18-1841
TAX TYPE: INCOME TAX
TAX YEAR: 2015 & 2016
DATE SIGNED: 1/13/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1, & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-1841 Account No. ##### Tax Type: Income Tax Years: 2015 & 2016 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: REPRESENTATIVE-1 FOR TAXPAYERS, CPA
TAXPAYER-1, Taxpayer
TAXPAYER-2, Taxpayer
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 October 15, 2019.

TAXPAYER-1 & TAXPAYER-2 ("Petitioners" or "taxpayers") appealed Auditing Division's (the "Division") assessments of Utah individual income taxes for the 2015 and 2016 tax years. On September 25, 2018, the Division issued Notices of Deficiency and Audit Change ("Statutory Notices") to the taxpayers, in which it imposed taxes and interest (calculated as of October 25, 2018),[1] as follows:

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

Year	Tax	Penalties	Interest	Total
2015	$$$$$	$0	$$$$$	$$$$$
2016	$$$$$	$0	$$$$$	$$$$$

The Division has determined that both of the taxpayers are considered to be domiciled in Utah for all of 2015 and 2016. The taxpayers married on June 4, 2015. Prior to their marriage, both taxpayers had been Utah resident individuals for many years. The taxpayers admit that they were both domiciled in Utah for the January 1, 2015 to June 3, 2015 portion of 2015 that neither of them was married. The taxpayers contend, however, that neither of them has been domiciled in Utah as of the June 4, 2015 date of their marriage. Accordingly, the taxpayers dispute the Division's determination that they were domiciled in Utah for the June 4, 2015 to December 31, 2015 portion of 2015, or for any portion of 2016.

As of the June 4, 2015 date of their marriage: 1) TAXPAYER-1 alone owned a property in CITY-1, Utah consisting of 10 acres of land and a home (the "first CITY-1 home") (which he continues to own as of the date of the hearing); 2) TAXPAYER-1 and his brother owned a property in COUNTY-1, Utah consisting of 20 acres and two homes (the "COUNTY-1 property") (which TAXPAYER-1 and his brother sold around October 1, 2016); and 3) TAXPAYER-2 alone owned a property in CITY-2, STATE-1 consisting of a small lot and a home (the "STATE-1 home") (which she continues to own as of the date of the hearing). In addition, around April 1, 2016, TAXPAYER-2 alone purchased a property in CITY-1, Utah consisting of 10 acres and a home (the "second CITY-1 home") (which is adjacent to the first CITY-1 home that TAXPAYER-1 owns and which TAXPAYER-2 continues to own as of the date of the hearing).

After marrying on June 4, 2015, the taxpayers went on a week-long honeymoon. On or around June 11, 2015, the taxpayers returned to Utah, where they packed clothes and some of the personal belongings located at the first CITY-1 home and moved to the STATE-1 home.[2] Of the four Utah residential

2 In 2014 (prior to the tax years at issue), TAXPAYER-2 sold another home in Utah that she had

properties in which the taxpayers had an ownership interest during all or part of 2015 and 2016, the only one to receive the Utah residential exemption from property taxation during these years was the first CITY-1 home.[3] The first CITY-1 home received the residential exemption for the entirety of the 2015 and 2016 tax years.[4] The taxpayers explained that the second CITY-1 home and the two homes on the COUNTY-1 property were vacant during the portions of 2015 and 2016 that the taxpayers had ownership interests in these properties.[5]

The taxpayers filed 2015 and 2016 federal income tax returns with a status of married filing jointly. In the spring of 2016, the taxpayers filed an original 2015 Utah part-year resident return, on which they asserted that they were Utah resident individuals from January 1, 2015 to June 3, 2015, and on which they allocated to Utah $$$$$ of their 2015 federal adjusted gross income ("FAGI") of $$$$$. On their original 2015 Utah return, the taxpayers did not indicate on Part 7 of the return that they were Utah residential

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owned for many years and moved the furniture from it into the STATE-1 home that she had purchased. When the taxpayers "moved" to the STATE-1 home on June 11, 2015, they did not move the furniture from the first CITY-1 home to STATE-1 because the STATE-1 home was already furnished and because they wanted the first CITY-1 home to remain furnished so they could use the home when they returned to Utah to visit family and to stay during holidays.

3 Utah Code Ann. §59-2-103(2) (2016) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property[,]" while Utah Code Ann. §59-2-102(36)(a) (2016) defines "residential property" to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that is used as a person's primary residence is only taxed on 55% of its fair market value, while a home that is not a person's primary residence (such as a vacation home) is taxed on 100% of its fair market value. Subsections 59-2-103(2) and 59-2-102(36)(a) were amended and/or renumbered during the 2015 and 2016 tax years at issue. However, any amendment to the language cited in this paragraph was nonsubstantive.

4 In addition, the first CITY-1 home also received the residential exemption for the 2017 and 2018 tax years. As will be explained in more detail later in the decision, TAXPAYER-1 recently had COUNTY-1 retroactively remove the residential exemption from the first CITY-1 home for the 2015, 2016, 2017, and 2018 tax years, and he paid the additional property taxes for these four years that resulted from having the exemption removed. Except for the taxpayers staying in the first CITY-1 home when they visited Utah, no one has lived in this home since the taxpayers moved to STATE-1 on June 11, 2015.

5 The taxpayers explained that the two homes on the COUNTY-1 property were vacant during the 2015 tax year and the portion of 2016 that TAXPAYER-1 and his brother owned the property; and that the second CITY-1 home has been vacant ever since TAXPAYER-2 purchased it in 2016.

property owners who no longer qualified to receive the residential exemption from property taxation for their primary residence.

In the spring of 2017, the taxpayers filed an original 2016 Utah full-year nonresident return on which they indicated that they were STATE-1 residents for all of 2016, and on which they allocated to Utah $$$$$ of their 2016 FAGI of $$$$$.[6] On their original 2016 Utah return, the taxpayers did not indicate on Part 7 of the return that they were Utah residential property owners who no longer qualified to receive the residential exemption from property taxation for their primary residence.

On or around March 25, 2019 (after the Division had issued its assessments), the taxpayers filed an amended 2015 Utah part-year resident return and an amended 2016 Utah full-year nonresident return. These amended returns were the same as the taxpayers' original 2015 and 2016 Utah returns, except that the taxpayers did indicate on Part 7 that they were Utah residential property owners who no longer qualified to receive the residential exemption from property taxation for their primary residence.

The Division has determined that both taxpayers were domiciled in Utah for all of 2015 and 2016 because TAXPAYER-1 claimed the residential exemption on the first CITY-1 home for each of these years. As a result, the Division determined that the taxpayers were Utah resident individuals for all of 2015 and 2016 and imposed Utah taxes on all of their 2015 and 2016 income.[7] For these reasons, the Division asks the Commission to sustain its assessments for the 2015 and 2016 tax years in their entireties.

