federal adjusted gross income are considered to be derived from Utah sources and, as a result, are included in the Utah state taxable income of a nonresident individual, as follows in pertinent part:

> (1) For purposes of Section 59-10-116, state taxable income derived from Utah sources includes those items includable in state taxable income attributable to or resulting from:
>
> . . .
>
> (b) the carrying on of a business, trade, profession, or occupation in this state;
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> . . . .
>
> (2) For the purposes of Subsection (1):
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> . . . .
>
> (c) a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources;
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> . . . .

7 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 2015 tax year at issue in this appeal.

7. 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."

8. 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.

9. 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 TAXPAYER-2 was a Utah resident individual from January 1, 2015 to August 9, 2015, and that TAXPAYER-1 was a Utah resident individual from March 17, 2015 to August 9, 2015. The taxpayers concede that TAXPAYER-2 was a Utah resident from January 1, 2015 to August 9, 2015, but contend that TAXPAYER-1 was not a Utah resident individual for any portion of 2015. For the 2015 tax year, 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 either taxpayer is a Utah resident individual for any portion of 2015 under the 183 day test. Instead, the Division asserts that both taxpayers are Utah resident individuals for portions of 2015 under the domicile test. As a result, the Commission will apply the facts to the domicile law in effect for 2015 to determine whether TAXPAYER-2 is considered to be domiciled in Utah from January 1,

2015 to August 9, 2015, and TAXPAYER-1 is considered to be domiciled in Utah from March 17, 2015 to August 9, 2015 (as the Division contends); or whether TAXPAYER-2 is considered to be domiciled in Utah from January 1, 2015 to August 1, 2015, and TAXPAYER-1 is not considered to be domiciled in Utah for any portion of 2015 (as the taxpayers contend).[8]

I. Additional Facts.

The taxpayers married on March 17, 2015, and they have not been legally separated or divorced since their marriage. TAXPAYER-2 and her daughter from a prior marriage (i.e., NAME-1) both lived in Utah for many years prior to and during 2015, while TAXPAYER-1 and his young son from a prior marriage have never lived in Utah. In 2015, NAME-1 was 19 years old and attended college in Utah. The taxpayers did not claim TAXPAYER-2's daughter as a dependent on their 2015 federal income tax return. The only dependent that the taxpayers claimed as a dependent on their 2015 federal income tax return was TAXPAYER-1's young son, who attended school in STATE-1 throughout the 2015 tax year. Neither of the taxpayers attended an institution of higher education during 2015.

As mentioned earlier, TAXPAYER-2 only lived in Utah from January 1, 2015 to August 1, 2015, when she moved to STATE-1 with her furniture and personal belongings (including her vehicle) and began the process of selling her Utah home. TAXPAYER-2's Utah home, which received the Utah residential exemption from property taxation for 2015, was approximately #### square feet in size. The taxpayers' home in STATE-1, in which both taxpayers lived from August 2, 2015 to December 31, 2015, was approximately #### square feet in size.

TAXPAYER-2 listed her Utah home for sale on August 17, 2015, and the home sold on December 8, 2015. NAME-1 proffered that during most of the August 2, 2015 to December 8, 2015 period that

8 While the taxpayers conceded that TAXPAYER-2 was a Utah resident individual from January 1, 2015 to August 9, 2015, they contend that she should not be considered to be domiciled in Utah "after she left the state" on August 1, 2015. The taxpayers, however, did not explain how, under Utah law, TAXPAYER-2 would be a Utah resident individual for the August 2, 2015 through August 9, 2015 portion of 2015 that they

TAXPAYER-2 owned the Utah home but lived in STATE-1, her mother allowed her to live in the Utah home rent-free until the home sold.[9] TAXPAYER-2's daughter proffered that she lived in the Utah home and used it as her primary residence from August 2, 2015 until around November 30, 2015, when she moved out of the home so that it could be cleaned before the new owners took possession of the home. After TAXPAYER-2 moved from Utah to STATE-1 on August 1, 2015, neither taxpayer returned to Utah during the remainder of 2015.[10] TAXPAYER-2 did not stay in or retain the right to use any portion of her Utah home during the August 2, 2015 to December 8, 2015 portion of 2015 that she owned it and lived in STATE-1.

