19-173
TAX TYPE: INCOME TAX
TAX YEAR: 2015, 2016 and 2017
DATE SIGNED: 6/19/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 AND TAXPAYER-2, Petitioner, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 19-173 Account No. ##### Tax Type: Income Tax Tax Year: 2015, 2016 and 2017 Judge: Marshall

Presiding:
Jan Marshall, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, *Pro Se*
TAXPAYER-2, *Pro Se*
For Respondent: RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 23, 2020 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners ("Taxpayers") timely appealed the Respondent's ("Division") audits of their individual income tax returns for the 2015, 2016, and 2017 tax years. For the 2015 tax year, the Division assessed audit tax of $$$$$ and interest of $$$$$ through January 27, 2019. For the 2016 tax year, the Division assessed audit tax of $$$$$ and interest of $$$$$ through January 27, 2019. For the 2017 tax year, the Division assessed audit tax of $$$$$ and interest of $$$$$ through January 27, 2019. No penalties were assessed on the audits, though interest continues to accrue on any unpaid balance.

APPLICABLE LAW

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

The term "state taxable income" is defined in Utah Code Ann. §59-10-103(1)(w), below in pertinent part:

(i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:
(A) additions and subtractions required by Section 59-10-114; and
(B) adjustments required by Section 59-10-115…

"Resident individual" is defined in Utah Code Ann. §59-10-103(1)(q), as follows:

(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.

The factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136, as set forth below:

(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;

(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.

If a property does not qualify to receive the primary residential exemption, the property owner is required to take certain steps, outlined in Utah Code Ann. §59-2-103.5, below in pertinent part:

(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) A property owner is not required to file a written statement or make the declaration described in Subsection (4) if the property owner:
(a) changes primary residences;
(b) qualified to receive a residential exemption authorized under Section 59-2-103 for the residence that was the property owner's former primary residence; and
(c) qualifies to receive a residential exemption authorized under Section 59-2-103 for the residence that is the property owner's current primary residence.

Utah Code Ann. §20A-2-305 provides for removal of a voter's name from the official voter, register as follows:

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

(3) The county clerk shall remove a voter's name from the official register within five business days after the day on which the county clerk receives confirmation from the Department of Health's Bureau of Vital Records that the voter is deceased.

Utah Code Ann. §20A-2-306 addresses the removal of names from the official voter register where a change of residence occurs, as set forth below:

(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?

_____

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"

"The portion of your voter registration form that lists your driver license or identification card number, social security number, email address, and the day of your month of birth is a private record. The portion of your voter registration form that lists your month and year of birth is a private record, the use of which is restricted to government officials, government employees, political parties, or certain other persons.

You may apply to the lieutenant governor or your county clerk to have your entire voter registration record classified as private."

(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 county clerk may list that voter as inactive.

(ii) If a 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, the county clerk may list that voter as inactive.

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

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

Under Utah Code Ann. §59-1-1417(1), the burden of proof is generally upon the petitioner in proceedings before the commission, 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

The Taxpayers filed married filing joint federal returns for each of the years at issue. For the 2015 tax year, the Taxpayers filed a married filing joint non/part-year resident Utah individual income tax return. On the return, the Taxpayers declared they were residents of Utah from January 1, 2015 through DATE, 2015. On DATE, 2018, the Division issued a Notice of Deficiency and Audit Change to the Taxpayers for the 2015 tax year. The Division changed the return type from a non/part-year resident to a full-year resident, reduced the Utah adjusted gross income on a part-year return from $$$$$ to $$$$$, and calculated tax liability on the Taxpayers' total adjusted gross income of $$$$$$. For the 2016 tax year, the Taxpayers filed a married filing joint non/part-year resident Utah individual income tax return.[1] The Taxpayers declared they were residents of STATE-1 for all of 2016. On DATE, 2018, the Division issued a Notice of Deficiency and Audit Change to the Taxpayers for the 2016 tax year. The Division changed the return type from a non/part-year resident to a full-year resident, reduced the Utah adjusted gross income on a part-year return from $$$$$ to $$$$$, and calculated tax liability on the Taxpayers' total adjusted gross income of $$$$$. For the 2017 tax year, the Taxpayers filed a married filing joint non/part-year resident Utah individual income tax return. The Taxpayers declared they were residents of Utah from DATE, 2017 through DATE, 2017. On DATE, 2018, the Division issued a Notice of Deficiency and Audit Change to the Taxpayers for the 2017 tax year. The Division changed the return type from a non/part-year resident to a full-year resident, reduced the Utah adjusted gross income on a part-year return from $$$$$ to $$$$$, and calculated tax liability on the Taxpayers' total adjusted gross income of $$$$$. It is the Division's position that the Taxpayers were "resident individuals" of Utah for tax purposes because they were domiciled in Utah for all of 2015, 2016, and 2017. It is the Taxpayers' contention that they were domiciled in STATE-1 from $$$$$, 2015 through $$$$$, 2017.

