19-58
TAX TYPE: INCOME TAX
TAX YEARS: 2012, 2013, 2014 & 2015
DATE SIGNED: 5/5/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION
"THIS DECISION WAS APPEALED TO A FORMAL HEARING AND THE FORMAL HEARING PROCESS IS STILL PENDING"

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 19-58 Account No. ##### Tax Type: Income Tax Years: 2012, 2013, 2014 & 2015 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner:	REPRESENTATIVE FOR TAXPAYER, Attorney (by telephone) TAXPAYER, Taxpayer (by telephone)
For Respondent:	REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General (by telephone) RESPONDENT, from Auditing Division (by telephone)

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 March 24, 2020.

TAXPAYER ("Petitioner" or "taxpayer") has appealed Auditing Division's (the "Division") assessments of Utah individual income taxes for the 2012, 2013, 2014, and 2015 tax years (which may be referred to as the "audit period").[1] On December 11, 2018, the Division issued Notices of Deficiency and

1 Auditing Division also audited the taxpayer's Utah tax liability for the 2011 tax year. However, on December 11, 2018, the Division issued to the taxpayer a letter concerning the 2011 tax year, in which the

Audit Change ("Statutory Notices") to the taxpayer, in which it imposed taxes and interest (calculated as of January 10, 2019),[2] as follows:

Year	Tax	Penalties	Interest	Total
2012	$$$$$	$$$$$	$$$$$	$$$$$
2013	$$$$$	$$$$$	$$$$$	$$$$$
2014	$$$$$	$$$$$	$$$$$	$$$$$
2015	$$$$$	$$$$$	$$$$$	$$$$$

The taxpayer was not married at any time during the 2012 through 2015 audit period. In 2010, the taxpayer moved from Utah to the State of STATE-1 ("STATE-1"). The taxpayer lived and worked in STATE-1 for the January 1, 2012 to DATE, 2015 portion of the audit period, after which he moved back to Utah. The taxpayer lived in Utah for the DATE, 2015 to DATE, 2015 portion of the audit period. As of the date of the Initial Hearing, the taxpayer continues to live in Utah.

Prior to 2018, the taxpayer had not filed a Utah income tax return for any of the 2012, 2013, 2014, and 2015 tax years. However, on or about DATE, 2018, the taxpayer filed 2012, 2013, and 2014 Utah nonresident returns and a 2015 Utah part-year resident return. On each of the Form TC-40B's accompanying his 2012, 2013, and 2014 Utah returns, the taxpayer reported that he was a Utah nonresident individual for the entire year and he allocated to Utah $0 of his federal adjusted gross income ("FAGI"). On the Form TC-40B accompanying his 2015 Utah return, the taxpayer reported that he was a Utah part-year resident individual from DATE, 2015 to DATE, 2015, and he allocated to Utah -$$$$$ of his 2015 FAGI.[3]

Division informed the taxpayer that "[a]fter reviewing the information you provided and the information available to us, we do not propose any adjustment or additional assessments." It appears that the Division reached this decision after determining that the taxpayer was not a Utah resident individual for any portion of the 2011 tax year. Because the Division has not issued an assessment for the 2011 tax year, that tax year is not at issue in this appeal.

2 Interest continues to accrue until any tax liability is paid. No penalties were issued.

3 The taxpayer did not work during the DATE, 2015 to DATE, 2015 period he lived in Utah. While the taxpayer did not allocate to Utah any of the income that he received during 2015, he did allocate to Utah the $$$$$ of 2015 moving expenses that he incurred for his move from STATE-1 to Utah.

The Division has determined that the taxpayer is domiciled in Utah for all of the 2012, 2013, 2014, and 2015 tax years because he claimed the Utah residential exemption from property taxation on a home he owned in COUNTY, Utah (the "Utah home")[4] for these years. In addition, the Division claims that the taxpayer would also be considered to be domiciled in Utah for the January 1, 2012 to DATE, 2014 portion of the audit period due to his being registered to vote in Utah. As a result, the Division determined that the taxpayer was a Utah resident individual for all of 2012, 2013, 2014, and 2015 and imposed Utah taxes on all of his income for these years.[5] For these reasons, the Division asks the Commission to sustain its 2012, 2013, 2014, and 2015 assessments in their entireties.

The taxpayer, however, contends he was not domiciled in Utah from January 1, 2012 to DATE, 2015, because he intended STATE-1, not Utah, to be his domicile during this portion of the audit period that he lived and worked in STATE-1. The taxpayer points out that the Division did not assess him for the 2011 tax year because the Division determined that he was not domiciled in Utah during 2011. The taxpayer contends that because he was not domiciled in Utah during 2011 and because he did not take any affirmative actions to abandon his STATE-1 domicile and establish a new domicile in Utah until DATE, 2015, he cannot be domiciled in Utah for the January 1, 2012 to DATE, 2015 portion of the audit period. The taxpayer contends

4 Utah Code Ann. §59-2-103(2) (2015) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property[,]" while Utah Code Ann. §59-2-102(35)(a) (2015) defines "residential property" to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that is used as a person's primary residence is only taxed on 55% of its fair market value, while a home 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(35)(a) were amended and/or renumbered during the audit period. However, any amendment to the language cited in this paragraph was nonsubstantive.

