18-1801
TAX TYPE: INCOME TAX
TAX YEAR: 2015
DATE SIGNED: 1/17/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
CONCURRENCE: L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-1801 Account No. 8743 Tax Type: Income Tax Tax Year: 2015 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE-1 FOR TAXPAYERS, EA
TAXPAYER-1
For Respondent: RESPONDENT-1, Manager, Income Tax Auditing

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on DATE, 2019 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The matter before the Commission is Petitioners' ("Taxpayers'") appeal filed under Utah Code §59-1-501 of a Utah individual income tax audit deficiency for tax year 2015. Respondent ("Division") had issued the Notice of Deficiency and Audit Change on DATE, 2018, on the basis that both Taxpayers were full-year Utah resident individuals for all of 2015. The Taxpayers claimed that they were part-year Utah resident individuals and had filed a part-year Utah return for tax year 2015. It was their position that they had moved during the year to STATE-1 and then returned to Utah. No penalties were assessed with the audit. The amounts of additional tax and interest due as of the date the Notice of Deficiency was issued is as follows:

	Tax	Interest[1]	Penalties	Total as of Notice Date
2015	$$$$$	$$$$$	$$$$$	$$$$$

APPLICABLE LAW

Utah imposes income tax on individuals who are residents of the state, in Utah Code Subsection 59-10-104(1) as follows:

> . . . . a tax is imposed on the state taxable income of a resident individual as provided in this section . . . .

Resident individual is defined in Utah Code Subsection 59-10-103(1)(q) as follows:

> (q)(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.

Beginning with the 2012 tax year, a new law was adopted regarding what constituted domicile in the State of Utah. Utah Code §59-10-136 (2015)[2] provides as follows:

> (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

1 Interest continues to accrue on the unpaid balance until paid in full.
2 Utah Code §59-10-136 was amended by the 2019 Utah Legislature and the changes made in that session became effective May 14, 2019, with retrospective application to tax years beginning with 2018. The 2019 revisions made changes to both Utah Code Subsections 59-10-136(2)(b) and 59-10-136(5). However, this decision cites to the code and applies the law that was in effect for the tax year at issue in this appeal.

(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.

(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.

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, "Upon 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."

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of penalties and interest, 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.

Utah Code Ann. §59-1-1417 provides, "[i]n a proceeding before the commission, the burden of proof is on the petitioner…"

DISCUSSION

Under Utah Code Sec. 59-10-104, a "resident individual" in the State of Utah is subject to Utah individual income tax on all taxable income regardless of where it was earned, subject to a credit for the individual income taxes paid to another state. In this case, the Taxpayers had moved to STATE-1, which has no individual income tax so there is not a credit available. "Resident individual" is defined at Utah Code Sec. 59-10-103 as an individual who is "domiciled" in Utah, or, if not "domiciled" in Utah, is one who maintains a place of abode in Utah and spends in the aggregate 183 days or more per year in Utah. What constitutes being domiciled in Utah is set out at Utah Code Sec. 59-10-136. The Division argues that both Taxpayers were "domiciled" in Utah for all of 2015 pursuant to the provisions of Utah Code Sec. 59-10-136.

The Taxpayers filed their federal return with the filing status of married filing joint. The Taxpayers were married for all of 2015, not legally separated or divorced. For these reasons, based on the express provisions of Utah Code Subsection 59-10-136(5), the Taxpayers were considered to be spouses for purposes of the domicile provisions in 2015. The Taxpayers had no minor children during the audit period and claimed no dependents on their federal and Utah part-year return. The Taxpayers themselves did not attend a Utah institution of higher education in 2015. It was the Division's position that both Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) because TAXPAYER-1 was registered to vote in Utah during the audit year.[3] It was not argued that TAXPAYER-2 was ever registered to vote in Utah.

3 The Division did not argue that the Taxpayers were considered to be domiciled in Utah under Subsection 59-10-136(1), under which an individual is domiciled in Utah if children claimed as dependents on the individual's tax return attend a Utah public school, or if the individual or individual's spouse attends a Utah institution of higher education and receives resident tuition. Instead, the Division's position was that the Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(2).