The Taxpayers were residents of Utah in years prior to the audit period. In February 2015, TAXPAYER-1's employer transferred him to STATE-1. He commuted to and from STATE-1 for a while. TAXPAYER-2 and the Taxpayers' children remained in Utah until DATE, 2015, when they joined TAXPAYER-1 in STATE-1. In June 2017, TAXPAYER-1's position in STATE-1 concluded, and he was transferred back to Utah. The Taxpayers then moved back to Utah.

The Taxpayers' children attended Utah public schools until they moved to STATE-1 in August 2015. The Taxpayers stated their children were home-schooled in STATE-1 for the first

[1] Each of the Taxpayers' employers reported a portion of their 2016 wages as Utah sourced. The Taxpayers had no explanation for this and maintain they lived and worked in STATE-1 for all of 2016.

year after they moved. The children then attended STATE-1 public schools. Neither of the Taxpayers were enrolled in a Utah institution of higher education.

The Taxpayers owned a home in CITY-1, Utah. This home received the primary residential exemption during each of the years in question. The Taxpayers listed their home in CITY-1 for sale on DATE, 2015 with NAME-1 as the agent. On DATE, 2016, the status of the listing was changed from "active" to "off market." It appears that on DATE, 2016, the listing was withdrawn. On DATE, 2016, the listing was made "active" again with a new listing agent, NAME-2. On DATE, 2016, it appears the home was under contract; however, the listing was made active again on DATE, 2016. On DATE, 2016, the listing was withdrawn. The home was listed with NAME-3 on DATE, 2016. The notes on the listing with NAME-3 provided, "[h]ome is available to see anytime with at least a few hours notice. One of the owners lives there and needs notice. Thank you." The listing with NAME-3 was withdrawn on DATE, 2016. On DATE, 2017, the listing for the home was again "active" with a new listing agent, NAME-4. The listing history shows that the property went under contract on DATE, 2017. On DATE, 2017, the listing status was changed from "under contract" to "sold."

The Taxpayers stated that during the periods the home was not listed with an agent, the home was "for sale by owner." They stated that the original "for sale" sign was still on the property. In addition, there was a banner on the back deck, visible from the Murdock Trail, which runs behind the home. The Taxpayers stated that there were two realtors who lived in the neighborhood, and they would bring potential buyers through the home. The Taxpayers stated that TAXPAYER-1's mother showed the home to several people during that period. The Taxpayers stated that TAXPAYER-1's mother was the owner referenced in the listing notes as living in the home. The Taxpayers stated that she was not actually living at the home, but was caring for the property. The Taxpayers stated that TAXPAYER-1's mother was living in CITY-2 with another of her daughters. The Taxpayers explained that after a real estate agent walked in on her mother while cleaning, they had the listing agent add a requirement of notice to show the property. The Taxpayers also provided a letter from a loan officer, who indicated that he was the loan officer for two different buyers that made offers on the Taxpayers' CITY-1 home. The letter indicates that the offers were lower than the Taxpayers believed the home should sell for. The letter indicates that the offers were made in DATE and DATE 2018; however, the Taxpayers believe this was a mistake, as the offers were received in 2017.