5 For a Utah resident individual, Utah Code Ann. §59-10-1003 (2012-2015) 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 its assessment because the taxpayer has not claimed that a state other than Utah has imposed income taxes on the taxpayer's income for the 2012, 2013, 2014, and 2015 tax years (STATE-1 does not impose a state income tax).

that this conclusion is consistent with the common law principle that an individual can only have one domicile at a time.

In addition, while the taxpayer concedes that he received the residential exemption on his Utah home for all of 2012, 2013, 2014, and 2015, he contends that receiving the exemption for these years does not show that he is domiciled in Utah for the January 1, 2012 to DATE, 2015 portion of the audit period, because the Utah home was not his "primary residence" for this portion of the audit period. Furthermore, he contends that he only kept the Utah home during the audit period due to his being "underwater" on the home's mortgage because of the economic crisis of the late 2000's, which led to his having the terms of his mortgage modified under the Home Affordable Refinance Program ("HARP"). Furthermore, the taxpayer contends that he should not be considered to be domiciled in Utah due to his Utah voter registration because he voted in STATE-1 in the 2012 presidential election, which means that he registered to vote in STATE-1 sometime between the date in 2010 that he moved to STATE-1 and the DATE, 2012 date of the 2012 presidential election. For these reasons, the taxpayer asks the Commission to accept his 2012, 2013, 2014, and 2015 Utah returns and to reverse the Division's assessments for these years in their entireties.

APPLICABLE LAW

1. Under Utah Code Ann. §59-10-104(1) (2015)[6], "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

6 All substantive law citations are to the 2015 version of Utah law. Unless otherwise noted, the substantive law remained the same during the 2012, 2013, 2014, and 2015 tax years.

(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 2012, 2013, 2014, and 2015 tax years at issue), UCA §59-10-136 provides for the determination of "domicile," as follows:[7]

> (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

7 Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in Senate Bill 13 (2019) ("SB 13"). However, it is the version of Section 59-10-136 in effect during the 2012 through 2015 tax years that is applicable to this appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

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

(c) For purposes of Subsection (4)(a), an absence from the state:
(i) begins on the later of the date:
(A) the individual leaves this state; or
(B) the individual's spouse leaves this state; and
(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

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

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

(b) For purposes of this section, an individual is not considered to have a spouse if:
(i) the individual is legally separated or divorced from the spouse; or
(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

> (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
> (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

4. In Section 59-10-136, two subsections require the Commission to determine whether the property for which an individual or an individual's spouse claims a residential exemption is that individual's or individual spouse's "primary residence."[8] 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:[9]

> (4) Except as provided in Subsection (5), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, the property owner shall:
> (a) file a written statement with the county board of equalization of the county in which the property is located:
> (i) on a form provided by the county board of equalization; and
> (ii) notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence; and
> (b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.

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8 *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.

9 During the 2012 through 2015 audit period, Subsection 59-2-103.5(4) was renumbered and amended. The amendments to Subsection 59-2-103.5(4) during the audit period issue were nonsubstantive. In SB 13 (2019), the Utah Legislature also amended Section 59-2-103.5. Again, however, the SB 13 amendments have no applicability to the 2012, 2013, 2014, and 2015 tax years at issue in this appeal.

5. For the January 1, 2012 to May 7, 2012 portion of the audit period, Utah Code Ann. §20A-2-305 provided for names to be removed or not be removed from the official voter register, as follows in pertinent part:

> (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
> (2) The county clerk may remove a voter's name from the official register only when:
> (a) the voter dies and the requirements of Subsection (3) are met;
> (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
> (c) the county clerk has obtained evidence that the voter's residence has changed, has mailed notice to the voter as required by Section 20A-2-306 and received no response from the voter, and the voter has failed to vote or appear to vote in either of the next two regular general elections following the date of the notice;
> (d) the voter requests, in writing, that the voter's name be removed from the official register; or
> (e)[10] the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter.
> . . . .

6. Effective May 8, 2012, Section 20A-2-305 was substantively amended. For the May 8, 2012 to DATE, 2015 portion of the audit period, Section 20A-2-305 provides, as follows in pertinent part:

> (1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.
> (2) The county clerk shall remove a voter's name from the official register if:
> (a) the voter dies and the requirements of Subsection (3) are met;
> (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
> (c) the county clerk has:
> (i) obtained evidence that the voter's residence has changed;
> (ii) mailed notice to the voter as required by Section 20A-2-306;
> (iii) (A) received no response from the voter; or
> (B) not received information that confirms the voter's residence; and
> (iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on

10 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2012 though 2015 versions of this statute that are pertinent to this appeal.