The taxpayers, on the other hand, contend that they were not domiciled in Utah beginning on June 4, 2015, because they amended their 2015 and 2016 Utah returns to indicate that one or both of them owned

6 The 2016 income the taxpayers allocated to Utah was primarily due to capital gains generated from the sale of a property located in Utah.

7 For a Utah resident individual, Utah Code Ann. §59-10-1003 (2015-2016) provides a credit against the Utah income tax otherwise due for income taxes imposed by another state. The Division did not apply a credit for taxes imposed by another state to either of the assessments at issue because the taxpayers have not claimed that a state other than Utah has imposed income taxes on the taxpayers' income for either of the 2015 or 2016 tax years (STATE-1 does not impose a state income tax).

a residential property that no longer qualified for the residential exemption and because they had COUNTY-1 retroactively remove the residential exemption from the first CITY-1 home for the 2015 through 2018 tax years and paid the additional property taxes resulting from this 2019 action. Furthermore, for reasons to be explained in more detail later in the decision, the taxpayers contend that COUNTY-1 should have removed the residential exemption from the first CITY-1 home on or around August 24, 2016, when TAXPAYER-1 met with and allowed an employee of the COUNTY-1 Assessor's Office to take photographs of the first CITY-1 home for appraisal purposes. For these reasons and because they have changed many of their contacts to STATE-1, the taxpayers ask the Commission to find that they were not Utah resident individuals from June 4, 2015 to December 31, 2016, and to reverse the Division's assessments for the 2015 and 2016 tax years in their entireties.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2016)[8], "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 and 2016 tax years at issue), UCA §59-10-136 provides for the determination of "domicile," as follows:[9]

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

9 Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in Senate Bill 13

(1) (a) An individual is considered to have domicile in this state if:

(i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or

(ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.

(b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

(i) is the noncustodial parent of a dependent:

(A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and

(B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

(ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

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

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

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

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

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

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

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

(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;

(2019) ("SB 13"). However, it is the version of Section 59-10-136 in effect during the 2015 and 2016 tax years that is applicable to this appeal.

(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."[10] To assist in determining whether a property is considered the "primary residence" of the individual or individual's spouse who claimed the exemption, the Legislature enacted new property tax provisions at the same time it enacted the new domicile law in Section 59-10-136. Specifically, to assist in the determination of Utah income tax domicile of a property owner, Utah Code Ann §59-2-103.5(4) provides, as follows:[11]

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

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10 *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.

11 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 and 2016 tax years at issue in this appeal.

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

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. At issue is whether the taxpayers are Utah resident individuals for all of 2015 and 2016. The Division contends that the taxpayers were Utah resident individuals for all of 2015 and 2016. The taxpayers concede that they were Utah resident individuals for the January 1, 2015 to June 3, 2015 portion of 2015, but they contend that they were not Utah resident individuals from June 4, 2015 to December 31, 2016 (which may be referred to as the "period at issue"). For the 2015 and 2016 tax years, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the "domicile test"); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the "183 day test").

The Division does not assert that the taxpayers were Utah resident individuals for any portion of 2015 or 2016 under the 183 day test. Instead, the Division asserts that the taxpayers are Utah resident individuals for all of 2015 and 2016, including the period at issue, under the domicile test. As a result, the Commission will apply the facts to the domicile law in effect for the 2015 and 2016 tax years to determine

whether both taxpayers are considered to be domiciled in Utah for all of 2015 and 2016 (as the Division contends); or whether the taxpayers are only considered to be domiciled in Utah from January 1, 2015 to June 3, 2015 of the 2015 tax year and are not considered to be domiciled in Utah for any portion of the June 4, 2015 to December 31, 2016 period at issue (as the taxpayers contend).

I. Additional Facts.

The taxpayers have not been legally separated or divorced since they married on June 4, 2015. Each of the taxpayers have two children from prior marriages (who may be referred to as the "taxpayers' four children"). During the 2015 and 2016 tax years, the taxpayers' four children were all grown, and none of them lived with the taxpayers. During these years, one of the taxpayers' four children lived in STATE-1, while the other three lived in Utah. The taxpayers did not claim any dependents on their 2015 and 2016 federal income tax returns (or on their 2017 or 2018 federal income tax returns). In addition, neither of the taxpayers were enrolled in an institution of higher education during 2015 or 2016 (or during 2017 and 2018).

The first CITY-1 home that TAXPAYER-1 owned throughout 2015 and 2016 has 1,400 square feet of above-grade living space and a basement that is approximately 900 square feet in size. TAXPAYER-1 could not recall the size of either of the homes on the COUNTY-1 property that he and his brother owned before they sold the property on October 1, 2016. However, the taxpayers proffered that the second CITY-1 home that TAXPAYER-2 purchased on April 1, 2016, has 1,400 square feet of above-grade living space and no basement.[12] In comparison, the STATE-1 home that TAXPAYER-2 owned alone has 1,450 square feet of living space and no basement.[13] The first CITY-1 home was not listed for

12 The taxpayers proffered that TAXPAYER-2 purchased the second CITY-1 home when it was offered for sale primarily so that the taxpayers would not have neighbors when staying at the first CITY-1 home.

13 The taxpayers did not disclose at the Initial Hearing whether TAXPAYER-2'S STATE-1 home received a residential exemption from property taxation (which, in some states, may be called a "homestead" exemption) and, if so, when in 2015 and 2016 the STATE-1 home may have received such an

sale or offered for rent during the 2015 or 2016 year. In addition, for the April 1, 2016 to December 31, 2016 portion of 2016 that TAXPAYER-2 owned the second CITY-1 home, it was not listed for sale or offered for rent.

Since the taxpayers moved to STATE-1 on June 11, 2015, it is unclear how many days in a calendar year that they have returned to Utah. At the hearing, the taxpayers stated that they have not kept track of the number of days that they have been in Utah since moving to STATE-1, but estimated that neither of them has returned to Utah for more than 30 days in a calendar year since the June 11, 2015 move. The Division, however, pointed out that on the Domicile Survey that the taxpayers completed for the 2015 and 2016 tax years, the taxpayers certified that they spent maybe 20% of the time in Utah. The Division indicates that 20% of a calendar year is approximately 70 days, which is more than double the 30 day maximum that the taxpayers estimated at the hearing. In response to the discrepancy between their survey answer and their proffered testimony, the taxpayers stated that they had not been in Utah for 30 *consecutive* days since moving to STATE-1. The taxpayers have the burden of proof in this manner. Based on the foregoing, the Commission finds that the taxpayers have not shown that they have spent no more than 30 total days in a calendar year in Utah since moving to STATE-1 on June 11, 2015.