The Taxpayers stated that the CITY-1 home was vacant, that they took all of their furniture with them when they moved to STATE-1 in DATE 2015. The Taxpayers stated that when the CITY-1 home was under contract in 2016, they had put an offer in on a home in

STATE-1. They stated that the offer was contingent on the sale of the Utah home, and that fell through. The CITY-1 home sold on DATE, 2017. When the Taxpayers moved back to Utah in 2017, they purchased a new home in the same area. The Taxpayers closed on the new home on DATE, 2017.

The Division's representative argued that the Taxpayers should be considered domiciled in Utah for each of the audit years in question because the CITY-1 home received the primary residential exemption. He stated that the Taxpayers did not check the box on their individual income tax returns indicating that they no longer qualified to receive the primary residential exemption. The Division's representative noted that the Commission has previously found that if a home is listed for sale and vacant, that may be sufficient to rebut the presumption of domicile based on receiving the primary residential exemption. However, he noted that in this case, there are questions as to the dates the home was listed for sale and whether it was actually vacant. The Division's representative argued that the Taxpayers should be domiciled in Utah for at least the period from DATE, 2016 through DATE, 2017 when the home in CITY-1 was not listed for sale with an agent.

The Taxpayers obtained STATE-1 driver licenses after they moved. They provided copies of their STATE-1 driver licenses, which were issued on DATE, 2016.

The Taxpayers were registered to vote in Utah prior to moving to STATE-1. The Division provided information showing that TAXPAYER-1 registered to vote in Utah on DATE, 2012. His status was changed to inactive in February 2017, and was changed again to active in March of 2018. The Division provided information showing that TAXPAYER-2 registered to vote in Utah on DATE, 2011. Her status was changed from active to inactive in February 2017, and was changed again to active in March 2018. After moving, the Taxpayers registered to vote in STATE-1. They provided copies of their STATE-1 voter registration certificates. The voter registration certificates show the Taxpayers registered to vote in STATE-1 on DATE 2016. The Division's representative argued that the Taxpayers would be domiciled in Utah based on their voter registration, up until the time they registered to vote in STATE-1, in May 2016.

The Taxpayers registered their vehicles in STATE-1. They provided a copy of the vehicle registration for a VEHICLE that was valid through DATE 2017. The Taxpayers also provided a copy of the renewal registration for a VEHICLE-2 that was valid through DATE 2018.

The Legislature enacted domicile legislation that became effective beginning with the 2012 tax year, and was in effect for the 2015, 2016, and 2017 tax years at issue. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. Subsection (4) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have domicile in

the State of Utah if certain qualifications are met. The Taxpayers do not meet the qualifications of Subsection (4), as they were not absent from the state for at least 761 days and because the primary residential exemption was in place for the home in CITY-1. The specific date TAXPAYER-1 left Utah was not provided. Though he may have been absent from Utah for 761 days, TAXPAYER-2 was not. For purposes of Utah Code Ann. §59-10-136(4), the 761 day period does not start running until both of the spouses are absent from Utah. There were no tenants in the CITY-1 home, and the primary residential exemption was in place for a portion of the audit period.

The Taxpayers are each other's spouse for the years at issue. Utah Code Ann. §59-10-136(5)(a) provides that 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. Subsection (5)(b) provides that an individual is not considered to have a spouse if the individual is legally separated or divorced from the spouse, or the individual and individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. The Taxpayers submitted federal returns with a married filing joint status for the tax years at issue. There was no evidence or testimony presented at the hearing that the Taxpayers were legally separated or divorced during the years in question. Thus if either TAXPAYER-1 or TAXPAYER-2 is considered to have domicile in Utah under Utah Code Ann. §59-10-136, the other is also considered to have domicile in this state.

The Taxpayers are domiciled in Utah under the provisions of Utah Code Ann. §59-10-136(1) from January 1, 2015 through the end of the 2014-2015 school year, and from the start of the 2017-2018 school year through DATE, 2017.[2] If a dependent claimed on the individual's or individual's spouse's federal return is enrolled in a Utah public school, the individual is considered domiciled in Utah. The Taxpayers had minor children who were claimed as dependents on their federal tax return. The Taxpayers' children attended Utah public schools prior to the move to STATE-1, and upon the Taxpayers' return to Utah. Additionally, if an individual or individual's spouse is a resident student enrolled in an institution of higher education in Utah, the individual is considered domiciled in Utah. The Taxpayers asserted they were not enrolled as a resident student in an institution of higher education.