> the day after the date of the second regular general election occurring after the date of the notice;
>
> (d) the voter requests, in writing, that the voter's name be removed from the official register;
>
> (e)[11] the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;
>
> (f) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or
>
> (g) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.
>
> . . . .

7. For the 2012 through 2015 tax years, where a change of residence occurs, Utah Code Ann. §20A-2-306 provides for names to be removed or to not be removed from the official voter register, as follows in pertinent part:

> (1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:
>
> (a) confirms in writing that the voter has changed residence to a place outside the county; or
>
> (b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and
>
> (ii) has failed to respond to the notice required by Subsection (3).
>
> (2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:
>
> (i) change the official register to show the voter's new address; and
>
> (ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
>
> (b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
>
> (3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE
>
> We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?
>
> _____

11 Again, effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, it is the 2012 through 2015 versions of this statute that are pertinent to this appeal.

Street City County State Zip

If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or

- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

_____

Signature of Voter"

. . . .

(4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.

(b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:

(i) the voter requests, in writing, that the voter's name be removed; or

(ii) the voter has died.

(c) (i) After a county clerk mails a notice as required in this section, the clerk may list that voter as inactive.

(ii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

(iii) A county is not required to send routine mailings to inactive voters and is not required to count inactive voters when dividing precincts and preparing supplies.

8. For the instant matter, UCA §59-1-1417(1) (2020) provides guidance concerning which party has the burden of proof, as follows:

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following, in which the burden of proof is on the commission:

(a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;

(b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and

(c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:

(i) required to be reported; and

(ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayer has the burden of proof in this matter. The Division contends that the taxpayer is a Utah full-year resident individual for each of the 2012, 2013, 2014, and 2015 tax years. The taxpayer concedes that he is a Utah resident individual for the DATE, 2015 to DATE, 2015 portion of the audit period, but contends that he is not a Utah resident individual for the January 1, 2012 to DATE, 2015 portion of the audit period. For the 2012, 2013, 2014, and 2015 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 contend that the taxpayer is a Utah resident individual for any portion of 2012, 2013, 2014, or 2015 under the 183 day test. Instead, the Division asserts that the taxpayer is a Utah resident individual for the entirety of the audit period under the domicile test. As a result, the Commission will apply the facts to the domicile law in effect for the 2012 through 2015 tax years to determine whether the taxpayer is considered to be domiciled in Utah for all of 2012, 2013, 2014, and 2015 (as the Division contends); or whether the taxpayer is considered to be domiciled in Utah only for the DATE, 2015 to DATE, 2015 portion of the audit period (as the taxpayer contends).

I. Additional Facts.

The taxpayer was raised in STATE-2, but went to college at UNIVERSITY(where his father had gone to college). After graduating from college around 1972, the taxpayer moved to various states other than Utah for employment from 1972 to 1985. In 1985, the taxpayer first moved to STATE-1, where he lived and worked until around 2002 (when he was laid off). Around 2002, the taxpayer accepted a job in Utah, where he moved and remained until 2010. In 2010, the taxpayer was offered a job with his prior STATE-1

employer, which led to his moving back to STATE-1 sometime in 2010. The taxpayer retired from his STATE-1 job in 2015, and he moved back to Utah on DATE, 2015.

The taxpayer has no children and claimed no dependents on his 2012 through 2015 federal returns. In addition, the taxpayer was not enrolled at an institution of higher education during the audit period. All of the "earned income" that the taxpayer earned during the 2012 through 2015 tax years was earned in STATE-1.

During the audit period, the only real property that the taxpayer owned was the Utah home. The taxpayer purchased the Utah home around 2005 and, as of the date of the Initial Hearing, continues to own the home. During the 2010 to DATE, 2015 period that the taxpayer lived in STATE-1, the Utah home remained vacant, in part, because one of the HARP requirements to which the taxpayer agreed in order for the terms of his mortgage to be revised was that he could not rent out the Utah home (i.e., that the Utah home was the primary residence of the taxpayer) and because he could not have sold the home without losing money until around 2016. The taxpayer stated that the Utah home was under foreclosure and that he would have lost his investment in the home had he not agreed to the HARP requirements. The Utah home has approximately #####-square feet of finished living space. For the 2012 through 2015 tax years, the Utah home was assessed a value for property tax purposes that ranged between $$$$$ and $$$$$, and the home received the residential exemption for each of these four tax years.