As of January 1, 2015, both taxpayers were registered to vote in Utah. In addition, the taxpayers concede that neither of them contacted a Utah county clerk to have their name removed from the Utah voter registry during 2015 or 2016. However, both taxpayers registered to vote in STATE-1 on April 26, 2016, the same date that both taxpayers obtained STATE-1 driver's licenses.[14] The taxpayers, however, again have the burden of proof, and they have not shown that either of them was not registered to vote in Utah for all of 2015 and 2016. The taxpayers admitted that they have not contacted a Utah county clerk

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exemption.

14 For the January 1, 2015 to April 25, 2016 portion of the years at issue, both taxpayers had Utah driver's licenses.

to see if their Utah voter registrations were terminated when they registered to vote in STATE-1. As a result, based on the evidence proffered at the Initial Hearing, the Commission finds that both taxpayers were registered to vote in Utah for all of 2015 and 2016. In addition, the Commission finds that neither taxpayer was registered to vote in a state other than Utah from January 1, 2015 to April 25, 2016, and that both taxpayers were registered to vote in STATE-1 from April 26, 2016 to December 31, 2016.

During the June 4, 2015 to December 31, 2016 period at issue, TAXPAYER-2 owned one motor vehicle that was registered in Utah. TAXPAYER-2 did not register this motor vehicle in STATE-1 until 2018. During the June 4, 2015 to December 31, 2016 period at issue, TAXPAYER-1 owned five motor vehicles (which included two trucks and/or cars, one utility vehicle, one boat, and one trailer). TAXPAYER-1 registered one of his trucks and/or cars in STATE-1 sometime in June 2015, where it remained registered for the remainder of the period at issue. TAXPAYER-1'S other four motor vehicles, however, were registered in Utah for all of 2015 and 2016.

The taxpayers contend that they used Utah addresses prior to moving to STATE-1 on June 11, 2015, and that they used a STATE-1 address beginning on June 11, 2015. This contention is consistent with how the taxpayers filed their income tax returns during 2015 and 2016. It appears that in the spring of 2015, the taxpayers filed their 2014 income tax returns with Utah addresses; and that in the spring of 2016, the taxpayers filed their 2015 income tax returns with a STATE-1 address. In addition, in the spring of 2017, the taxpayers filed their 2016 income tax returns with a STATE-1 address. The taxpayers received most of their mail at their STATE-1 address beginning on June 11, 2015. However, they continued to receive significant amounts of mail at a Utah address (including most of their tax documents and property tax notices) during the June 11, 2015 to December 31, 2016 period at issue.

The taxpayers have not claimed Utah as their "tax home" for federal income tax purposes since moving to STATE-1 on June 11, 2015. In addition, neither taxpayer earned any "earned income" in 2015 or 2016. All of their 2015 and 2016 income came from other sources. Furthermore, neither taxpayer was

a member of a church or a club or other such organization during the 2015 and 2016 tax years. Since moving to STATE-1 on June 11, 2015, the taxpayers have purchased Utah nonresident fishing licenses and have not purchased any Utah resident fishing or hunting licenses.

As mentioned earlier, the first CITY-1 home received the residential exemption for the 2015, 2016, 2017, and 2018 tax years. The taxpayers, however, contend that COUNTY-1 should have removed the residential exemption from the first CITY-1 home as of the August 24, 2016 date that TAXPAYER-1 met with an appraiser employed by the COUNTY-1 Assessor's Office (who may be referred to as "the appraiser"). TAXPAYER-1 proffered that around August 24, 2016, he discovered on the gate of the first CITY-1 home a note from the appraiser, in which the appraiser indicated that he wanted to inspect the property. TAXPAYER-1 proffered that upon discovering the note, he called the appraiser and told the appraiser that he was not at the first CITY-1 home when the appraiser left the note because he lived in STATE-1. TAXPAYER-1 proffered that the appraiser asked to visit the first CITY-1 home because no one from the County had visited the property for a long time and because the County's information about the property was lacking. TAXPAYER-1 concedes that there was no discussion about Utah's residential exemption during the telephone conversation.

TAXPAYER-1 indicated that when he and the appraiser met at the first CITY-1 home on August 24, 2016, the appraiser took pictures of "everything." TAXPAYER-1 stated he asked the appraiser about the residential exemption in regards to the second CITY-1 home and that the appraiser told him that the second CITY-1 home would need to be rented before it would qualify for the residential exemption.[15]

15 The second CITY-1 home did not receive the residential exemption for the 2015 and 2016 tax years, which may have prompted TAXPAYER-1'S question as to how this property could qualify for the exemption in the future. For the 2017 and 2018 tax years (subsequent to the 2015 and 2016 tax years at issue), the County incorrectly applied the residential exemption to the second CITY-1 home's first acre of land (but it did not apply the exemption to this property's home or other improvements). It is unclear if this mistake has since been corrected at the County. Nevertheless, the application of the residential exemption to the second CITY-1 home's first acre of land for the 2017 and 2018 tax years is not critical to the Commission's decision for the June 4, 2015 to December 31, 2016 period at issue in the instant appeal.

TAXPAYER-1 further stated he and the appraiser did not discuss the residential exemption that the first CITY-1 home was receiving. TAXPAYER-1 stated that he had assumed that the appraiser knew that the first CITY-1 home should not receive the residential exemption because he had told the appraiser that he lived in STATE-1. Regardless, the taxpayers contend that because TAXPAYER-1 told the appraiser on the telephone call that he lived in STATE-1, the appraiser should have removed the residential exemption from the first CITY-1 home as of August 24, 2016.

COUNTY-1, however, contends that it was not until 2018 and/or 2019 that TAXPAYER-1 ever told the County that the residential exemption should be removed from the first CITY-1 home. On November 29, 2018, the COUNTY-1 Assessor sent TAXPAYER-1 an email in which she stated "I was able to reach the appraiser who used to work in our office and who met with you in 2016. He does recall a conversation about primary and secondary on the houses but only that you owned two houses in COUNTY-1 [and that] you would only be allowed to receive the exemption on one. He does not recall any conversation about both being secondary because you were living in or owned an additional home in STATE-1."

From this information, it appears that TAXPAYER-1 and the appraiser did not expressly discuss the residential exemption on the first CITY-1 home during their conversations by telephone and in person that occurred on or around August 24, 2016. In addition, the taxpayers indicate that they did not look at any of their 2015 and 2016 property tax notices from COUNTY-1 to see whether any of their properties were receiving a residential exemption. Moreover, prior to the Division's issuing its 2015 and 2016 income tax assessments in September 2018, neither taxpayer notified COUNTY-1 in writing that the first CITY-1 home no longer qualified for the residential exemption or declared on a Utah income tax return that one or both of the taxpayers was a property owner who no longer qualified to receive a Utah residential exemption authorized for the property owner's primary residence.