[2] The Commission notes that this coincides with the Taxpayers' part-year resident filings for the 2015 and 2017 tax years, and that the Taxpayers are not contesting that they were domiciled in Utah from January 1, 2015 through DATE, 2015, and from DATE, 2017 through DATE, 2017.

The Division argued that the Taxpayers are presumed to be domiciled in Utah because the home in CITY-1 received the primary residential exemption during the audit period. Utah Code Ann. §59-10-136(2)(a) provides as follows:

> (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…

Utah Code Ann. §59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Utah Code Ann. §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 a 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.

For purposes of Utah Code Ann. §59-10-136, the Taxpayers' home in CITY-1 is considered to be their "primary residence." beginning on the first day of the audit period on January 1, 2015, until DATE, 2017, the date on which the Taxpayers sold the property. The Taxpayers' home that they purchased on DATE, 2017, is considered to be their "primary residence" from DATE, 2017 until DATE, 2017. When Utah Code Ann. §59-10-136 and Utah Code Ann. §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 certain affirmative steps. First, the property owner must 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. Second, the property owner must declare on their Utah individual income tax return for the taxable year that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence. The Taxpayers are both presumed domiciled in Utah under Utah Code Ann. §59-10-136(2)(a) from January 1, 2015 until DATE, 2017, and from DATE, 2017, until DATE, 2017 because neither of them had asked the county to remove this exemption from either of the Utah homes; and the Taxpayers had not checked the proper box on Part 7 of their

Utah individual income tax return to indicate they were no longer qualified to receive this property tax exemption.

The Legislature did not provide what circumstances are sufficient to rebut the presumption in Subsection (2)(a), leaving it to the Commission to determine which circumstances are sufficient to rebut the presumption. The Commission has held in prior cases that a taxpayer has failed to rebut the presumption of domicile because an individual was unaware that they were receiving the primary residential exemption.[3] Likewise, the Commission has previously found that retroactively removing the primary residential exemption and paying the difference in property tax is insufficient to rebut the presumption of domicile.[4] The Commission has found that the Subsection (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).[5] In addition, the Commission has found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home is 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).[6] [7] In this case, the Taxpayers moved their furniture out of the home and listed it with an agent when they moved to STATE-1. The property was first listed with an agent on DATE, 2015. The property was for sale by owner from DATE, 2016 until DATE, 2017, when it was once again listed with an agent. The Division questioned whether the property was actually vacant, due to the notes on the listing about one of the owners living in the home and notice being required. The Commission finds the Taxpayer's explanation to be reasonable, and notes that the property had been listed for several months prior to the note about notice being required before a showing. The Taxpayers have stated that the home was "for sale by owner" during this time, and proffered testimony that they received offers during this time, that TAXPAYER-1's mother was showing the property to prospective buyers, and there were signs on the property. The Commission finds the Taxpayers

[3] *See* Appeal nos. 14-30 and 15-720.
[4] *See* Appeal nos. 15-1582 and 17-1787.
[5] S*ee* Appeal No. 17-812.
[6] S*ee* Appeal No. 15-1332.
[7] Other factors the Commission found rebutted the Subsection 59-10-136(2)(a) presumption were that it could 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). S*ee* Appeal No. 17-758. In another decision, the Commission 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. *See* Appeal No. 15-1582.

have rebutted the presumption of domicile under Subsection (2)(a) from DATE, 2015 through DATE, 2017, when the home sold. Once the home sold, the presumption of domicile under Subsection (2)(a) does not arise for Taxpayers until they purchased the new home in Utah on DATE, 2017. From DATE, 2017 until DATE, 2017, the presumption of domicile based on Subsection (2)(a) arises for the Taxpayers. The Taxpayers have not provided evidence, as previously discussed, to rebut the presumption of domicile from January 1, 2015 to DATE, 2015 or from DATE, 2017 until DATE, 2017.