Each of the taxpayers owned one vehicle during 2015. TAXPAYER-2 owned a vehicle that was registered in Utah from January 1, 2015 until sometime in November 2015, when she registered it in STATE-1. TAXPAYER-1 owned a vehicle that was registered in STATE-1 for all of 2015. Throughout the 2015 tax year, TAXPAYER-2 had a Utah driver's license, while TAXPAYER-1 had a STATE-1 driver's license.

As to voter registration, TAXPAYER-2 completed a domicile survey for the 2015 tax year on which she certified that she was registered to vote in Utah for all of 2015 and that TAXPAYER-1 was not registered to vote in Utah for any portion of 2015. The Division, however, researched Utah voter registration records and found out that neither of the taxpayers were registered to vote in Utah for any portion of 2015. As a result, it appears that TAXPAYER-2 may have been mistaken about being registered to vote in Utah in 2015. Because the Division searched Utah voter registration records and does not contend that either of the taxpayers were registered to vote in Utah during 2015 and because TAXPAYER-2 provided no information to support her

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claim that she was not domiciled in Utah.

9 The Division stated that it would accept NAME-1's proffer that she lived in the Utah home after her mother moved to STATE-1 on August 1, 2015, even though TAXPAYER-2 had certified on a domicile survey that NAME-1 had not lived in the Utah home since January 2014. Based on NAME-1's proffered testimony and the Division's decision not to refute it, the Commission finds that NAME-1 lived in the Utah home after TAXPAYER-2 moved from Utah to STATE-1 on August 1, 2015.

10 It was not disclosed at the hearing whether the taxpayers returned to Utah during 2016 and 2017 and, if so, the number of days during these years that each taxpayer was present in Utah.

assertion that she was registered to vote in Utah during 2015, the Commission finds, at least for this decision, that neither of the taxpayers were registered to vote in Utah during the 2015 tax year.

Neither of the taxpayers was a member of a church or a club or other similar organization during 2015. From January 1, 2015 to August 1, 2015, TAXPAYER-2 received her mail at a Utah address, while TAXPAYER-1 received his mail at a STATE-1 address. From August 2, 2015 through the remainder of 2015, both taxpayers received their mail at a STATE-1 address. In early 2015 (while TAXPAYER-2 lived in Utah and TAXPAYER-1 lived in STATE-1), TAXPAYER-2 used a Utah address to file her 2014 federal and Utah returns, while TAXPAYER-1 used a STATE-1 address to file his 2014 federal return. In early 2016 (while both taxpayers were living in STATE-1), they used a STATE-1 address to file their joint 2015 federal return and TAXPAYER-2's separate 2015 Utah return. On her separate 2015 Utah return (which was filed in 2016 after TAXPAYER-2 had sold her Utah home), TAXPAYER-2 did not declare that the Utah home no longer qualified to receive the residential exemption. In addition, TAXPAYER-2 did not contact COUNTY-1 (the county in which the Utah home is located) to notify the county she no longer qualified to receive the residential exemption on her Utah home.

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 the 2015 tax year, 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)).[11]

11 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

A. Section 59-10-136(5). For a married individual, it is often necessary, as in this case, to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if the individual is legally separated or divorced from the individual's spouse or if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. Because neither taxpayer was married to another person for the January 1, 2015 to March 16, 2015 portion of 2015, neither taxpayer is considered to have a "spouse" for purposes of Section 59-10-136 for this portion of 2015. On the other hand, the taxpayers were married on March 17, 2015 and remained married for the remainder of 2015 without legally separating or divorcing. In addition, the taxpayers filed a 2015 federal income tax return with a status of married filing jointly. Accordingly, pursuant to Subsection 59-10-136(5)(b), each taxpayer is considered to have a "spouse" for purposes of Section 59-10-136 from March 17, 2015 to December 31, 2015.

Because the taxpayers concede that TAXPAYER-2 was a Utah resident individual from January 1, 2015 to August 9, 2015, the Division indicates that, for this period, she would be a Utah resident individual because she was domiciled in Utah. The Division also contends that pursuant to Subsection 59-10-136(5)(a), TAXPAYER-1 would be considered to be domiciled in Utah for the March 17, 2015 to August 9, 2015 portion of 2015 that he was the "spouse" of an individual who was domiciled in Utah. In prior decisions, however, the Commission has decided not to rely on Subsection 59-10-136(5)(a) alone to find that an individual is domiciled in Utah because this subsection only applies if "an individual is considered to have domicile in this state *in accordance with this section*" (emphasis added).[12] Accordingly, the Commission declines to find that

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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.