However, after the Division issued its assessments in September 2018, the taxpayers contacted COUNTY-1 and informed it that none of their Utah properties should be receiving the residential exemption. In addition, they have recently had the County retroactively remove the residential exemption that the first CITY-1 home received for the 2015 through 2018 tax years, and they paid the additional 2015 through 2018 property taxes that resulted from this action. For these reasons and because they have recently amended their 2015 and 2016 Utah income tax returns to declare that they are Utah residential property owners who no longer qualified to receive the residential exemption from property taxation for their primary residence, the taxpayers contend that TAXPAYER-1'S receiving the residential exemption from taxation on the first CITY-1 home for the 2015 and 2016 tax years should not be considered when determining if they are domiciled in Utah for these years.

II. Domicile Test for the 2015 and 2016 Tax Years.

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]" For the 2015 and 2016 tax years still at issue, 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)).[16]

16 Prior to tax year 2012, an individual's income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) ("Rule 2"), which provided, in part, criteria to be used when determining an individual's income tax domicile and which referred to a non-exhaustive list of domicile factors in Utah Admin. Rule R884-24P-52 (2011) ("Rule 52") (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile for the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

A. Subsection 59-10-136(5)(b). For a married individual, it is often necessary to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is considered to have a spouse for purposes of Section 59-10-136 unless the individual is legally separated or divorced from the individual's spouse or if "the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year." All parties agree that the taxpayers were married on June 4, 2015, and that they were not legally separated or divorced during the remainder of 2015 or during 2016. In addition, the taxpayers claimed a filing status of married filing jointly for purposes of filing their 2015 and 2016 federal returns. Accordingly, for all of the June 4, 2015 to December 31, 2016 period at issue, each of the taxpayers is considered to have a spouse for purposes of Section 59-10-136. Neither taxpayer, however, is considered to have a spouse for purposes of Section 59-10-136 from January 1, 2015 to June 3, 2015, because neither taxpayer was married for this portion of 2015.

B. Subsection 59-10-136(4). Pursuant to this subsection, the taxpayers contend that they are not considered to be domiciled in Utah for the June 4, 2015 to December 31, 2016 period at issue because they have been absent from Utah for a 761-day or more period beginning on June 4, 2015. It is arguable that the 761-day or more period for which the taxpayers have been absent from Utah did not begin on June 4, 2015 (as they contend), but began on June 11, 2015 (the date the taxpayers returned to Utah from their honeymoon, packed some personal property from the first CITY-1 home, and moved to STATE-1). Regardless of which of these dates on which the 761-day or more absence from Utah began, the taxpayers have not met the other conditions of Subsection 59-10-136(4) that are necessary for them not to be considered to be domiciled in Utah under this subsection for any portion of the June 4, 2015 to December 31, 2016 period at issue.

The taxpayers do not meet the Subsection 59-10-136(4)(a)(ii)(A) condition for a 761-day or more period that includes any portion of the June 4, 2015 to December 31, 2016 period still at issue. For reasons

discussed earlier, the Commission has found that the taxpayers have not shown that they returned to Utah for no more than 30 total days during a calendar year since June 4, 2015. Accordingly, under Subsection 59-10-136(4), neither taxpayer qualifies not to be considered to be domiciled in Utah for the June 4, 2015 to December 31, 2016 period at issue. As a result, the Commission need not address the remaining conditions set forth in Subsection 59-10-136(4)(a)(ii) to find that the taxpayers do not meet the Subsection 59-10-136(4) exception. However, it may be helpful to discuss the Subsection 59-10-136(4)(a)(ii)(D) condition and why the taxpayers also do not meet this condition.

An individual does not meet the Subsection 59-10-136(4)(a)(ii)(D) condition if the individual or the individual's spouse claims a Utah residential exemption for that individual's or individual's spouse's primary residence. For reasons explained below, the taxpayers do not meet this condition for a 761-day or more period that includes any portion of the June 4, 2015 to December 31, 2016 period at issue because TAXPAYER-1 claimed the residential exemption on the first CITY-1 home for all of 2015 and 2016 and because this property is considered to be his "primary residence" for purposes of Section 59-10-136 for these years.[17]

For the Subsection 59-10-136(4)(a)(ii)(D) condition not to be met in regards to the first CITY-1 home, two elements must exist. First, TAXPAYER-1 must have claimed the residential exemption on his first CITY-1 home. Second, the first CITY-1 home on which TAXPAYER-1 claimed 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). If both of these elements exist for the June 4, 2015 to

17 Even if the first CITY-1 home had not received the residential exemption, it is clear that the second CITY-1 home received the residential exemption on its first acre of land for the 2017 and 2018 tax years (regardless of whether the second CITY-1 home received the exemption because of County error). However, because the Commission is finding that the Subsection 59-10-136(4)(a)(ii)(D) condition is not met because of the first CITY-1 home, the Commission will not discuss whether receiving the exemption on the second CITY-1 home for 2017 and 2018 would also disqualify the taxpayers from meeting this condition for a 761-day or more period that included the June 4, 2015 to December 31, 2016 period at issue.

December 31, 2016 period at issue, the Subsection 59-10-136(4)(a)(ii)(D) condition will not have been met for a 761-day period that includes any portion of this period.[18]

As to the first element, because TAXPAYER-1 received the residential exemption on the first CITY-1 home for the June 4, 2015 to December 31, 2016 period at issue, he is considered to have claimed the exemption on the home for this period. Subsection 59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Subsection 59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county adds the second step of requiring formal application in order to receive the benefit of the exemption. The claim persists until the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner).

Therefore, simply owning a residential property in a Utah county that does not require an application (which includes most Utah counties) generally asserts an enduring claim to the residential exemption. Furthermore, in those Utah counties that require an application, receiving the residential exemption after filing the application also constitutes a claim to the exemption.[19] No evidence was

18 Subsection 59-10-136(6) provides that claiming a residential exemption may not be considered in determining income tax domicile if the home for which the exemption is claimed is the primary residence of a tenant. The taxpayers, however, admit that except when they visit Utah and stay at the property, the first CITY-1 home has been vacant since they moved to STATE-1 in June 2015.

19 On the other hand, in a county that requires an application, receiving the residential exemption without filing an application does not constitute a claim to the exemption. Under such circumstances, the first element would not exist, and the Subsection 59-10-136(4)(a)(ii)(D) condition would be met. In addition, the first element would not exist and the Subsection 59-10-136(4)(a)(ii)(D) condition would be met for an individual if the property receiving the residential exemption was in the name of the individual but had been sold under contract to someone else. *See, e.g., USTC Appeal 16-1368* (Initial Hearing Order Apr. 18, 2018). Redacted versions of this and other selected Commission decisions can be reviewed the

proffered to suggest that COUNTY-1 requires an application before it applies the residential exemption to a residential property or, if it does, that the County applied the residential exemption to the first CITY-1 home without TAXPAYER-1'S having filed an application to receive the exemption. As a result, because TAXPAYER-1 received the residential exemption on the first CITY-1 home for all of 2015 and 2016, the Commission finds that he claimed the residential exemption for the first CITY-1 home for all of 2015 and 2016, including the June 4, 2015 to December 31, 2016 period at issue.