The Division argued that the Taxpayers are domiciled in Utah from January 1, 2015 until DATE 2016 because the Taxpayers were registered to vote in Utah. Utah Code Ann. §59-10-136(2)(b) provides as follows:

> There is a rebuttable presumption that an individual is considered to have domicile in this state if:
> (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration…

The Tax Commission has considered what would rebut and what does not rebut the Subsection (2)(b) presumption of Utah domicile in many appeal decisions.[8] Factors found to rebut the presumption include a showing that the individual registered to vote in the state to which they moved relatively soon after moving there.[9] The Commission has also found that the Subsection (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.[10] In addition, the Commission found the 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.[11] However, the Commission has found that an individual cannot rebut the Subsection (2)(b) presumption by showing that they did not vote in Utah during the tax year at issue.[12] Because both TAXPAYER-1 & TAXPAYER-2 were registered to vote in Utah, they are presumed to be domiciled in Utah under Utah Code Ann. §59-10-136(2)(b) for the entire audit period. The Taxpayers provided information showing that they both registered to vote in STATE-1 on DATE, 2016. Thus, the Taxpayers have rebutted the presumption of domicile based on Utah Code Ann. §59-10-136(2)(b)

[8] *See* Appeal No. 17-1624.
[9] *See* Appeal No. 15-720.
[10] *See* Appeal No. 18-793.
[11] *See* Appeal No. 18-539. Further, in Appeal No. 17-1552, the Commission indicated 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.
[12] *See* Appeal No. 15-720.

from DATE, 2016 until DATE, 2017, when the Taxpayers moved back to Utah. As noted above, the Commission has found that registering to vote in another state relatively soon after moving there may rebut the presumption of domicile. The Taxpayers registered to vote in STATE-1 nine and a half months after moving. This length of time is insufficient to rebut the presumption for that period prior to when the Taxpayers registered to vote in another state. The Taxpayers have not rebutted the presumption of domicile under Subsection (2)(b) from January 1, 2015 through DATE, 2016, nor have the Taxpayers rebutted the presumption from DATE, 2017, when they moved from STATE-1 to Utah and were both still on the Utah voter register.

There is a rebuttable presumption that the Taxpayers are domiciled in Utah from January 1, 2015 through DATE, 2015 and from DATE, 2017 through DATE, 2017. The Taxpayers declared they were residents of Utah from January 1, 2015 through DATE, 2015 on their 2015 Utah individual income tax return. The Taxpayers declared they were residents of Utah from DATE, 2017 through DATE, 2017 on their 2017 Utah individual income tax return. Utah Code Ann. §59-10-136(2)(c) provides as follows:

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

The Taxpayers are not disputing that they were domiciled in Utah under Subsection 59-10-136(2)(c) during these periods, and have proffered no evidence to rebut the presumption of domicile for the period of January 1, 2015 through DATE, 2015 and DATE, 2017 through DATE, 2017.

Prior to the enactment of Utah Code Ann. §59-10-136, the factors that create the rebuttable presumptions of domicile found in Subsection (2), as well as the education factors found in Subsection (1), were included in a non-exhaustive list of factors found in Administrative Rule R884-24P-52, which the Commission used to determine domicile for tax years prior to 2012. However, Utah Code Ann. §59-10-136 establishes a hierarchy of specific factors to establish domicile in Utah. The education factors found in Subsection (1) create an absolute indication of domicile, and the Subsection (2) factors create rebuttable presumptions of domicile. Thus, those factors were given greater importance in establishing domicile for those tax years that Utah Code Ann. §59-10-136 is in effect. It is clear that the Legislature intended that an individual meeting one of the factors in Subsection (1) would, with limited exception, be considered domiciled in Utah. Further, it is clear that the Legislature intended that an individual meeting one

of the factors that create a rebuttable presumption in Subsection (2) might be considered domiciled in Utah, regardless of whether that individual would otherwise be considered domiciled somewhere other than Utah under a more traditional domicile test. To find that an individual can rebut a Subsection (2) presumption by showing the individual would not be considered domiciled in Utah under a more traditional domicile test does not consider the Subsection (2) presumptions in concert with the structure and language of Utah Code Ann. §59-10-136 as a whole, and would frustrate the plain meaning of the statute.

