19-1919
TAX TYPE: INCOME TAX
TAX YEAR: 2016 and 2017
DATE SIGNED: 8/14/2020
COMMISSIONERS: J. VALENTINE, R. ROCKWELL, M. CRAGUN, L. WALTERS
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

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| TAXPAYER-1 & TAXPAYER-2,<br><br>Petitioners,<br><br>v.<br><br>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,<br><br>Respondent. | **INITIAL HEARING ORDER**<br><br>Appeal No. 19-1919<br><br>Account No. #####<br>Tax Type: Income Tax<br>Tax Years: 2016 and 2017 |

**Presiding:**
Rebecca L. Rockwell, Commissioner

**Appearances:**
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
For Respondent: RESPONDENT, 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 July 15, 2020.

TAXPAYER-1 & TAXPAYER-2 ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessment of Utah individual income taxes for the 2016 and 2017 tax years. On DATE, 2019, the Division issued a Notice of Deficiency and Audit Change ("Statutory Notice"), in which it imposed additional tax and interest (calculated as of DATE6, 2019),[1] as follows:

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

| Year | Tax | Penalties | Interest | Total |
|---|---|---|---|---|
| 2016 | $$$$$ | $0.00 | $$$$$ | $$$$$ |
| 2017 | $$$$$ | $0.00 | $$$$$ | $$$$$ |

For the 2016 tax year, the taxpayers filed a 2016 federal income tax return and a 2016 Utah part-year resident return, both with a status of married filing jointly. For the 2017 tax year, the taxpayers filed a 2017 federal income tax return and a 2017 Utah part-year resident return, both with a status of married filing jointly. On the Form TC-40B that accompanied the taxpayers' 2016 Utah return, the taxpayers indicated that they were Utah resident individuals from DATE, 2016 to DATE, 2016, and they allocated $$$$$ of their total 2016 federal adjusted gross income ("FAGI") of $$$$$ to Utah. On the Form TC-40B that accompanied the taxpayers' 2017 Utah return, the taxpayers indicated that they were Utah resident individuals from DATE, 2017 to DATE, 2017, and they allocated $$$$$ of their total 2017 FAGI of $$$$$ to Utah. The taxpayers argued that from DATE, 2016 to DATE, 2017, they were residents of STATE-1.

The Division, however, has determined that both taxpayers were domiciled in Utah for all of the 2016 and 2017 tax years because both of them were registered to vote in Utah throughout 2016 and 2017. As a result, the Division changed the taxpayers' joint 2016 and 2017 Utah part-year resident returns to 2016 and 2017 Utah full-year resident returns and imposed Utah taxes on all of the taxpayers' 2016 and 2017 income. The Division's assessment does not reflect a credit for income taxes imposed by another state because STATE-1 does not impose an individual income tax, and the taxpayers, who have the burden of proof in this matter, did not assert that they paid individual income taxes to a state other than Utah.[2]

The taxpayers contend that they intended to remain in STATE-1 permanently when they moved to STATE-1 in September 2016. As a result, they contend that Utah should not tax the

2 Utah resident individuals are entitled to claim a credit against their Utah tax liability for income taxes imposed by another state, pursuant to Utah Code Ann. §59-10-1003 (2017).

income TAXPAYER-1 earned while they were living and working in STATE-1.[3] For these reasons, the taxpayers ask the Commission to accept the 2016 and 2017 Utah part-year resident returns that they filed.

APPLICABLE LAW

1. Utah Code Ann. §59-10-104(1)[4] (2017) provides that "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:

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

3. Effective for tax year 2012 (and applicable to the 2016 and 2017 tax years at issue), Utah Code Ann. §59-10-136 provides guidance concerning the determination of "domicile," as follows:[5]

> (1) (a) An individual is considered to have domicile in this state if:
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
> (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
> (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
> (i) is the noncustodial parent of a dependent:

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3 TAXPAYER-2 did not work during the 2016 or 2017 tax years.

4 All substantive law citations are to the 2017 version of Utah law, unless otherwise indicated.

5 Effective for tax year 2018, the Utah Legislature amended Section 59-10-136 in 2019 General Session Senate Bill 13 ("SB 13"). However, it is the version of Section 59-10-136 in effect during the 2016 and 2017 tax years that is applicable to this appeal.

(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.