The taxpayers contend that because TAXPAYER-1 had COUNTY-1 retroactively remove the residential exemption from the first CITY-1 home for the 2015 through 2018 tax years and paid the additional property taxes resulting from this action, TAXPAYER-1 should no longer be considered as having claimed the exemption on this home for any of these years, including the June 4, 2015 to December 31, 2016 period at issue. The Commission disagrees.

That TAXPAYER-1 has retroactively had the residential exemption removed from the first CITY-1 home (and paid the additional property taxes resulting from this action) does not mean that he did not claim the exemption during the 2015 and 2016 tax years at issue. Until at least 2018 (when the Division imposed its assessments for 2015 and 2016), TAXPAYER-1 claimed the residential exemption on the first CITY-1 home for all of 2015 and 2016. The taxpayers, who have the burden of proof, have not proffered any statute or court precedent to show that TAXPAYER-1'S "corrective" actions have the legal effect of nullifying or voiding the actions that initially occurred for the 2015 and 2016 tax years when TAXPAYER-1 claimed the residential exemption on the first CITY-1 home. As a result, the Commission finds that TAXPAYER-1 claimed the residential exemption for the first CITY-1 home for all of 2015 and 2016.[20]

Commission's website at https://tax.utah.gov/commission-office/decisions.

20 This conclusion is consistent with other decisions concerning Section 59-10-136 in which the Commission has found that a taxpayer's retroactive or corrective actions do not negate the actions taken during the tax year(s) at issue (especially where those retroactive or corrective actions did not occur until the Division began its audit of the tax year(s) at issue). *See, e.g., USTC 15-1582* (Initial Hearing Order Aug. 26, 2016); *USTC Appeal No. 17-812* (Initial Hearing Order Mar. 13, 2018); and *USTC Appeal No.*

Accordingly, the first element for the Subsection 59-10-136(4)(a)(ii)(D) condition not to be met exists for the June 4, 2015 to December 31, 2016 period at issue.

As to the second element, for purposes of Section 59-10-136, the first CITY-1 home is considered to be TAXPAYER-1'S "primary residence" throughout 2015 and 2016 (including the June 4, 2015 to December 31, 2016 period at issue), regardless of whether he began living in the STATE-1 home in June 2015. When Section 59-10-136 and Subsection 59-2-103.5(4) are read in concert, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take 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.

Prior to the Division auditing the taxpayers for the 2015 and 2016 tax years, it is clear that TAXPAYER-1 did not file a *written* statement to notify COUNTY-1 that the first CITY-1 home did not qualify for the residential exemption for any portion of 2015 or 2016. In addition, the taxpayers did not declare on their 2015 or 2016 Utah income tax returns they originally filed that either of them was a property owner who was no longer qualified to receive the residential exemption for their Utah home for any portion of 2015 or 2016. Again, for reasons already discussed, that the taxpayers may have retroactively taken these actions in 2018 and/or 2019 (after the Division had issued its assessments) does not negate or nullify the lack of actions that originally occurred. Accordingly, pursuant to Subsection 59-2-103.5(4), the first

17-1768 (Findings of Fact, Conclusions of Law, and Final Decision Jul. 3, 2019). To find otherwise would allow an individual who claimed the residential exemption on a second home (such as a vacation home) and who was found to be domiciled in Utah (once these actions were uncovered) to avoid the income tax consequences of their actions.

CITY-1 home is considered to be TAXPAYER-1'S "primary residence" for all of 2015 and 2016. Because TAXPAYER-1 claimed the residential exemption for the first CITY-1 home for the 2015 and 2016 tax years and because this home is considered to be his "primary residence" for these years for purposes of Section 59-10-136, neither of the taxpayers meet the Subsection 59-10-136(4)(a)(ii)(D) condition for the June 4, 2015 to December 31, 2016 period at issue.[21]

Because the taxpayers do not meet all of the Subsection 59-10-136(4) conditions for a 761-day period that includes any portion of the June 4, 2015 to December 31, 2016 period at issue, the taxpayers do not qualify under this subsection to *not* be considered to be domiciled in Utah for any portion of the period at issue. Accordingly, the Commission must analyze whether the taxpayers *are* considered to have domicile in Utah for the June 4, 2015 to December 31, 2016 period at issue under one or more of the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If an individual meets the criteria found in *any one* of these subsections, that individual is considered to be domiciled in Utah, even if the individual does not meet the criteria found in any of the other subsections.

C. 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

21 The Commission recognizes that TAXPAYER-2 does not own the first CITY-1 home. However, Subsection 59-10-136(4)(a)(ii)(D) provides that for an individual to meet this condition, *neither* the individual *nor* the individual's spouse claim a residential exemption for that individual's *or* individual's spouse's primary residence. TAXPAYER-2 is the spouse of an individual who claimed the residential exemption for that individual's primary residence. As a result, TAXPAYER-2 is also an individual who does not meet the Subsection 59-10-136(4)(a)(ii)(D) condition for the June 4, 2015 to December 31, 2016 period at issue.

It is also noted that the taxpayers indicate that they can "rebut" TAXPAYER-1'S claiming the residential exemption on the first CITY-1 home for the June 4, 2015 to December 31, 2016 period at issue. The residential exemption *condition* found in Subsection 59-10-136(4)(a)(ii)(D), however, is not a rebuttable presumption that can be rebutted (unlike the residential exemption *presumption* found in Subsection 59-10-136(2)(a), which can be rebutted and which will be discussed in more detail later in the decision).

secondary school; or 2) the individual or the individual's spouse is enrolled in a Utah institution of higher education. Neither of these circumstances applies to the taxpayers for any portion of the 2015 and 2016 tax years. Accordingly, under Subsection 59-10-136(1), the taxpayers would not be considered to be domiciled in Utah for any portion of the June 4, 2015 to December 31, 2016 period at issue.