12 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 28, 2016).

TAXPAYER-1 is considered to be domiciled in Utah for any portion of 2015 on Subsection 59-10-136(5)(a) alone.

Instead, the Commission must first determine whether one or both of the taxpayers is considered to be domiciled in Utah "in accordance with this section," specifically in accordance with Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3). In instances where the actions of *only one spouse* meet the circumstances described in Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3), the Commission has generally found that *both spouses* are considered to be domiciled in Utah under the applicable subsection, and that such a conclusion is *supported* by Subsection 59-10-136(5)(a). As a result, the Commission must analyze whether the taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), or (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.

B. Subsection 59-10-136(1). This subsection provides that an individual is considered to be domiciled in Utah if: 1) a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school; or 2) the individual or the individual's spouse is enrolled in a Utah institution of higher education. Because neither of these circumstances is applicable to the taxpayers during the 2015 tax year, neither taxpayer would be considered to be domiciled in Utah during any of 2015 under Subsection 59-10-136(1).

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 primary residence, unless the presumption is rebutted. TAXPAYER-2 owned and received the residential exemption on her Utah home from January 1, 2015 to December 8, 2015. Because neither taxpayer owned the Utah home from December 9, 2015 to December 31, 2015, the Subsection 59-10-136(2)(a) presumption does not arise for this portion of 2015. Accordingly, it is clear that neither

taxpayer is considered to be domiciled in Utah under this subsection from December 9, 2015 to December 31, 2015.

In addition, Subsection 59-10-136(6) provides that claiming a residential exemption may not be considered when determining an individual's domicile if the property on which the exemption is claimed is the primary residence of a tenant. From August 2, 2015 to November 30, 2015, TAXPAYER-2's daughter used the Utah home as her primary residence. In addition, upon moving from Utah to STATE-1 on August 1, 2015, TAXPAYER-2 removed all of her furniture and personal belongings from the Utah home; did not retain use of any portion of the Utah home; and did not stay in the Utah home at any time. Given these particular factual circumstances, the Subsection 59-10-136(6) exception is applicable for the August 2, 2015 to November 30, 2015 portion of 2015. Accordingly, the Subsection 59-10-136(2)(a) presumption does not arise for the August 2, 2015 to November 30, 2015 portion of 2015. As a result, neither taxpayer is considered to be domiciled in Utah under Subsection 59-10-136(2)(a) for the August 2, 2015 to November 30, 2015 portion of 2015.

Still at issue, is whether one or both of the taxpayers would be considered to be domiciled in Utah under Subsection 59-10-136(2)(a) for the remaining portions of 2015, specifically from January 1, 2015 to August 1, 2015, and from December 1, 2015 to December 8, 2015. For the Subsection 59-10-136(2)(a) presumption to arise for the remaining portions of 2015, two elements must exist. First, the Utah home that TAXPAYER-2 owned must have received the residential exemption. Second, the Utah home that received the residential exemption must be considered the "primary residence" of one or both of the taxpayers in accordance with the guidance provided in Subsection 59-2-103.5(4). It is clear that TAXPAYER-2's Utah home received the residential exemption for the January 1, 2015 to August 1, 2015, and December 1, 2015 to December 8, 2015 portions of 2015 that she owned it. As a result, the first element is met.

As to the second element, for purposes of Section 59-10-136, TAXPAYER-2's Utah home is also considered to be her "primary residence" not only from January 1, 2015 to August 1, 2015, but also from

December 1, 2015 to December 8, 2015 (regardless of whether TAXPAYER-2 was living in STATE-1 for this latter period). When Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual claims the residential exemption is considered their "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.

TAXPAYER-2 did not file a written statement to notify COUNTY-1 that her Utah home did not qualify for the residential exemption for 2015. In addition, TAXPAYER-2 did not declare on page 3 of a Utah return that she no longer qualified to receive the residential exemption for her Utah home. Accordingly, pursuant to Subsection 59-2-103.5(4), TAXPAYER-2's Utah home is considered to be her "primary residence" for the portion of 2015 that she owned it (including the January 1, 2015 to August 1, 2015, and December 1, 2015 to December 8, 2015 portions of 2015 that remain at issue). As a result, the second element is also met.