4. For the 2016 and 2017 tax years, 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 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)[6] 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.
> . . . .

5. For the 2016 and 2017 tax years, where a change of residence occurred, Utah Code Ann. §20A-2-306 provided 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

6 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute. However, this deletion does not affect the outcome of this decision.

(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.

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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 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.[7]

(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.

7 Effective May 9, 2017, Subsection 20A-2-306(4)(c)(ii) was added to the statute. However, this addition does not affect the outcome of this decision.

6. 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 taxpayers have the burden of proof in this matter. At issue is whether the taxpayers are Utah resident individuals for all of 2016 and 2017 or only for a portion or portions of 2016 and 2017. The Division contends that both taxpayers were Utah resident individuals for all of 2016 and 2017. The taxpayers contend that they were Utah resident individuals from DATE, 2016 to DATE, 2016 and from DATE, 2017 to DATE, 2017, but contend that they were not Utah resident individuals from DATE, 2016 to DATE, 2017. For the 2016 and 2017 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 either taxpayer was a Utah resident individual for all of 2016 or 2017 under the 183 day test. Instead, the Division contends that both of the taxpayers were 2016 and 2017 Utah full-year resident individuals under the domicile test. As a result, the

Commission must apply the facts to the Utah domicile law in effect for 2016 and 2017 to determine whether both of the taxpayers are considered to be domiciled in Utah for all of 2016 and 2017 (as the Division contends); or whether the taxpayers are only considered to be domiciled in Utah from DATE, 2016 to DATE, 2016 and from DATE, 2017 to DATE, 2017 (as the taxpayers contend).

**I. Additional Facts.**

The taxpayers were married throughout 2016 and 2017, and they have not been legally separated or divorced. TAXPAYER-1 stated that he worked for PLACE OF EMPLOYMENT from 2012 until the summer of 2016, when he was offered a job in CITY-1, STATE-1, working for COMPANY-1 ("COMPANY-1"). TAXPAYER-1 moved to STATE-1 and began employment at COMPANY-1 on July 14, 2016, and TAXPAYER-2 remained in Utah with the taxpayers' children in a home the taxpayers had purchased in YEAR in CITY-2, Utah (the "first CITY-2 home") until the sale of the home closed on DATE, 2016. TAXPAYER-2 and the taxpayers' children then joined TAXPAYER-1 in STATE-1 and the taxpayers and their children moved into a rental home in CITY-3, STATE-1, under a 12 month lease (the "CITY-3 home").

TAXPAYER-1 explained that when the taxpayers moved to STATE-1 in September 2016, the taxpayers had planned on the move being permanent. TAXPAYER-1 stated that he signed a three-year employment contract with COMPANY-1. COMPANY-1 reimbursed the taxpayers for their moving expenses to relocate to STATE-1, and TAXPAYER-1 provided a copy of an agreement he had signed with COMPANY-1 to repay all or a portion of the moving expense reimbursement if TAXPAYER-1 resigned from his position with COMPANY-1 prior to the conclusion of the three-year employment contract. TAXPAYER-1 noted that the repayment of the moving expense reimbursement was %%% if he resigned within 12-18 months after employment at COMPANY-1. The taxpayers had arranged for financing to purchase a home in STATE-1, but the seller fell through and the purchase never closed. The taxpayers also enrolled three of their four children in a STATE-1 public school for the 2016-17 school year.

TAXPAYER-1 stated that the taxpayers' plans to remain in STATE-1 permanently changed when TAXPAYER-2's mother was diagnosed with cancer in the early summer of 2017. TAXPAYER-2's mother required treatment at HOSPITAL, and TAXPAYER-2 wanted to return to Utah to care for her mother during her cancer treatment. Consequently, TAXPAYER-1 began exploring the possibility of working remotely for COMPANY-1 so that the taxpayers could return to Utah. TAXPAYER-2 and the taxpayers' children moved back to Utah during the summer of 2017. The taxpayers enrolled their children in a Utah public school in August 2017. Ultimately, TAXPAYER-1 took a leave of absence from COMPANY-1 in October 2017, and then left employment with COMPANY-1 when he was reemployed by the State of Utah during October 2017. Because TAXPAYER-1 left employment with COMPANY-1 prior to the termination of his three-year employment contract, he was required to repay %%% of the moving expense reimbursement the taxpayers received from COMPANY-1, which was over $$$$$. He also incurred moving and relocation expenses in moving from STATE-1 back to Utah. The taxpayers purchased a home in CITY-2, Utah (the "second CITY-2 home") in the second week of October 2017. As of the date of the hearing, the taxpayers still live in Utah.