D. Subsection 59-10-136(2)(a). This subsection provides that an individual is presumed to be domiciled in Utah if the individual *or* the individual's spouse claims a property tax residential exemption for that individual or individual's spouse's primary residence, unless the presumption is rebutted. For reasons already discussed in regards to Subsection 59-10-136(4), the two elements necessary for this presumption to arise exist. First, TAXPAYER-1 claimed the residential exemption on the first CITY-1 home for all of 2015 and 2016. Second, the first CITY-1 home is considered to be TAXPAYER-1'S primary residence for all of 2015 and 2016. Accordingly, under Subsection 59-10-136(2)(a): 1) TAXPAYER-1 alone will be considered to be domiciled in Utah for the January 1, 2015 to June 3, 2015 portion of 2015 (the period he does not have a spouse), unless he is able to rebut the presumption for this period; and 2) both taxpayers will be considered to be domiciled for the June 4, 2015 to December 31, 2016 period at issue (which is also the period they are spouses for purposes of Section 59-10-136), unless they are able to rebut the presumption for this period.[22]

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

22 Again, the Commission recognizes that TAXPAYER-2 does not own the first CITY-1 home. Nevertheless, because Subsection 59-10-136(2)(a) provides that an individual is presumed to be domiciled in Utah if either that individual *or* that individual's spouse claims a residential exemption on that individual's or individual's spouse's primary residence, the presumption has arisen for both taxpayers for the June 4, 2015 to December 31, 2016 period at issue because TAXPAYER-2 is the spouse of an individual who claimed the residential exemption for that individual's primary residence. Furthermore, where the presumption has arisen for both taxpayers, the taxpayers cannot rebut the presumption for only one of the taxpayers. Either the presumption is rebutted for both taxpayers, or the presumption is not rebutted for both taxpayers. This conclusion is supported by Subsection 59-10-136(5)(a), which provides that an individual is considered to have domicile in Utah if his or her spouse is considered to have domicile in Utah.

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.[23] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. As a result, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

TAXPAYER-1 admits that he was domiciled in Utah for the January 1, 2015 to June 3, 2015 period for which the Subsection 59-10-136(2)(a) presumption has arisen for him alone and, as a result, does not attempt to rebut the presumption for this period. Thus, the Commission finds that under Subsection 59-10-136(2)(a), TAXPAYER-1 is considered to be domiciled in Utah for the January 1, 2015 to June 3, 2015 portion of 2015.

As to the June 4, 2015 to December 31, 2016 period at issue for which the Subsection 59-10-136(2)(a) presumption has arisen for both taxpayers, the taxpayers ask the Commission to find that they have rebutted the presumption because they moved to STATE-1 and changed a number of their contacts from Utah to STATE-1 during this period. The taxpayers' argument may rely on weighing an individual's contacts with various states when determining whether they are considered to be domiciled in Utah, as was done under Rule 52 (prior to Section 59-10-136 becoming effective for tax year 2012) and is done under Subsection 59-10-136(3)(b) if an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1) or (2).

The Commission has previously found that an individual has not rebutted a Subsection 59-10-136(2) presumption because he or she would not be considered to be domiciled in Utah under Rule 52, the

23 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).

property tax rule used to determine income tax domicile for tax years prior to 2012. It is arguable that using the "old" income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in Rule 52 to determine an individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the Legislature's "new" law little or no effect, which the Commission declines to do.[24]

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).[25]

To allow an individual to rebut a Subsection 59-10-136(2) presumption by showing that they could be considered to be domiciled outside of Utah using the 12 domicile factors listed in Subsection 59-10-136(3)(b) (or using domicile factors found in Rule 2 and/or Rule 52 or other sources) would clearly frustrate the plain meaning of Section 59-10-136. The Subsection 59-10-136(2) presumptions involve three specific factors: 1) claiming the residential exemption on a Utah residential property (the Subsection 59-10-136(2)(a) presumption); 2) being registered to vote in Utah (the Subsection 59-10-136(2)(b) presumption); and 3) asserting Utah residency on a Utah income tax return (the Subsection 59-10-136(2)(c) presumption).

Prior to Section 59-10-136 becoming effective for tax year 2012, the three factors that the Utah Legislature described and set forth as rebuttable presumptions in Subsection 59-10-136(2) (as well as the two education factors described in Subsection 59-10-136(1)) had been among the numerous and non-exhaustive list of factors that the Commission had used to determine income tax domicile for tax years prior to 2012 (as set forth in Rule 2 and/or Rule 52).[26] In Section 59-10-136, however, the Utah Legislature

24 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016).
25 *See, e.g., USTC Appeal No. 15-1857*.
26 Prior to tax year 2012, Rule 2(1)(b) had provided that for purposes of determining income tax domicile, "an individual's intent will not be determined by the individual's statement, or the occurrence of

established a hierarchy of specific factors described in Subsections 59-10-136(1) and (2) to establish income tax domicile, with the education factors creating an absolute indication of domicile and the three Subsection 59-10-136(2) factors creating rebuttable presumptions of domicile. Thus, each of the factors described in Subsections 59-10-136(1) and (2) were given greater import than they had received in establishing income tax domicile for years prior to 2012 (when each of these factors was merely one of the many factors with which domicile was determined).[27]

As a result, it is clear that the Legislature intended that an individual meeting one of the factors described in Subsection 59-10-136(1) would, with limited exception, be considered to be domiciled in Utah; and that an individual meeting one of the factors described and set forth as a rebuttable presumption in Subsection 59-10-136(2) might be considered to be domiciled in Utah, regardless of whether that individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test (such as the one found in Rule 2 and/or Rule 52). To find that a Subsection 59-10-136(2) presumption can be rebutted by showing that the individual would not be considered to be domiciled under some more traditional type of domicile test does not consider the Subsection 59-10-136(2) presumptions in concert with the structure and language of Section 59-10-136 as a whole and would frustrate the plain meaning of Section 59-10-136.[28]

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any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation" and that Rule 52 "provides a *non-exhaustive* list of factors or objective evidence determinative of domicile" (emphasis added).

27 Almost all of the factors that were given greater import in Subsections 59-10-136(1) and (2) are based on an individual or individual's spouse availing themselves of certain benefits of being a resident of Utah, such as having their dependent attend a Utah public school, being enrolled as a resident student at a Utah institution of higher education, receiving a property tax benefit in the form of a residential exemption, or being able to vote in an election in Utah.

28 For example, it is arguable that an individual whose only contact with Utah was claiming the residential exemption on a vacation home located in Utah could continue to do so without any Utah income tax consequences if the individual showed that they would be considered to have domicile outside of Utah based on some sort of traditional income tax domicile criteria.

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 "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.

As a result, when a Subsection 59-10-136(2) presumption is considered in concert with Section 59-10-136 as a whole, the Commission has generally looked to actions or inactions related to the specific factor described in the presumption to determine whether an individual has rebutted the presumption or not. For example, where the Subsection 59-10-136(2)(a) presumption has arisen in regards to claiming the residential exemption, the Commission has found that this presumption can be rebutted by showing that the property owner asked the county to remove the exemption, and the county failed to do so.[29] In the instant case, TAXPAYER-1 did not specifically ask COUNTY-1 to remove the residential exemption from the first CITY-1 home until sometime in 2018 and/or 2019 (after the Division had issued its assessments for the 2015 and 2016 tax years). For reasons similar to ones already discussed in regards to retroactive actions, retroactively asking for the residential exemption to be removed from a home and paying the additional property taxes associated with such a request after an income tax assessment has been issued is insufficient to rebut the Subsection 59-10-136(2)(a) presumption.