The taxpayer contends that he returned to Utah no more than seven days in a calendar year during the 2010 to DATE, 2015 period he lived in STATE-1, which the Division did not contest. The taxpayer claims that he only returned to Utah on these occasions to check on his Utah home, which was located in a HOA. The taxpayer contends that he hired landscapers or had the HOA look after his Utah home for most of the 2010 to DATE, 2015 period he lived in STATE-1. For the 2010 to DATE, 2015 period the taxpayer lived in STATE-1, he rented a waterfront home in STATE-1 that was approximately ##### square feet in size and which was worth approximately $$$$$ (the "STATE-1 home"). Although his rental agreement included an

option to purchase the STATE-1 home, he never exercised the option. The taxpayer did not own any real property in STATE-1 during the 2012 through 2015 tax years at issue.

When the taxpayer moved to STATE-1 in 2010, he initially kept his Utah driver's license because it did not expire until mid-2013. On DATE, 2013, the taxpayer obtained a STATE-1 driver's license, which he kept for the remainder of the audit period. When the taxpayer moved to STATE-1 in 2010, he had one or more motor vehicles that were registered in Utah. The taxpayer proffered that he continued to register the vehicle(s) in Utah when the old registration(s) expired. On the other hand, the taxpayer proffered that he may have registered one or more other vehicles in STATE-1. However, he could not remember when he registered a vehicle in STATE-1 and provided no documentation to show that he ever registered a vehicle in STATE-1.

The Division, however, provided some Utah motor vehicle registration information, which shows: 1) that the taxpayer purchased a VEHICLE on DATE, 2013, which the taxpayer registered in Utah; and 2) that the taxpayer registered a vehicle in Utah on DATE, 2013 and DATE, 2014.[12] The information, however, does not show that the vehicle(s) that the taxpayer owned when he moved to STATE-1 in 2010 continued to be registered in Utah. The taxpayer explained that in regards to the VEHICLE he purchased in 2013, he registered it in Utah because it was cheaper to register it in Utah than in STATE-1. However, he explains that he was told by a Utah governmental entity that he could register the VEHICLE in Utah at the time of the 2013 purchase because he still had a Utah driver's license.[13]

The taxpayer was not an active member of a church during the audit period. However, he was a member of a professional organization in STATE-1 during the audit period. During the January 1, 2012 to DATE, 2015 period that the taxpayer lived in STATE-1, he received his mail at a STATE-1 address. During

12 It is unclear whether the vehicle that the taxpayer registered in Utah in October 2013 and August 2014 is the VEHICLE that the taxpayer purchased on DATE, 2013.

13 The Division's information, however, shows that the taxpayer purchased the VEHICLE on DATE, 2013, which is after the DATE, 2013 date the taxpayer obtained a STATE-1 driver's license.

the DATE, 2015 to DATE, 2015 period that the taxpayer lived in Utah, he received his mail at a Utah address.

During the January 1, 2012 to DATE, 2015 period that the taxpayer lived in STATE-1, he filed his 2011, 2012, 2013, and 2014 federal returns using a STATE-1 address. In 2016 (after moving to Utah), the taxpayer filed his 2015 federal return using a Utah address. When the taxpayer filed his 2012, 2013, 2014, and 2015 Utah returns in January 2018, he used a Utah address. On none of the Utah returns did the taxpayer declare that he was a property owner who was no longer qualified to receive a Utah residential exemption authorized for the property owner's primary residence. In addition, the taxpayer never contacted COUNTY and notified it that his Utah home no longer qualified for the residential exemption.

The Division provided Utah voting information that shows that the taxpayer voted in Utah in 2008 and in 2018, but that he did not vote in Utah at any time during the 2012 through 2015 audit period. This information also shows actions taken by the COUNTY clerk's office ("clerk's office") in regards to the taxpayer's Utah voter registration since he first registered to vote in Utah in 2003. This evidence shows that after the taxpayer voted in Utah in 2008, his Utah voter registration was on an "active" status until DATE, 2012, when the clerk's office took an action described as "changed status from active to inactive." Subsequently, on DATE, 2012, the clerk's office took an action described as "status was inactive changed to active" that appears to have occurred because of a "registrant update."

On DATE, 2012, the clerk's office again took an action described as "changed status from active to inactive." On DATE, 2012, the clerk's office again took an action described as "status was inactive changed to active" that appears to have occurred because of a "registrant update." On DATE, 2012, the clerk's office again took an action described as "changed status from active to inactive." Subsequently, the taxpayer's Utah voter registration remained on "inactive" status until DATE, 2014, when the clerk's office took an action described as "made removable and placed in state holding area due to inactivity."