Because TAXPAYER-2 meets both elements of Subsection 59-10-136(2)(a) for the January 1, 2015 to August 1, 2015, and December 1, 2015 to December 8, 2015 portions of 2015, the Subsection 59-10-136(2)(a) presumption has arisen in regards to TAXPAYER-2 for these periods and for TAXPAYER-1 for the portion of these periods that TAXPAYER-2 was his spouse. Accordingly, under Subsection 59-10-136(2)(a): 1) TAXPAYER-2 alone will be considered to be domiciled in Utah from January 1, 2015 to March 16, 2015, unless she is able to rebut the presumption for this period; and 2) both taxpayers will be considered to be

domiciled in Utah from March 17, 2015 to August 1, 2015, and from December 1, 2015 to December 8, 2015, unless they are able to rebut the presumption for all or some portion of these periods.[13]

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.[14] 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 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. During 2015, COUNTY-1 did not fail to remove the residential exemption from TAXPAYER-2's Utah home after receiving a request from her to do so. In addition, neither taxpayer has declared on a Utah income tax return that the Utah home no longer qualified for the residential exemption. The Commission has also previously found that

13 The Commission is aware that TAXPAYER-1 never owned the Utah home and never resided in it. Nevertheless, TAXPAYER-1's spouse (i.e., TAXPAYER-2), owned the Utah home and claimed it as her primary residence for the March 17, 2015 to August 1, 2015, and December 1, 2015 to December 8, 2015 portions of 2015 that the taxpayers were married. For these reasons and because Subsection 59-10-136(2)(a) provides that there is a rebuttable presumption that an *individual* is considered to be domiciled in Utah if *the individual or the individual's spouse* claims the exemption on the *individual's or the individual's spouse's* primary residence, this presumption has arisen in regards to both taxpayers for the March 17, 2015 to August 1, 2015, and December 1, 2015 to December 8, 2015 portions of 2015. 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."

14 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).

the Subsection 59-10-136(2)(a) presumption is not rebutted because an individual had never heard of the residential exemption or did not know that he or she was receiving the residential exemption. Similarly, the Commission finds that the Subsection 59-10-136(2)(a) presumption is not rebutted where a taxpayer received the residential exemption on their Utah home even though they did not file an application to receive the exemption (i.e., where a county automatically classifies a home as a primary residence that qualifies for the exemption without the taxpayers having known that they were receiving the exemption).[15]

Furthermore, 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.[16]

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).[17]

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15 *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).

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

17 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.

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.[18] In the instant case, TAXPAYER-2 listed the Utah home for sale on August 17, 2015, and the home remained listed for sale until it sold on December 8, 2015. In addition, after TAXPAYER-2's daughter moved out of the Utah home on November 30, 2015, the Utah home was vacant. Accordingly, the Subsection 59-10-136(2)(a) presumption is rebutted for the December 1, 2015 to December 8, 2015 portion of 2015, and neither taxpayer is considered to be domiciled in Utah from December 1, 2015 to December 8, 2015 under this subsection.

As to the January 1, 2015 to August 1, 2015 period remaining at issue, the taxpayers do not attempt to rebut the Subsection 59-10-136(2)(a) presumption as it applies to TAXPAYER-2 because she lived in the Utah home for this entire period. The taxpayers, however, attempt to rebut the Subsection 59-10-136(2)(a) presumption as it applies to TAXPAYER-1 for the March 17, 2015 to August 1, 2015 period he was TAXPAYER-2's spouse because he lived in STATE-1 and because he never owned the Utah home. For reasons already explained, the Subsection 59-10-136(2)(a) presumption cannot be rebutted for only one taxpayer when it has arisen in regards to both taxpayers. As a result, TAXPAYER-2 has not rebutted the Subsection 59-10-136(2)(a) presumption for the January 1, 2015 to March 16, 2015 period for which the presumption has arisen in regards to her alone. In addition, the taxpayers have not rebutted the Subsection 59-10-136(2)(a) presumption for the March 17, 2015 to August 1, 2015 period for which the presumption has arisen in regards to both of them. Accordingly, under Subsection 59-10-136(2)(a), TAXPAYER-2 is

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

considered to be domiciled in Utah from January 1, 2015 to August 1, 2015; and TAXPAYER-1 is considered to be domiciled in Utah from March 17, 2015 to August 1, 2015.