As mentioned earlier, the taxpayers filed 2016 and 2017 federal returns with a status of married filing jointly. On these returns, the taxpayers claimed four dependents as exemptions, one for each of their four children. Three of the taxpayers' four children were enrolled in a Utah public kindergarten or elementary school from DATE, 2016, until the school year ended in 2016. After moving to STATE-1, the taxpayers enrolled the three children in a STATE-1 public school from August 2016 to June 2017.[8] When TAXPAYER-2 returned to Utah in 2017, the taxpayers

8 In the domicile survey the taxpayers filed with the Division, the taxpayers did not indicate the dates when school ended in Utah in 2016. In addition, one statement in the domicile survey indicated that school started in STATE-1 in September 2016, while another statement indicated school started in STATE-1 in August 2016. TAXPAYER-1 did not clarify when school ended in Utah in 2016 at the initial hearing, but did state that school started in STATE-1 in August 2016. For purposes of this initial hearing decision, the Commission finds that school started in STATE-1 in August 2016. However, as discussed later in this decision, the dates that school began and ended are not critical to resolving this appeal because the taxpayers are found to

enrolled the three children in a Utah public kindergarten or elementary school in August 2017, where they remained enrolled for the remainder of 2017. Neither taxpayer attended a Utah institution of higher education during 2016 or 2017.

TAXPAYER-1 explained at the hearing that the taxpayers' first CITY-2 home was approximately ##### to ##### square feet and was in good condition, but was only partially finished. He stated that the first CITY-2 home received the residential property tax exemption from DATE, 2016 until the home sold on DATE, 2016.[9] TAXPAYER-1 noted that the first CITY-2 home was never rented to tenants. He stated that the home the taxpayers rented in STATE-1 was similar in size, quality, and features as the first CITY-2 home.

Both TAXPAYER-1 and TAXPAYER-2 held Utah driver's licenses. TAXPAYER-1 indicated that the taxpayers' driver's licenses were not set to expire until 2020, so the taxpayers asked the STATE-1 Department of Transportation whether they needed to obtain STATE-1 driver's licenses. TAXPAYER-1 stated that the STATE-1 Department of Transportation told him there was no need to obtain a STATE-1 driver's license, so the taxpayers did not obtain STATE-1 driver's licenses during 2016 or 2017. However, TAXPAYER-1 asserted that he considered obtaining a STATE-1 driver's license so he could obtain a STATE-1 resident hunting and/or fishing license, but because the taxpayers lived about 45 minutes from the county offices and it was difficult to obtain time off from work, TAXPAYER-1 never obtained a STATE-1 driver's license.

Both TAXPAYER-1 and TAXPAYER-2 were registered to vote in Utah. The Division explained that COUNTY-1 began using its current voter registration system in 2004 and that

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be domiciled in Utah under Subsection 59-10-136(2)(b) for all of 2016 and 2017 as a result of their voter registration in Utah.

9 Utah Code Ann. § 59-2-103(2) (2017) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property [,]" while Utah Code Ann. § 59-2-102(36)(a) (2017) 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.

COUNTY-1 records indicate that the taxpayers were registered to vote in 2004. However, the Division asserted that the taxpayers may have initially registered to vote earlier than 2004, but COUNTY-1 system may only contain information as far back as 2004. In any event, the taxpayers were registered to vote during 2016 and 2017. The Division proffered evidence to show that TAXPAYER-1 voted in Utah in 2000, 2004, 2008, 2012, and 2018, and TAXPAYER-2 voted in Utah in 2004 and 2012. The Division also provided information showing that on DATE, 2016, a Utah county clerk changed TAXPAYER-1's voter registration status from "active" to "inactive," and on October 31, 2018, a Utah county clerk changed TAXPAYER-1's voter registration status from "inactive" to "active." Likewise, the Division provided information showing that on DATE, 2016, a Utah county clerk changed TAXPAYER-2's voter registration from "active" to "inactive." On March 19, 2018, county records show that TAXPAYER-2 signed a candidate petition, and her voter registration status was changed from "inactive" to "active."