To determine what these actions mean, the Division has previously contacted the Utah Lieutenant Governor's office, which is responsible for elections in Utah. Based on this information, the Division has proffered in prior appeals involving similar voter registration issues: 1) that when a Utah registered voter has little voting activity or when a Utah clerk receives information that a Utah registered voter may have moved, the Utah clerk generally mails the voter a confirmation card on which the clerk informs the voter that records indicate that the voter may have moved and on which the clerk asks for a new address; 2) that if the voter does not respond to the confirmation card, the voter is classified as an "inactive voter;" 3) that an "inactive voter" is still considered to be registered to vote in Utah and can vote if the voter goes to the polls (an "inactive voter," however, will not receive mailings such as voter identification cards and mail-in ballots); and 4) that if an "inactive voter" does not vote within the next four years, the clerk removes the voter from the Utah voter registration rolls (which is the action described as "made removable and placed in state holding area due to inactivity").[14] The Division indicated that this information is also pertinent to the instant appeal.

The taxpayer has not refuted any of the information that the Division has provided in regards to Utah voter registration.[15] As a result, it appears that the taxpayer was registered to vote in Utah for the January 1, 2012 to DATE, 2014 portion of the audit period (while he was on "active" or "inactive" status); and that he was not registered to vote in Utah for the DATE, 2014 to DATE, 2015 portion of the audit period (after he was "made removable").

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14 *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2019). This and other selected Commission decisions can be reviewed in a redacted format on the Commission's website at https://tax.utah.gov/commission-office/decisions.

15 Furthermore, it appears that the Division's explanation reflects, at least in substantial part, Subsection 20A-2-305(2)(c), which provides that a Utah county clerk shall remove a voter's name from the official Utah voter register if: 1) the county clerk obtains evidence that the voter's residence has changed; 2) the county clerk mails notice to the voter as required by Section 20A-2-306; 3) the county clerk receives no response from the voter or does not receive information that confirms the voter's residence; and 4) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice.

The taxpayer contends that on DATE, 2012, he voted in STATE-1 in the 2012 presidential election. As a result, he contends that he must have registered to vote in STATE-1 sometime between 2010 and DATE, 2012. The Division contests these claims because the taxpayer has provided no documentary evidence to support the claims. As explained earlier, the taxpayer has the burden of proof in this matter. The taxpayer cannot remember when between 2010 and DATE, 2012 that he registered to vote in STATE-1. In addition, the Utah voter registration information appears to indicate that the taxpayer took steps in June 2012 and September 2012 to update his Utah voter registration. For these reasons and based on the limited information provided at the Initial Hearing, the Commission finds that the taxpayer has not met his burden of proof to show that he registered to vote in STATE-1 sometime between 2010 and DATE, 2012, or that he voted in STATE-1 in the 2012 presidential election.

As a result, for the Initial Hearing decision, the Commission finds that the taxpayer was registered to vote in Utah for the January 1, 2012 to DATE, 2014 portion of the audit period, during which he was not registered to vote and did not vote in STATE-1. In addition, the Commission finds that the taxpayer was not registered to vote in Utah for the DATE, 2014 to DATE, 2015 portion of the audit period.

II. Domicile Test for the 2012, 2013, 2014, and 2015 Tax Years at Issue.

Subsection 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 2012, 2013, 2014, and 2015 tax years, Section 59-10-136 contains four subsections addressing when a taxpayer is considered to have income tax domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have income tax 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

The taxpayer contends that because the Division determined that he was domiciled in STATE-1 for the 2011 tax year and because he took no action to abandon his STATE-1 domicile and establish a Utah domicile prior to DATE, 2015, he cannot be domiciled in Utah for the January 1, 2012 to DATE, 2015 portion of the audit period. It appears that the taxpayer may be asking the Commission not to determine whether the taxpayer is domiciled in Utah for income tax purposes for the audit period under Section 59-10-136, but under common law domicile principles that concern intent and which are used for other purposes. In Section 59-10-136, however, the Utah Legislature has prescribed the circumstances that do constitute and do not constitute "domicile" for Utah income tax purposes effective for tax year 2012 and applicable to the 2012 through 2015 audit period.

Furthermore, "domicile" is prescribed or applied differently for different Utah purposes. For example, in Utah Code Ann. §41-1a-202(1), the Utah Legislature provides that "domicile" for motor vehicle registration purposes is "the place: (i) where an individual has a fixed permanent home and principal establishment; (ii) to which the individual if absent, intends to return; and (iii) in which the individual and his family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home." Similarly, in Utah Code Ann. §23-13-2(13), the Utah Legislature provides that "domicile" for wildlife resources purposes is, in part, "the place: (i) where an individual has a fixed permanent home and principal establishment; (ii) to which the individual if absent, intends to return; and (iii) in which the individual, and the individual's family voluntarily reside, not for a special or temporary purpose, but with the intention of making a permanent home." For these specific purposes, the Utah Legislature has provided for "domicile" to be applied in ways where an individual's intent is considered in determining their domicile for these purposes, which is similar to how "domicile" is applied under common law domicile principles and was applied in the pre-2012 Utah income tax laws that the Utah Legislature replaced with Section 59-10-136 beginning with tax year 2012.