The Taxpayer proffered at the hearing that both he and TAXPAYER-2 were from STATE-1 originally and during the audit year most of their family, including their adult children and grandchildren, were living in STATE-1. However, they had moved to CITY-1, Utah in 2008 so he could help his father open a business in Utah. He states it was their plan that once he helped his father get that business running, his father would open a business in STATE-1, which the Taxpayers would manage and operate. While in Utah TAXPAYER-1 registered to vote in Utah in 2011. He and TAXPAYER-2 obtained Utah Driver Licenses and they registered their vehicles in Utah. The Taxpayers had leased a residence in Utah. TAXPAYER-2 worked for an HOSPITAL in CITY-1, but in the foodservice area of the hospital.

In 2014, TAXPAYER-1 and his father started constructing the business in CITY-2, STATE-1. The business was a BUSINESS-1 which they opened at the end of 2014. TAXPAYER-1 stated that they had leased a building for the business that was only an exterior shell and they built out all the interior finishes. He said they invested a lot of money into the business and it was a nice place of which he was proud. It was TAXPAYER-2's dream to eventually quit her employment with HOSPITAL and work at this business because she had gone to culinary school and her background was the food service industry. However, until the business was running well they decided that she should continue to work for HOSPITAL. By early 2015, TAXPAYER-1 was working 12 to 14 hour days for the new business in CITY-2, STATE-1 and it was difficult to then commute back to CITY-1 where they were renting a residence, so by DATE 2015 they had decided to move to CITY-2. They ended their lease in CITY-1 and rented a residence in CITY-2, STATE-1, beginning DATE, 2015. They moved all their furniture and belongings to CITY-2 at this time. TAXPAYER-2 commuted to CITY-1 for her employment after that. On the Taxpayers' part-year Utah return, they did claim TAXPAYER-2's wages for all of 2015 from her Utah employment as Utah source income and they did pay Utah individual income taxes on this wage income. The income that they did not claim as Utah income or Utah source income was the income TAXPAYER-1 received from his employment at the new business in STATE-1 after the Taxpayers had moved to STATE-1. While in STATE-1 the Taxpayers did change their mailing address to their STATE-1 residence and provided evidence that their mail was received in STATE-1 and that most of their bank charges took place in STATE-1.

TAXPAYER-1 explained that after moving to STATE-1 and trying to keep this new business running they were too busy to obtain STATE-1 Driver Licenses or register vehicles in STATE-1. He also points out since it was not a major election year he did not think about registering to vote in STATE-1 or canceling his Utah voter registration so he had not done that in 2015 either. Unfortunately, their business failed and by the end of DATE 2015, they closed the

business. At this point, TAXPAYER-1 had no job in CITY-2 and TAXPAYER-2 was still working in Utah, so the couple moved back to Utah by DATE, 2015. It was their proffer that had the business succeeded they would still be living in CITY-2, STATE-1 today.

It was the Division's position that both Taxpayers were domiciled in Utah for all of 2015 under Utah Code Subsection 59-10-136(2)(b). A taxpayer is domiciled in Utah if any one of the rebuttable presumptions at Subsection 59-10-136(2) have been met and are not rebutted. Subsection 59-10-136(2) provides, "There is a rebuttable presumption that an individual is considered to have domicile in this state if: . . . (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration . . . ."

The Subsection 59-10-136(2) presumptions are rebuttable presumptions, meaning an individual is presumed domiciled in Utah, but certain factors could rebut that presumption. Based on the information presented, the Taxpayers have not rebutted this presumption. TAXPAYER-1 did not attempt to cancel his Utah voter registration and did not register to vote in STATE-1.[4] The Tax Commission has considered what would rebut and what does not rebut the Subsection 59-10-136(2)(b) presumption of Utah domicile in many appeal decisions. See *Utah State Tax Commission, Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 17-1624* (11/15/2019).[5] Factors found to rebut the presumption include a showing that the individual registered to vote in the state to which they moved relatively soon after moving there.[6] The Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted if the individual who is registered to vote in Utah requested for their name to be removed from the Utah voter registry and the local county clerk or other official who received the request did not remove the individual's name from the registry.[7] The Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted from the date that Utah voting laws provide for an individual's name to be removed from the Utah voter registry and a local county clerk does not immediately remove their name from the registry.[8] On the other hand, the Commission has found that an individual cannot rebut the Subsection 59-10-136(2)(b) presumption by showing that they