The Commission takes notice that in prior cases, the Division has contacted the Utah Lieutenant Governor's office, which is responsible for elections in Utah. The Utah Lieutenant Governor's office has provided information to determine what these actions related to voter registration mean. The Utah Lieutenant Governor's office has indicated: 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 will mail 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"). [10]

TAXPAYER-1 indicated that he was "99% sure" he updated his voter registration records with STATE-1 when the taxpayers moved to STATE-1. However, when TAXPAYER-1 contacted the CITY-1, STATE-1, county office, TAXPAYER-1 stated that the county office had no record of the taxpayers' voter registration records being updated. TAXPAYER-1 indicated that he has had difficulty communicating with the STATE-1 county offices regarding the taxpayers' voter registration, and has no receipt or other record showing that the taxpayers registered to vote in STATE-1.

The taxpayers have not refuted any of the information the Division provided regarding voter registration, and have not shown that they were registered to vote in STATE-1 for any portion of the 2016 or 2017 tax years. As a result, it appears that TAXPAYER-1 was registered to vote in Utah during all of 2016 and 2017 (including from DATE, 2016 to DATE, 2016 during which he was in an "active" status and from DATE, 2016 to DATE, 2017, during which he was in an "inactive" status). It also appears that TAXPAYER-2 was registered to vote in Utah during all of 2016 and 2017 (including from DATE, 2016 to DATE, 2016, during which she was in an "active" status and from DATE, 2016 to DATE, 2017, during which she was in an "inactive" status). For these reasons, the Commission finds that the taxpayers were registered to vote in Utah during all of the 2016 and 2017 tax years at issue. The Taxpayers have the burden of proof in this matter, and have not met their burden of proof to show that either taxpayer was registered to vote in STATE-1 during any portion of 2016 or 2017. In conclusion, the Commission finds

10 Furthermore, it appears that this explanation reflects, at least in substantial part, Subsection 20A-2-305(2)(c), which provides that a 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.

that TAXPAYER-1 and TAXPAYER-2 were registered to vote in Utah for all of the 2016 and 2017 tax years and that neither taxpayer was registered to vote in STATE-1 for any portion of 2016 or 2017.

At the time the taxpayers moved from Utah to STATE-1 in 2016, they owned a VEHICLE-1 and a VEHICLE-2, which were registered in Utah. TAXPAYER-1 stated that the taxpayers registered both of these vehicles in STATE-1 in July or August 2016. While in STATE-1, the taxpayers sold the VEHICLE-1 and purchased a VEHICLE-3, which they registered in STATE-1. The Division's records also showed that the taxpayers owned a VEHICLE-4 that was registered in Utah during the audit period; however, TAXPAYER-1 contended that he never owned this vehicle. The Division agreed that this was likely an error in the Division's records. The Division agreed that the taxpayers registered all of their vehicles in STATE-1 during the audit period.

The taxpayers were members of a church during 2016 and 2017. While living in Utah, the taxpayers attended a Utah unit of their church. When they moved to STATE-1, the taxpayers attended a STATE-1 unit of their church. TAXPAYER-1 noted that he served as an assistant LEADER in the ORGANIZATION in both Utah and STATE-1 during the audit period. He also was a COACH while living in STATE-1. Prior to moving to STATE-1, both taxpayers received their mail in Utah at the address of their first CITY-2 home. In addition, both taxpayers received their mail in STATE-1 while they lived in STATE-1. Because home mail delivery was unavailable in STATE-1, the taxpayers received their mail at a post office box in STATE-1. Upon returning to Utah, the taxpayers received mail in Utah at the address of the second CITY-2 home. In early 2017 (when the taxpayers were living in STATE-1), they used the address of the STATE-1 post office box to file their 2016 federal and Utah tax returns. In early 2018 (after both taxpayers had moved back to Utah), they used the address of the second CITY-2 home to file their 2017 federal and Utah tax returns.