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.

As a result, the Utah Legislature clearly intended for "domicile" to be prescribed or applied differently for Utah income tax purposes beginning with tax year 2012 than it had been prescribed or applied for this purpose prior to 2012 and may be applied under common law principles for other purposes. Accordingly, to determine whether the taxpayer is considered to be domiciled in Utah for income tax purposes for the 2012, 2013, 2014, and 2015 tax years, the Commission will make its determination based on the various income tax domicile provisions found in Section 59-10-136, not the common law principles that concern "domicile."[17] The Commission will begin its analysis of Section 59-10-136 with a discussion of Subsection 59-10-136(5)(b).

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. Because the taxpayer was not a married individual at any time during the 2012, 2013, 2014, and 2015 tax years, he is not considered to have a spouse for purposes of Section 59-10-136 for any portion of these years.

B. Subsection 59-10-136(4). The taxpayer does not argue that he is *not* considered to be domiciled in Utah under Subsection 59-10-136(4) for any portion of the 2012 through 2015 tax years. For an individual who does not have a spouse for purposes of Section 59-10-136, the Subsection 59-10-136(4) exception from domicile applies if the individual is "absent from the state" (i.e., absent from Utah) for at least 761 consecutive days, if a number of other conditions are also met. For the 2010 to DATE, 2015 period that the taxpayer lived in STATE-1, he was absent from Utah for at least 761 consecutive days. The taxpayer, however, does not meet all of the other listed conditions.

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17 The taxpayer contends that an individual can only be domiciled in one state at any one time. That may be true under common law principles concerning "domicile" and for Utah income tax purposes prior to 2012 (when the more traditional application of "domicile" was in effect under Rule 2 and/or Rule 52). However, once the Utah Legislature amended Utah's income tax domicile laws by enacting Section 59-10-136 effective for tax year 2012, an individual may be considered to be domiciled in Utah and in another state at the same time for state income tax purposes (with double taxation concerns mitigated by the credit provided under Section 59-10-1003). For example, if an individual is considered to be domiciled in STATE-3 for income tax purposes under STATE-3 law and if that individual is enrolled as a resident student in a Utah institution of higher education, that individual would also be considered to be domiciled in Utah for income tax purposes under Subsection 59-10-136(1)(a)(ii).

Specifically, the taxpayer does not meet the condition set forth in Subsection 59-10-136(4)(a)(ii)(D), which is not met if the individual claims a Utah residential exemption on the individual's primary residence.[18] For the Subsection 59-10-136(4)(a)(ii)(D) condition *not* to be met in regards to the Utah home, two elements must exist. First, the taxpayer must have claimed the residential exemption on the Utah home. Second, the Utah home on which the taxpayer claimed the residential exemption must be considered the "primary residence" of the taxpayer in accordance with the guidance provided in Subsection 59-2-103.5(4). If both of these elements exist, the Subsection 59-10-136(4)(a)(ii)(D) condition will not have been met.

As to the first element, because the taxpayer received the residential exemption on the Utah home for all of the 2012, 2013, 2014, and 2015 tax years, he is considered to have claimed the residential exemption on the home for these years. 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

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 taxpayer, however, admits that a tenant did not live in the Utah home for any portion of the audit period.

the application also constitutes a claim to the exemption.[19] No evidence was proffered to suggest that COUNTY 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 Utah home without the taxpayer's having filed an application to receive the exemption. For these reasons and because the taxpayer received the residential exemption on his Utah home for all of the 2012 through 2015 tax years, the Commission finds that the taxpayer claimed the residential exemption on the home for these years. Accordingly, the first element for the Subsection 59-10-136(4)(a)(ii)(D) condition not to be met exists for the entirety of the audit period.

As to the second element, for purposes of Section 59-10-136, the Utah home is considered to be the taxpayer's "primary residence" for all of the 2012 through 2015 tax years, regardless of whether the taxpayer was living in STATE-1. 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.

The taxpayer never filed a written statement to notify COUNTY that his Utah home did not qualify for the residential exemption for any of the audit years. In addition, the taxpayer never declared on page 3 of a

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).

Utah return that he no longer qualified to receive the residential exemption for his Utah home.[20] Accordingly, pursuant to Subsection 59-2-103.5(4), the taxpayer's Utah home is considered to be his "primary residence" during all of the 2012 through 2015 tax years. Because the taxpayer meets both of these elements for all of the 2012 through 2015 audit period, he has not met the Subsection 59-10-136(4)(a)(ii)(D) condition for any portion of the audit period.[21] As a result, the Subsection 59-10-136(4)(a) domicile exception would not apply to the taxpayer for any portion of the audit period.