The Commission has determined the Taxpayers were domiciled in Utah from January 1, 2015 through DATE, 2016, and from DATE, 2017 through DATE, 2017 under Utah Code Ann. §59-10-136(1) and (2). The Taxpayers have rebutted the presumptions under Subsections (2)(a) and (2)(b) for some of the audit period, and are not considered to be domiciled in Utah from DATE, 2016 through DATE, 2017 under those subsections. Subsection (3)(a) provides, "[i]f 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…" certain requirements are met. Subsection (3)(b) provides an exhaustive list of 12 facts and circumstances that the Commission shall consider in determining whether the Taxpayers are domiciled in Utah under Subsection (3), from DATE 2016 through DATE, 2017, based on a preponderance of the evidence. Of the twelve factors, six of them are either not relevant, or there was no information provided at the hearing that would allow the Commission to make a determination. Specifically, those are subsections (3)(b)(ii), (vii), (viii), (x), (xi), and (xii). Those factors will receive no weight in determining the Taxpayers' domicile under Subsection (3). The other factors that are relevant to the Taxpayers' circumstances either indicate domicile in Utah, do not indicate domicile in Utah, or are neutral (do not indicate domicile in Utah over domicile not in Utah). The relevant factors that are neutral will be given little or no weight. Following is an analysis of the relevant factors:

Subsection (3)(b)(i): The first factor is "[w]hether the individual or the individual's spouse has a driver license in this state[.]" In this case, the Taxpayers held Utah driver licenses prior to moving to STATE-1. The Taxpayers provided information showing they obtained STATE-1 driver licenses on DATE, 2016. Thus, for the period of DATE, 2016 through DATE, 2016, this factor indicates that both Taxpayers were domiciled in Utah. For the period of DATE, 2016 through DATE, 2017, this factor indicates neither of the Taxpayers was domiciled in Utah.

Subsection (3)(b)(iii): The third factor is "[t]he nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state." The Taxpayers owned a home in Utah that was on the market for much of the

audit period. No information was provided on the nature or quality of the home. The Taxpayers did not own a home in STATE-1. They did not proffer any testimony on the nature or quality of their accommodations in STATE-1. Generally a property that is owned would be considered superior to a rental property that is more temporary in nature. For the period of DATE, 2016 through DATE, 2017, this factor supports a finding of domicile in Utah. For the period of DATE, 2017 through DATE, 2017, the Taxpayers had no accommodations in the State of Utah. This would not support a finding of domicile in Utah for that brief period in 2017. Overall, this factor supports a finding of domicile in Utah.

Subsection (3)(b)(iv): The fourth factor is "[t]he 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." The Taxpayers and their children were in STATE-1 between DATE, 2015 and DATE, 2017. As the Taxpayers and their children were not present in Utah, this factor does not support a finding of domicile in Utah.

Subsection (3)(b)(v): The fifth factor is "[t]he 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." Under IRC §32(c)(2)(A), "earned income" is defined to mean:

> (i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus
> (ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

The Taxpayers' 2016 W-2s reported some Utah sourced income. The W-2 from BUSINESS-1 reported $$$$$ of Utah wages, and the W-2 from COMPANY-1 reported $$$$$ of Utah wages. The Taxpayers were unsure as to why their employers sourced some of their wages to Utah, as they maintain they were in STATE-1 for the entirety of 2016. The Division's representative indicated that those wages were reported as Utah source income in the fourth quarter of 2016.For 2017, the Taxpayers' W-2s also reported some Utah sourced income. BUSINESS-1 reported $$$$$ in Utah source wages, and COMPANY-1 reported $$$$$ as Utah source wages. There was no proffer of when those Utah source wages were earned. While some of the Taxpayers' wages were earned in STATE-1 during the period in question, the Taxpayers also had Utah source income during the period in question. The Taxpayers have the burden of proof in this matter, and have not provided any documentation that would show that the Utah source wages were not actually earned in Utah. This factor would tend to support a finding of domicile in Utah.