In addition, TAXPAYER-1 admits that he did not specifically ask the appraiser who visited the first CITY-1 home on August 24, 2016 to remove the residential exemption from this home. Nevertheless, the taxpayers contend that the Subsection 59-10-136(2)(a) presumption should be rebutted for the June 4,

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

2015 to December 31, 2016 period at issue because during a telephone call on or around August 24, 2016, TAXPAYER-1 mentioned to the appraiser that he lived in STATE-1. The taxpayers contend that COUNTY-1 should have known to remove the residential exemption from the first CITY-1 home based on this telephone conversation. This, however, is insufficient to rebut the Subsection 59-10-136(2)(a) presumption for any of the June 4, 2015 to December 31, 2016 period at issue, especially where TAXPAYER-1 admits that at his meeting with the appraiser, he discussed the residential exemption in regards to the second CITY-1 home, not the first CITY-1 home.[30]

The Commission has also found that the Subsection 59-10-136(2)(a) presumption was rebutted where an individual whose home was receiving the residential exemption disclosed on their Utah income tax return that the home no longer qualified for the exemption (even if the individual did not contact the county directly).[31] The taxpayers, however, did not declare on the 2015 or 2016 Utah return they originally filed that they were Utah residential property owners who no longer qualified to receive the residential exemption from property taxation for their primary residence. Subsequent to the Division's issuance of the 2015 and 2016 assessments, the taxpayers filed amended 2015 and 2016 Utah returns on which they did declare that they were Utah residential property owners who no longer qualified to receive the residential exemption from property taxation for their primary residence. Again, for reasons similar to ones already discussed, this retroactive action is insufficient to rebut the Subsection 59-10-136(2)(a) presumption.

The Commission has also found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home that was listed for sale, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for sale).[32] TAXPAYER-1 did not

30 Furthermore, even if it had been shown that the appraiser had understood that he was being asked to remove the residential exemption from the first CITY-1 home, the Subsection 59-10-136(2)(a) presumption would only have been rebutted from the time the appraiser received the request on or around August 24, 2016, not for the entire June 4, 2015 to December 31, 2016 period at issue.

31 *See, e.g., USTC Appeal No. 17-812* (Initial Hearing Order Mar. 13, 2018).

32 *See, e.g., USTC Appeal No. 15-1332* (Initial Hearing Order Jun. 27, 2016).

have the first CITY-1 home listed for sale during the June 4, 2015 to December 31, 2016 period at issue. In addition, the taxpayers continued to reside in the first CITY-1 home on occasion whenever they visited Utah during this period.

Furthermore, the Commission has found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home was listed for rent, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for rent) and if the home would continue to qualify for the residential exemption by being rented to tenants who would use the home as the tenants' primary residence (i.e., not being rented to tenants who would not use the home as their primary residence, such as a short-term rental).[33] TAXPAYER-1, however, did not list the first CITY-1 home for rent during the June 4, 2015 to December 31, 2016 period at issue. In addition, the taxpayers continued to reside in the first CITY-1 home on occasion whenever they visited Utah during this period.

The Commission has also found that the Subsection 59-10-136(2)(a) presumption would be rebutted for that period that a home was under its initial construction (not a remodel) and until it received a certificate of occupancy, if the home would be used as a primary residence upon its completion.[34] No evidence was provided to show that the first CITY-1 home was under its initial construction and did not have a certificate of occupancy for any portion of the June 4, 2015 to December 31, 2016 period at issue.

On the other hand, the Commission has previously found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an individual had never heard of the residential exemption or did not know that they were receiving the residential exemption.[35] The Commission has also stated in prior cases that it could find in future cases that other circumstances would be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. The taxpayers, however, have not proffered sufficient arguments or evidence to

33 *See, e.g., USTC Appeal No. 17-758* (Initial Hearing Order Jan. 26, 2018).
34 *See, e.g., USTC Appeal No. 17-1589.*
35 *See, e.g., USTC Appeal No. 15-1582.*

rebut the Subsection 59-10-136(2)(a) presumption for any portion of the June 4, 2015 to December 31, 2016 period at issue. Accordingly, under Subsection 59-10-136(2)(a), both taxpayers are considered to be domiciled in Utah for all of the June 4, 2015 to December 31, 2016 period for which the presumption has arisen for both of them.

In conclusion, under Subsection 59-10-136(2)(a), TAXPAYER-1 is considered to be domiciled in Utah for all of 2015 and 2016 (including the June 4, 2015 to December 31, 2016 period at issue), while TAXPAYER-2 is considered to be domiciled in Utah for all of the June 4, 2015 to December 31, 2016 period at issue. Because the Commission has found that both taxpayers are considered to be domiciled in Utah for the June 4, 2015 to December 31, 2016 period at issue under Subsection 59-10-136(2)(b), the Commission need not analyze the remaining subsections of Section 59-10-136 (i.e., Subsections 59-10-136(2)(b), (2)(c), and (3)) to determine whether they are considered to be domiciled in Utah for this period. However, it may prove useful to make some observations about these remaining subsections and to determine, under one of these subsections, whether TAXPAYER-2, like TAXPAYER-1, is considered to be domiciled in Utah in accordance with Section 59-10-136 for the January 1, 2015 to June 3, 2015 portion of 2015.

E. Subsection 59-10-136(2)(b). This subsection 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. For reasons discussed earlier, the Commission has found that both taxpayers were registered to vote in Utah for all of 2015 and 2016. Accordingly, under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for all of 2015 and 2016, unless they are able to rebut this presumption that has arisen for both of them. For the January 1, 2015 to June 3, 2015 period that the taxpayers were not spouses, the Subsection 59-10-136(2)(b) presumption has arisen for each of them individually. However, both taxpayers admit that they were domiciled in Utah for this portion of 2015, and neither of the taxpayers attempts to rebut the Subsection 59-10-136(2)(b) presumption for this

period. Accordingly, the Commission will find that under Subsection 59-10-136(2)(b), each taxpayer is considered to be domiciled in Utah for the January 1, 2015 to June 3, 2015 portion of 2015.

As to the June 4, 2015 to December 31, 2016 period at issue during which the taxpayers are spouses for purposes of Section 59-10-136 and for which the Subsection 59-10-136(2)(b) has arisen for both taxpayers together, the taxpayers ask the Commission to find that they have rebutted the presumption. Again, because Subsection 59-10-136(2)(b) involves a rebuttable presumption, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

The taxpayers suggest that they have rebutted the Subsection 59-10-136(2)(b) presumption for the entirety of the June 4, 2015 to December 31, 2016 period at issue by showing that they moved to STATE-1 and changed many of their contacts from Utah to STATE-1 during this period. For reasons explained earlier in regards to the Subsection 59-10-136(2)(a) presumption, an individual also cannot rebut the Subsection 59-10-136(2)(b) presumption because he or she would not be considered to be domiciled in Utah under Rule 52 (the property tax rule used to determine income tax domicile for tax years prior to 2012) or because he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). Again, when a Subsection 59-10-136(2) presumption is considered in concert with Section 59-10-136 as a whole, the Commission has generally looked to actions or inactions related to the specific factor described in the presumption to determine whether an individual has rebutted the presumption or not.