As a result, the Commission must analyze whether the taxpayer *is* considered to have domicile in Utah for the audit period 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 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 taxpayer for any portion of the 2012 through 2015 tax years.

20 Filing an amended Utah return(s) on which the taxpayer now declares he was not qualified to receive the residential exemption for his Utah home for all or a portion of the audit period would be insufficient to show that the Utah home was not his "primary residence" during the audit period. The Commission has previously found that taking such "corrective" actions after the audit process has begun do not negate the actions that were taken during the tax years at issue. *See, e.g., USTC Appeal No. 15-1582* (Initial Hearing Order Aug. 26, 2016).

21 At the hearing, the taxpayer argues that he can "rebut" his claiming the residential exemption on his Utah home. 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).

Accordingly, under Subsection 59-10-136(1), the taxpayer would not be considered to be domiciled in Utah for any portion of the audit period.

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's 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, the taxpayer claimed the residential exemption on the Utah home for all of the 2012 through 2015 tax years. Second, the Utah home is considered to be the taxpayer's primary residence for all of these years. Accordingly, under Subsection 59-10-136(2)(a), the taxpayer will be considered to be domiciled in Utah for all of the 2012 through 2015 tax years, unless he is able to rebut the presumption for all or a portion of the audit period.

Because Subsection 59-10-136(2)(a) involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual whose actions give rise to this presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to this presumption *is not* considered to have domicile in Utah.[22] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. As a result, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

The taxpayer does not attempt to rebut the Subsection 59-10-136(2)(a) presumption for the DATE, 2015 to DATE, 2015 portion of the audit period that he lived in the Utah home. As a result, the Commission

22 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).

will find that the taxpayer is considered to be domiciled in Utah for this DATE, 2015 to DATE, 2015 portion of the audit period.

The taxpayer, however, does attempt to rebut the presumption for the January 1, 2012 to DATE, 2015 portion of the audit period that he lived in STATE-1 (which may be referred to as the "period at issue"). The taxpayer contends that he has rebutted the Subsection 59-10-136(2)(a) presumption for the period at issue by showing that he had the requisite intent to make STATE-1 his permanent home for this period, which he contends is demonstrated, at least in part, by his having established his domicile in STATE-1 for the 2011 tax year and by his not abandoning his STATE-1 domicile and establishing a domicile in Utah until DATE, 2015. The taxpayer's argument appears to rely on intent and weighing an individual's contacts with various states when determining whether he is 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 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.[23]

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

23 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016).

was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[24]

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 such as common law domicile principles) 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).[25] In Section 59-10-136, however, the Utah Legislature 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)

24 *See, e.g., USTC Appeal No. 15-1857*.

25 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 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).

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).[26]

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 exceptions, 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 (such as common law principles) 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.[27]

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.

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26 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 registered to vote in Utah.

27 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

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.[28] 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, the taxpayer never asked COUNTY to remove the residential exemption from the Utah home.

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).[30] The taxpayer, however, did not declare on a Utah return that he was a Utah residential property owner who no longer qualified to receive the residential exemption from property taxation for his primary residence.

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).[31] The taxpayer did not list his Utah home for sale during the January 1, 2012 to DATE, 2015 period at issue.

In addition, the Commission has found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home that 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

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on some sort of traditional income tax domicile criteria.

28 This conclusion is consistent with prior Commission decisions. *See, e.g., USTC Appeal No. 18-1841* (Initial Hearing Order Jan. 13, 2020).

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

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

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).[32] The taxpayer, however, did not list the Utah home for rent during the January 1, 2012 to DATE, 2015 period at issue. That the taxpayer did not attempt to rent the Utah home because of the HARP provisions to which he agreed is not sufficient to rebut his claiming and receiving the benefits of the residential exemption on his Utah home.

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.[33] The Utah home, however was not under its initial construction for any portion of the January 1, 2012 to DATE, 2015 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.[34] 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. That the taxpayer decided not to sell his Utah home while he lived in STATE-1 because it was "underwater" is also insufficient to rebut his claiming and receiving the benefits of the residential exemption on his Utah home. The taxpayer has not proffered sufficient arguments or evidence to rebut the Subsection 59-10-136(2)(a) presumption for the January 1, 2012 to DATE, 2015 period that remains at issue. For this reason and because the taxpayer does not attempt to rebut the presumption for the DATE, 2015 to DATE, 2015 portion of the audit period, the taxpayer is considered to be domiciled in Utah for all of the 2012, 2013, 2014, and 2015 tax years under Subsection 59-10-136(2)(a).

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

32 *See, e.g., USTC Appeal No. 17-758* (Initial Hearing Order Jan. 26, 2018).

33 *See, e.g., USTC Appeal No. 17-1589.*

Because the Commission has found that the taxpayer is considered to be domiciled in Utah for all of the 2012 through 2015 audit period under Subsection 59-10-136(2)(a), 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 the taxpayer is considered to be domiciled in Utah for the audit period. However, it may prove useful to make some observations about these remaining subsections.