**II. Applying the Facts to the 2016 and 2017 Domicile Law.**

UCA §59-10-103(1)(q)(i)(A) defines a "resident individual" as "an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]" For the 2016 and 2017 tax years, a taxpayer's domicile for income tax purposes is determined under Section 59-10-136, which contains four subsection addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).[11]

A. Section 59-10-136(5)(b). For a married individual, it is often necessary (as in this case) to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if the individual is legally separated or divorced from the individual's spouse or if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. Neither of these circumstances applies to the taxpayers for the 2016 or 2017 tax year because the taxpayers were not legally separated or divorced during 2016 or 2017 and because they filed joint 2016 and 2017 federal returns. Accordingly, for all of 2016 and 2017, each taxpayer is considered to have a spouse for purposes of Section 59-10-136.

B. Subsection 59-10-136(4). The taxpayers do not meet all of the conditions of Subsection 59-10-136(4) in order *not* to be considered to be domiciled in Utah for any portion of 2016 or 2017. This subsections applies to an individual if the individual and the individual's spouse are both "absent from the state" for at least 761 consecutive days, if a number of other

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

listed conditions are also met. Both taxpayers were absent from Utah from DATE, 2016 to DATE, 2017, which is a period of less than 400 days. Because both taxpayers were not absent from Utah for at least 761 consecutive days that included a portion of 2016 and/or 2017, the Subsection 59-10-136(4)(a) exception from domicile had not be met for any portion of the audit period, regardless of whether the other listed conditions would have been met.

As a result, the Commission must analyze whether the taxpayers are considered to be domiciled in Utah for the 2016 and 2017 tax years under 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. Because the Division contends that both taxpayers are considered to be domiciled in Utah for all of 2016 and 2017 under Subsection 59-10-136(2)(b), the Commission will begin the remainder of its analysis with this subsection.

C. Subsection 59-10-136(2)(b). Under this subsection, an individual is presumed to be domiciled in Utah if the individual or the individual's spouse is registered to vote in Utah, unless the presumption is rebutted. For reasons discussed earlier, the Commission has found that both taxpayers were registered to vote in Utah for all of 2016 and 2017. As a result, under Subsection 59-10-136(2)(b), both taxpayers will be considered to be domiciled in Utah for all of 2016 and 2017, unless they are able to rebut this presumption.[12]

12 Because the taxpayers admit that they were Utah resident individuals for the DATE, 2016 to DATE, 2016 and DATE, 2017 to DATE, 2017 periods during which the Subsection 59-10-136(2)(b) presumption has arisen, it is unclear whether the taxpayers are attempting to rebut the Subsection 59-10-136(2)(b) presumption for all of 2016 and 2017; or whether they are attempting to rebut the Subsection 59-10-136(2)(b) presumption only for the September 1, 2016 to September 30, 2017 period they lived in STATE-1. To avoid any confusion and in order to show how the taxpayers may be considered to be domiciled in Utah under each of the relevant Section 59-10-136 provisions, the Commission will determine whether the taxpayers have rebutted the Subsection 59-10-136(2)(b) presumption for the entire 2016 and 2017 audit period for which this presumption has arisen.

Because Subsection 59-10-136(2)(b) 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.[13] 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)(b) 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 taxpayers contend that their actions demonstrate their intent to change their domicile from Utah to STATE-1 when they moved to STATE-1 in September 2016, and that these actions should be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. This argument relies on intent and considering an individual's contacts with various states when determining whether they are considered to be domiciled in Utah, as was done under Rule 52 (prior to Section 59-10-136 becoming effective for tax year 2012) and is done under Subsection 59-10-136(3)(b) (if an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1) or (2)).

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

13 The Legislature did not provide that being registered to vote in Utah 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).

of Section 59-10-136 that became effective for tax year 2012 and remained in effect for the 2016 and 2017 tax years at issue) little or no effect, which the Commission declines to do.[14]

Similarly, the Commission has found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[15]

To allow an individual to rebut a Subsection 59-10-136(2) presumption by showing that the individual could be considered to be domiciled outside of Utah using domicile factors found in Rule 2 and/or Rule 52, Subsection 59-10-136(3), or some other source 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

14 *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016). Redacted copies of this and other selected Commission decisions can be reviewed on the Commission's website at https://tax.utah.gov/commission-office/decisions.

15 *See, e.g., Appeal No. 15-1857.* This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that an individual may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of the presumptions of Subsection 59-10-136(2) is met.

tax domicile for years prior to 2012 (as set forth in Rule 2 and/or Rule 52).[16] 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) 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).[17]

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 in Utah under some more traditional type of domicile test does not consider the Subsection 59-10-136(2) presumptions in concert with the structure and language of Section 59-10-136 as a whole and would frustrate the plain meaning of Section 59-10-136.[18]

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16 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).