D. Other Subsections of Section 59-10-136. The Division contends that both taxpayers are also considered to be domiciled in Utah for the August 2, 2015 to August 9, 2015 portion of 2015 that TAXPAYER-2 concedes that she was a Utah resident individual. As a result, the Commission will analyze the remaining subsections of Section 59-10-136 (Subsections 59-10-136(2)(b), (2)(c), and (3)) to determine whether the taxpayers are considered to be domiciled in Utah for the August 2, 2015 to August 9, 2015 portion of 2015.[19]

Subsection 59-10-136(2)(b) provides that there is a rebuttable presumption that an individual is considered to be domiciled in Utah if the individual *or* the individual's spouse is registered to vote in Utah. Neither of the taxpayers was registered to vote in Utah during 2015. As a result, neither taxpayer would be considered to be domiciled in Utah under Subsection 59-10-136(2)(b) for the August 2, 2015 to August 9, 2015 portion of 2015.

Subsection 59-10-136(2)(c) 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. On her 2015 Utah return, TAXPAYER-2 asserted to be a Utah resident individual from January 1, 2015 to June 1, 2015. However, neither taxpayer asserted on a Utah return to be a Utah resident individual for the August 2, 2015 to August 9, 2015 portion of 2015. As a result, neither taxpayer would be considered to be domiciled in Utah under Subsection 59-10-136(2)(c) for the August 2, 2015 to August 9, 2015 portion of 2015.

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

19 Because TAXPAYER-2 has already been found to be domiciled in Utah from January 1, 2015 to August 1, 2015, and TAXPAYER-1 has already been found to be domiciled in Utah from March 17, 2015 to August 1, 2015, the Commission need not determine whether the taxpayers are considered to be domiciled in Utah for these particular portions of 2015 under one of the remaining subsections of Section 59-10-136.

relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Neither party specifically addressed these 12 factors. However, a cursory review of the 12 factors indicates that for the August 2, 2015 to August 9, 2015 portion of 2015, a preponderance of the factors show that neither taxpayer is considered to be domiciled in Utah.[20] As a result, neither taxpayer would be considered to be domiciled in Utah under Subsection 59-10-136(3) for the August 2, 2015 to August 9, 2015 portion of 2015.

E. Domicile Summary. Based on the foregoing, TAXPAYER-2 is considered to be domiciled in Utah for the January 1, 2015 to August 1, 2015 portion of 2015, while TAXPAYER-1 is considered to be domiciled in Utah for the March 17, 2015 to August 1, 2015 portion of 2015.[21]

III. Utah Residency and Other Arguments.

Subsection 59-10-103(1)(q)(i)(A) provides that an individual is a Utah resident individual for the duration of the period during which the individual is domiciled in Utah. As a result, because TAXPAYER-2 is

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20 Of the relevant Subsection 59-10-136(3)(b) factors, it appears that only one or two of the factors point to a Utah domicile for the taxpayers for the August 2, 2015 to August 9, 2015 portion of 2015, specifically: 1) the Subsection 59-10-136(3)(b)(i) factor because TAXPAYER-2 had a Utah driver's license for this period; and 2) perhaps the Subsection 59-10-136(3)(b)(ix) factor because TAXPAYER-2 used a Utah address on the 2014 income tax returns that she filed in early 2015. On the other hand, it appears that three or four of the factors point to a domicile outside of Utah for the taxpayers for the August 2, 2015 to August 9, 2015 portion of 2015, specifically: 1) the Subsection 59-10-136(3)(b)(iii) factor because the home in which the taxpayers lived in STATE-1 during this period appears to be superior to TAXPAYER-2's Utah home; 2) the Subsection 59-10-136(3)(b)(iv) factor because neither of the taxpayers were present in Utah for this portion of 2015; 3) the Subsection 59-10-136(3)(b)(viii) factor because the taxpayers used a STATE-1 address for this portion of 2015; and 4) perhaps the Subsection 59-10-136(3)(b)(v) factor because Utah is not the *physical location* where either taxpayer earned "earned income" during this portion of 2015 (regardless of whether TAXPAYER-2's transfer from her Utah job did not take effect until August 9, 2015). The rest of the factors are either not applicable or are neutral (for example, because the Subsection 59-10-136(3)(b)(v) factor does not refer to a vehicle that is registered "in this state," this factor appears to be neutral because the taxpayers had one vehicle registered in Utah and one vehicle registered in STATE-1 during the August 2, 2015 to August 9, 2015 portion of 2015).