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 the taxpayer was registered to vote in Utah for the January 1, 2012 to DATE, 2014 portion of the audit period. Accordingly, under Subsection 59-10-136(2)(b), the taxpayer is considered to be domiciled in Utah from January 1, 2012 to DATE, 2014, unless he is able to rebut this presumption.

The taxpayer suggests that he has rebutted the Subsection 59-10-136(2)(b) presumption for all of the January 1, 2012 to DATE, 2014 period for which the presumption has arisen because of his intent to make STATE-1, not Utah, his permanent home 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), under the 12 factors listed in Subsection 59-10-136(3)(b), or under common law domicile principles. 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

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34 *See, e.g., USTC Appeal No. 15-1582.*

the state to which they moved relatively soon after moving there.[35] However, for reasons discussed earlier, the evidence provided at the Initial Hearing is insufficient to show that the taxpayer registered to vote in STATE-1 prior to or during the January 1, 2012 to DATE, 2014 period for which the Subsection 59-10-136(2)(a) presumption has arisen.

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.[36] The taxpayer, however, never asked for his name to be removed from the Utah voter registry prior to or during the January 1, 2012 to DATE, 2014 period for which the Subsection 59-10-136(2)(b) presumption has arisen.

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.[37] Pursuant to Subsection 20A-2-306(4)(c), a Utah voter on "inactive" status is "allowed to vote, sign petitions, and have all other privileges of a registered voter[,]" but might not receive "routine mailings." As a result, it appears that the taxpayer was still allowed to vote, sign petitions, and have all other privileges of a Utah registered voter for those portions of the January 1, 2012 to DATE, 2014 period that he was on an "inactive" status. For these reasons, the Commission finds that the taxpayer has not rebutted the Subsection 59-10-136(2)(b) presumption for any portion of the January 1, 2012 to DATE, 2014 period that he was registered to vote in Utah because of his being on an "inactive" status for some of this period.

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

36 *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2019).

37 *See, e.g., USTC Appeal No. 18-539* (Initial Hearing Order Apr. 30, 2019).

However, pursuant to Subsection 20A-2-305(2)(c), a Utah county clerk was not allowed to remove the taxpayer's name from the Utah voter registry until after the DATE, 2014 regular general election (i.e., the second regular general election after the taxpayer was last placed on an "inactive" status and did not vote or appear to vote), which resulted in the taxpayer's name being removed from the Utah voter registry on DATE, 2014. It is not unreasonable that it took the Utah county clerk about a month to remove the taxpayer's name from the official voter registry once the regular general election of DATE, 2014 occurred without the taxpayer's having voted or appeared to vote. Nevertheless, where the clerk was required to remove the taxpayer's name from the official voter registry on or after DATE, 2014, and where the clerk did not remove his name until DATE, 2014, the Commission finds that the Subsection 59-10-136(2)(b) presumption has been rebutted for the period occurring after the DATE, 2014 election. Specifically, the presumption is rebutted for the DATE, 2014 to DATE, 2014 portion of the January 1, 2012 to DATE, 2014 period for which the Subsection 59-10-136(2)(b) presumption has arisen.

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 and if the individual eventually votes in that state.[38] The taxpayer, however, has 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).[39] As a result, even though the taxpayer did not vote in Utah during the January 1, 2012 to DATE, 2014 period for which the

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

Subsection 59-10-136(2)(b) has not already been rebutted, this is insufficient to rebut the Subsection 59-10-136(2)(b) presumption.

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 taxpayer, however, has not proffered sufficient arguments or evidence to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the January 1, 2012 to DATE, 2014 period for which the Subsection 59-10-136(2)(b) presumption has arisen but has not already been rebutted. In conclusion, under Subsection 59-10-136(2)(b), the taxpayer is also considered to be domiciled in Utah for the January 1, 2012 to DATE, 2014 portion of the audit period.

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), the taxpayer would also be considered to be domiciled in Utah for the DATE, 2015 to DATE, 2015 period he asserted Utah residency on his 2015 Utah return, unless he was able to rebut this presumption.

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 the taxpayer would be considered to be domiciled in Utah for all of the 2012 through 2015 audit period under Subsection 59-10-136(2)(a), Subsection 59-10-136(3) has no applicability to this case.

III. Conclusion.

Based on the foregoing, the taxpayer is considered to be domiciled in Utah for all of the 2012 through 2015 audit period. Accordingly, pursuant to Subsection 59-10-103(1)(q)(i)(A), the taxpayer is s Utah resident individual for all of the 2012 through 2015 audit period. For these reasons, the Commission should sustain the Division's 2012, 2013, 2014, and 2015 assessments 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 2012, 2013, 2014, and 2015 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.