4 In addition the Taxpayers were not absent from Utah for 761 consecutive days, so they do not qualify for the exception set out at Utah Code Subsection 59-10-136(4).
5 These and other Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.
6 *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720* (3/6/2016).
7 *Utah State Tax Commission Initial Hearing Order Appeal No. 18-793* (2/22/2019).
8*Utah State Tax Commission Initial Hearing Order Appeal No. 18-539* (4/30/2019). The Commission has also stated that it might find that the Subsection 59-10-136(2)(b) presumption is rebutted if an individual moves from Utah to a state that does not require voter registration prior to voting and if the individual eventually votes in that state. *Utah State Tax Commission Initial Hearing Order Appeal No. 17-1552* (2/7/2019).

did not vote in Utah during the tax year at issue. See *Utah State Tax Commission Initial Hearing Order Appeal No. 15-720* (5/6/16).

Additionally at the hearing, the Taxpayer states that had he known voter registration was such a key factor he would have registered to vote in STATE-1 immediately upon moving there. Many individuals have argued ignorance of the law as a basis to rebut the presumptions under Utah Code Subsection 59-10-136(2). However, the Tax Commission has concluded that ignorance of the law is not a sufficient basis to rebut these presumptions. See *Utah State Tax Commission Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 14-30* (9/2/2015); *Initial Hearing Orders, Appeal No. 15-1154* (2/1/16); *Appeal No. 16-117*(1/18/17); *Appeal No. 16-792* (8/16/2017); *Appeal No. 17-237* (9/18/17); *Appeal No. 17-609* (1/26/2018); and *Appeal No. 18-88* (3/22/2019).

The Taxpayer argued at the hearing that using voter registration to determine domicile is "bad law." He explained that he had contacted Utah State NAME-1 about the law. It was TAXPAYER-1's proffer that NAME-1 told him that he thought the law was doing good but realized it was a 'terrible bill' and that they had fixed it in 2019, but made it retrospective only back to tax year 2018. TAXPAYER-1 also proffered that NAME-1 told him that common sense should prevail and the law should be considered on a "case-by-case basis." The Taxpayer argues in this appeal that there was not a major election in 2015, and they had returned to Utah just before the election, so he did not even think about registering to vote in STATE-1 or canceling his Utah registration. The Taxpayer argues that they had moved from Utah, they had no Utah property or residence and they were living in CITY-2 from DATE, 2015 to DATE, 2015. These were the facts that the Taxpayers' argued should be considered for determining domicile.

The Taxpayers' argument that the voter registration should be given less weight than the other factors is contrary to Utah law for the audit period at issue in this appeal. The Taxpayers' factors are the type of factors found in Utah Code Subsection 59-10-136(3). However, the Subsection 136(3) factors are not applicable if an individual is domiciled in Utah under Subsections 136(1) or 136(2). Subsection 59-10-136(3)(a) states, "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 . . ." and then goes on in Subsection 136(3)(b) to list twelve factors. Other individuals have argued that if they met a preponderance of, or more than a preponderance of, the twelve factors at Subsection 59-10-136(3)(b), that should be sufficient to rebut the presumption of domicile that arises under Utah Code Subsection 59-10-136(2). The Tax Commission has considered this argument and concluded it would not be appropriate in *Appeal No. 17-1624*, pg. 23 stating, "Moreover, relying on the limited and

exhaustive list of 12 factors described in Subsection 59-10-136(3)(b) to rebut a Subsection 59-10-136(2) presumption would: 1) be contrary to the express language of Subsection 59-10-136(3)(a), which provides that the Subsection 59-10-136(3)(b) factors should be used to determine domicile only "if the requirements of Subsection (1) or (2) are not met[;]" and 2) be contrary to the plain meaning of Section 59-10-136 as a whole by allowing the hierarchy of factors set forth in Subsection 59-10-136(2) to be rebutted by satisfying a list of factors set forth in Subsection 59-10-136(3) that are lower in the hierarchy of domicile factors established by the Legislature."