21 The taxpayers do not argue that they are *not* considered to be Utah domiciliaries for any portion of 2015 under Subsection 59-10-136(4), which provides an exception from being considered to be domiciled in Utah. This subsection applies to individuals who are *both* "absent from the state" for at least 761 consecutive days, if a number of other listed conditions are all met. Both taxpayers, however, were not absent from Utah until August 2, 2015. As a result, even if all of the other listed conditions were met, the Subsection 59-10-136(4) exception would not apply to the January 1, 2015 to August 1, 2015 portion of 2015 that TAXPAYER-2 is considered to be domiciled in Utah, or the March 17, 2015 to August 1, 2015 portion of 2015 that

domiciled in Utah for the January 1, 2015 to August 1, 2015 portion of 2015, she is considered to be a Utah resident individual for this portion of 2015. Similarly, because TAXPAYER-1 is considered to be domiciled in Utah for the March 17, 2015 to August 1, 2015 portion of 2015, he is considered to be a Utah resident individual for this portion of 2015.

Although TAXPAYER-2 is not domiciled in Utah from August 2, 2015 to August 9, 2015, she conceded that she was a Utah resident individual for these eight days, as well, because her job transfer did not take effect until August 9, 2015. It is unclear whether the taxpayers conceded that TAXPAYER-2 was a Utah resident individual from August 2, 2015 to August 9, 2015 because they believed that she qualified as a Utah resident individual for these days under the other residency test (i.e., the 183 day test); or because they believed that any income she earned during these eight days would be Utah source income under Section 59-10-116 and Subsection 59-10-117(1)(b) even if she was a Utah nonresident for these eight days. Regardless, where the taxpayers concede that TAXPAYER-2 was a Utah resident individual for these eight days, the Commission will not try to discern the reasoning behind the concession. Accordingly, the Commission finds that TAXPAYER-2 is a Utah resident individual from January 1, 2015 to August 9, 2015, and that as a result, all income that she received for the January 1, 2015 to August 9, 2015 portion of 2015 is subject to Utah taxation.

TAXPAYER-1, however, is not considered to be a Utah resident individual for the August 2, 2015 to August 9, 2015 period that the taxpayers conceded that TAXPAYER-2 is a Utah resident individual. TAXPAYER-1 is not considered to be domiciled in Utah during these eight days, nor does he meet the 183 day test for this period. Accordingly, TAXPAYER-1 is only considered to be a Utah resident individual from March 17, 2015 to August 1, 2015. As a result, all income that TAXPAYER-1 received for the March 17, 2015 to August 1, 2015 portion of 2015 is subject to Utah taxation.

The taxpayers contend that none of TAXPAYER-1's 2015 income should be subject to taxation because all of it was earned outside of Utah. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-

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TAXPAYER-1 is considered to be domiciled in Utah

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 Subsection 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 Subsection 59-10-116(1), however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because TAXPAYER-1 has been found to be a Utah resident individual from March 17, 2015 to August 1, 2015, Subsection 59-10-117(2)(c) does not apply to him for this portion of 2015. Accordingly, all of the income that TAXPAYER-1 earned while he was a Utah resident individual is subject to Utah taxation, regardless of whether it was earned outside of Utah.

IV. 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.[22] 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.[23] The taxpayers did not fail to pay the Utah income taxes at issue 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 arises once the

22 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.

23 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 of this money.

Division revises its assessment to reflect the Commission's decision. 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. Accordingly, reasonable cause exists to waive all penalties imposed for the 2015 tax year.

V. Conclusion.

Based on the foregoing, the Commission should find that TAXPAYER-2 is a Utah resident individual from January 1, 2015 to August 9, 2015, and that TAXPAYER-1 is a Utah resident individual from March 17, 2015 to August 1, 2015. In addition, the Commission should waive all penalties that the Division imposed.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that TAXPAYER-2 is a Utah resident individual from January 1, 2015 to August 9, 2015, and that TAXPAYER-1 is a Utah resident individual from March 17, 2015 to August 1, 2015. In addition, the Commission waives all penalties that the Division has imposed. The Division is ordered to revise its assessment accordingly. It is so ordered.

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

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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 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.