For example, if an individual is registered to vote in Utah, the Commission has found that the Subsection 59-10-136(2)(b) presumption can be rebutted by showing that the individual registered to vote in the state to which they moved relatively soon after moving there.[36] On April 26, 2016 (approximately

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

10½ months after moving to STATE-1), the taxpayers registered to vote in STATE-1. As a result, the Subsection 59-10-136(2)(b) presumption is rebutted for the April 26, 2016 to December 31, 2016 portion of 2016 that the taxpayers were registered to vote in STATE-1. However, registering to vote in STATE-1 more than 10 months after moving there is insufficient to rebut the Subsection 59-10-136(2)(b) presumption for the June 4, 2015 to April 25, 2016 portion of the period at issue, especially where the taxpayers have not shown that STATE-1 law precluded them from registering to vote in STATE-1 any sooner than they did.[37]

In addition, 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.[38] No evidence was provided to show that the taxpayers asked for their names to be removed from the Utah voter registry prior to or during the June 4, 2015 to April 25, 2016 period for which the Subsection 59-10-136(2)(b) presumption has arisen but has not already been rebutted.

Furthermore, 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.[39] The taxpayers, however, did not argue that Utah voting laws provided for their names to be removed from the Utah voter registry at any time prior to or during the June 4, 2015 to April 25, 2016 period for which the Subsection 59-10-136(2)(b) presumption has arisen but has not already been rebutted.

The Commission has also found 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

37 *See, e.g., USTC Appeal No. 16-1376* (Initial Hearing Order May 1, 2017) and *USTC Appeal No. 17-1552* (Initial Hearing Order Feb. 7, 2019).
38 *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2019).
39 *See, e.g., USTC Appeal No. 18-539* (Initial Hearing Order Apr. 30, 2019).

and if the individual eventually votes in that state.[40] The taxpayers, however, have not shown that STATE-1 allows an individual who moves there to vote in a STATE-1 election without having registered to vote in STATE-1.

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 did not vote in Utah during the period at issue. The Commission has reached this decision, at least in part, because the Utah Legislature elected to use voting registration, not actual voting, as the criterion that could trigger domicile under Subsection 59-10-136(2)(b).[41] As a result, even though the taxpayers proffer that neither of them voted in Utah during 2015 or 2016, this is insufficient to rebut the Subsection 59-10-136(2)(b) presumption for the June 4, 2015 to April 25, 2016 period for which the Subsection 59-10-136(2)(b) presumption has arisen but has not already been rebutted.

The Commission has also stated in prior cases that it could find in future cases that other circumstances would be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. The taxpayers, however, have not proffered sufficient arguments or evidence to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the June 4, 2015 to April 25, 2016 period for which the Subsection 59-10-136(2)(b) presumption has arisen for both of them together but has not already been rebutted.

In conclusion, under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah from January 1, 2015 to April 25, 2016 (which includes the June 4, 2015 to April 25, 2016 portion of the June 4, 2015 to December 31, 2016 period at issue). When the period for which the taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(2)(b) is considered with the period for which each taxpayer is considered to be domiciled in Utah under Subsection 59-10-136(2)(a), both

40 *See, e.g., USTC Appeal No. 17-1552* (Initial Hearing Order Feb. 7, 2019).
41 *See, e.g., USTC Appeal No. 15-720.*

taxpayers are considered to be domiciled in Utah for all of 2015 and 2016.[42] As a result, it is not necessary to discuss the remaining two subsections of Section 59-10-136 (i.e. Subsections 59-10-136(2)(c) and (3)) to resolve this matter. However, it may prove useful to make some cursory observations about these two remaining subsections.

F. Subsection 59-10-136(2)(c). Under this subsection, there is a rebuttable presumption that an individual is considered to be domiciled in Utah if "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." Accordingly, under Subsection 59-10-136(2)(c), both taxpayers would be considered to be domiciled in Utah for the January 1, 2015 to June 3, 2015 period they asserted Utah residency on their 2015 Utah return, unless they were able to rebut this presumption. However, under Subsection 59-10-136(2)(c), neither taxpayer would be considered to be domiciled in Utah for the June 4, 2015 to December 31, 2016 period at issue.

G. Subsection 59-10-136(3). Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), he or she may still be considered to be domiciled in Utah based on a preponderance of the evidence relating to 12 specific facts and circumstances listed in Subsection 59-10-136(3)(b). Subsection 59-10-136(3), however, is only applicable "if the requirements of Subsection (1) or (2) are not met[.]" Because the Commission has already found that both taxpayers would be considered to be domiciled in Utah for all of 2015 and 2016 (including the June 4, 2015 to December 31,

42 For TAXPAYER-1, he is considered to be domiciled in Utah for all of 2015 and 2016 under Subsection 59-10-136(2)(a), and from January 1, 2015 to April 25, 2016 under Subsection 59-10-136(2)(b). For TAXPAYER-2, she is considered to be domiciled in Utah from June 4, 2015 to December 31, 2016 under Subsection 59-10-136(2)(a), and from January 1, 2015 to April 25, 2016 under Subsection 59-10-136(2)(b) (which, together, constitute all of 2015 and 2016).

2016 period at issue) under Subsection 59-10-136(2)(a) and/or Subsection 59-10-136(2)(b), Subsection 59-10-136(3) has no applicability to this case.

H. Domicile Summary. For reasons discussed above, both taxpayers are considered to be domiciled in Utah for all of 2015 and 2016. Accordingly, pursuant to Subsection 59-10-103(1)(q)(i)(A), both taxpayers are Utah resident individuals for all of 2015 and 2016 (including the June 4, 2015 to December 31, 2016 period at issue). As a result, all of the taxpayers' 2015 and 2016 income is subject to Utah taxation (subject to a credit for taxes imposed by another state, which is not applicable to this appeal).

III. Other Arguments.

The taxpayers suggest that it is unfair that they would be considered to be domiciled in Utah for periods when they lived outside of Utah. The taxpayers may be suggesting Section 59-10-136, as written, results in bad tax policy in certain situations. While the Commission is tasked with the duty of implementing laws enacted by the Legislature, the Commission is not authorized to amend these laws to achieve what the taxpayers may consider to be a better tax policy. That is the role of the Legislature.

IV. Conclusion.

Based on the foregoing, the taxpayers are Utah resident individuals for all of 2015 and 2016 (including the June 4, 2015 to December 31, 2016 period at issue). As a result, the Commission should sustain the Division's assessments for the 2015 and 2016 tax years in their entireties.

_____

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessments for the 2015 and 2016 tax years in their entireties. It is so ordered.

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

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

or emailed to:

taxappeals@utah.gov

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

DATED this _____ day of _____, 2020.

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.