Based on the applicable law, both Taxpayers were domiciled in Utah for all of 2015 and the Division's audit should be upheld. Both Taxpayers were domiciled in Utah under Utah Code Subsection 59-10-136(2)(b) because TAXPAYER-1 remained registered to vote in Utah and has not demonstrated factors to rebut this presumption. Additionally, the Taxpayers were not absent from Utah for 761 consecutive days or more to meet the exception at Utah Code Subsection 59-10-136(4). The Taxpayers moved to STATE-1 for less than one year and then returned to Utah.

As the Taxpayers were both domiciled in Utah for all of tax year 2015, they were both Utah resident individuals for that year. As Utah resident individuals they are subject to Utah individual income tax pursuant to Utah Code Subsection 59-10-104(1) on all of their income, regardless of where it was earned or received, subject to a credit for individual income taxes paid to another state. In this case, there is no credit available because the other state is STATE-1 and STATE-1 has no individual income tax. The audit deficiency as to the tax should be upheld.

No penalties were assessed with this audit. Interest has been assessed under Utah Code Sec. 59-1-402. Utah Admin. Rule R861-1A-42(2) provides that interest is waived only if the taxpayer proves that the Tax Commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error. The Taxpayers have not demonstrated Tax Commission error in this matter and the interest should be upheld as well as the tax.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that both Taxpayers were domiciled in Utah for all of tax year 2015 and upholds the Utah individual income tax audit deficiency as to the tax and interest for that year. It is so ordered.

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

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

or emailed to:
taxappeals@utah.gov

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

DATED this _____day of _____, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

CONCURRENCE

I concur with the majority decision in this appeal, but the question of Utah domicile for the period DATE, 2015 to DATE, 2015 merits a slightly different analysis. Prior to DATE, 2015 and after DATE, 2015, the taxpayers acknowledge that they were domiciled in Utah.

For the remaining period in question, the majority decision hinges on the presumption of domicile created under Section 59-10-136(2). This Section creates a rebuttable presumption that an individual is domiciled in Utah if the individual or the individual's spouse (1) claims a residential property tax exemption; (2) is registered to vote in Utah; or (3) asserts residency in Utah for purposes of filing an individual income tax return.

The presumption thus created is rebuttable and does not irrefutably establish Utah domicile. Compelling evidence that a presumption of domicile under Section 59-10-136(2) is rebutted must encompass all of the factors enumerated by the Legislature in Section 59-10-136. Past Commission rulings have concluded that rebutting the factors that create the presumption is sufficient to rebut the presumption. The plain language of the statute allows for the possibility that there could also be sufficient additional evidence that the taxpayer is not domiciled in Utah even though the taxpayer satisfies one of the conditions enumerated in Section 59-10-136(2). Such evidence must include all of the factors enumerated by the Legislature in Section 59-10-136, but must give particular weight to the factors listed in Sections 59-10-136(1) and (2).

In this case, the taxpayers have no minor children enrolled in public schools in Utah or elsewhere, and they did not pay resident tuition at any post-secondary institution in Utah or elsewhere (Section 59-10-136(1)). The taxpayers did not receive a primary residential exemption and did not own their primary residence in Utah or elsewhere. TAXPAYER-1 was registered to vote in Utah. While TAXPAYER-2 was not registered to vote in Utah, it is not known whether she was registered to vote in STATE-1 or elsewhere. The taxpayers did assert Utah residency for part of 2015 on their tax returns (Section 59-10-136(2)). Thus, none of the factors identified by the Legislature as critical in determining domicile rebut the presumption of domicile for TAXPAYER-1.

These five factors can be supplemented and bolstered by the twelve factors listed in Section 59-10-136(3), but the twelve factors in and of themselves are not sufficient to rebut a presumption under Section 59-10-136(2). Under Utah law in effect for the 2015 tax year, the Division has correctly determined that the taxpayers were domiciled in Utah for the entire year.

Lawrence C. Walters
Commissioner

Notice of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.