Subsection (3)(b)(vi): The sixth factor is the "[s]tate of registration of a vehicle…owned or leased by the individual or the individual's spouse." The Taxpayers provided a title application receipt with the STATE-1 Department of Motor Vehicles for a VEHICLE-1, dated DATE, 2016. It appears the Taxpayers acquired this vehicle while living in STATE-1 and registered it in STATE-1 during the period of DATE, 2016 through DATE, 2017. The Taxpayers also provided a registration renewal receipt with the STATE-1 Department of Motor Vehicles for a VEHICLE-2, dated DATE, 2017. Because this was a renewal receipt, it is reasonable to infer that the Taxpayers had originally registered the vehicle in 2016. The evidence supports a finding that the Taxpayers' vehicles were registered in STATE-1 during the DATE, 2016 through DATE, 2017 periods. This factor does not support a finding of domicile in Utah.

Subsection (3)(b)(ix): The ninth factor is "whether the individual or the individual's spouse lists an address in this state on a state or federal tax return." The Taxpayers' 2015 Utah individual income tax return, which was filed in 2016, was filed using an address in CITY-3, STATE-1. The Taxpayers' 2016 Utah individual income tax return, which was filed in 2017, was filed using an address in CITY-4, STATE-1. The Taxpayers were using addresses in STATE-1, rather than Utah, for the filing of returns. This factor does not support a finding of domicile in Utah

One of the factors, whether the Taxpayers held driver licenses in this state, supports a finding of domicile in Utah through DATE, 2016, and a finding of domicile not in Utah from DATE, 2016 through DATE, 2017. Two of the factors; where income was earned and the nature of living accommodations supports a finding of domicile in Utah during the period in question. The remaining three factors support a finding of domicile outside of Utah. Under the specific facts and circumstances of this case, the Commission finds it is reasonable to place less weight on Subsection (3)(b)(iii), the nature of living accommodations. Though the Taxpayers did own a home in Utah, the Taxpayers have proffered sufficient evidence to show that the home was vacant and listed for sale. Considering the relevant Subsection (3)(b) factors, when weighed as previously noted, the Commission concludes that the Taxpayers were not domiciled in Utah for the period of DATE, 2016 through DATE, 2017.

The Commission notes that the factors found in Utah Code Ann. §59-10-136(3) are not applicable for the period of January 1, 2015 through DATE, 2016 and DATE, 2017 through DATE, 2017. Subsection (3)(a) specifically provides, "[i]f 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…" certain requirements are met. In this case, the requirements of Subsections (1) and (2) have been met for various times throughout those

periods, as explained above.[13] To rely upon the limited and exhaustive list of factors in Subsection (3) to rebut a Subsection (2) presumption is both contrary to the express language of Utah Code Ann. §59-10-136(3)(a) and contrary to the plain meaning of Utah Code Ann. §59-10-136 as a whole. By allowing the factors in Subsection (3) to be used to rebut a presumption in Subsection (2) upends the hierarchical nature of Utah Code Ann. §59-10-136 as established by the legislature. Almost all of the factors to which the Legislature gave greater import in Subsections (1) and (2) are based on an individual, or an individual's spouse availing themselves of certain benefits of being a resident of Utah. These include having a dependent attend 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 Utah.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the Taxpayers were domiciled in Utah for all of 2015. The Taxpayers were part-year residents of Utah for 2016 from January 1, 2016 through DATE, 2016. The Taxpayers were part-year residents of Utah from DATE, 2017. The Auditing Division is hereby ordered to adjust its audits accordingly. It is so ordered.

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

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

[13] Because the Taxpayers are domiciled for the period of January 1, 2015 through DATE, 2016and from DATE, 2017 through DATE, 2017 under Utah Code Ann. §59-10-136(1) and (2). The Commission declines to analyze the factors in Subsection (3)(b) in determining the Taxpayers' domicile for those periods.

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