17 The factors that were given greater import in Subsections 59-10-136(1) and (2) are generally 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.

18 For example, if the taxpayers' argument were to be accepted, it is arguable that an individual whose only contact with Utah was claiming the residential exemption on a vacation

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

As a result, when a Subsection 59-10-136(2) presumption is considered in concert with Section 59-10-136 as a whole, the Commission has generally looked to actions or inactions related to the specific factor described in the presumption to determine whether an individual has rebutted the presumption or not. For example, 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 elsewhere relatively soon after moving away from Utah.[19] Although TAXPAYER-1 indicated that he was "99% sure" he updated his voter registration records with STATE-1, the county office had no record of the taxpayers' voter registration records being updated, and TAXPAYER-1 has not provided any receipt or other record showing that the taxpayers registered to vote in STATE-1. The taxpayers have the burden of proof in this matter, and the Commission finds that the taxpayers have not met their burden of proof. Thus, the Commission concludes that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption by showing that they registered to vote somewhere other than Utah.

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

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home located in Utah could continue to do so without any Utah income tax consequences if the individual showed that they would be considered to have domicile outside of Utah based on some sort of traditional income tax domicile criteria.

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

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.[20] No evidence was provided to show that the taxpayers asked for their names to be removed from the Utah voter registry prior to or during the 2016 and 2017 tax years. That the taxpayers did not ask for their names to be removed from the Utah voter registry prior to or during the 2016 and 2017 tax years is insufficient to rebut the Subsection 59-10-136(2)(b) presumption.[21]

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.[22] The taxpayers have not shown that STATE-1 allows an individual who moves there to vote in a STATE-1 election without having registered to vote in STATE-1. Furthermore, the taxpayers provided no information to suggest that either of them ever voted in STATE-1.

In addition, the Commission acknowledges that neither of the taxpayers voted in Utah during the 2016 or 2017 tax years at issue. The Commission, however, 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 tax year(s) 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 the version of Subsection 59-10-136(2)(b) that applies to the 2016 and 2017 tax years at issue.[23] As a result, that neither taxpayer voted during the 2016 and 2017 tax years at issue is insufficient to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the 2016 or 2017 tax years for which the presumption has arisen.

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20 *See, e.g., Appeal No. 18-793.*

21 Furthermore, the instructions for the 2016 and 2017 Forms TC-40 (i.e., the 2016 and 2017 Utah tax returns) included explanations about domicile under Section 59-10-136 and specifically indicated that a rebuttable presumption of Utah domicile would exist if an individual was registered to vote in Utah. Forms for prior tax years can be reviewed on the Commission's website at https://tax.utah.gov/forms-pubs/previousyears.

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

23 *See, e.g., Appeal No 15-720.*

The taxpayers suggest that they should be able to rebut the Subsection 59-10-136(2)(b) presumption for that portion of the audit period that their Utah voter registration was changed to an "inactive" status. As mentioned earlier, both taxpayers' Utah voter registrations were placed on "inactive" status on DATE, 2016, and they remained on "inactive" status for the remainder of the audit period (to DATE, 2017). However, under 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 taxpayers were still allowed to vote, sign petitions, and have all other privileges of a registered voter for all of 2016 and 2017. For these reasons, the Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption because of their Utah voter registrations being on "inactive" status.

For reasons discussed in the preceding paragraphs, the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption for the entire 2016 and 2017 tax years. The Commission has also stated in prior cases that it could find in future cases that other circumstances would be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. The taxpayers, however, have not proffered sufficient arguments or information to rebut the Subsection 59-10-136(2)(b) presumption for any portion of the 2016 and 2017 tax years. Accordingly, under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for the entire 2016 and 2017 tax years.

D. Other Subsections of Section 59-10-136. Because both taxpayers have been found to be domiciled in Utah for all of the 2016 and 2017 tax years under Subsection 59-10-136(2)(b), there is no need to analyze the remaining subsections of Section 59-10-136 (i.e., Subsections (1)(a)(i), (1)(a)(ii), (2)(a), (2)(c), or (3)) to resolve this appeal. However, some observations about the remaining subsections may be useful.

Subsection 59-10-136(1)(a)(i). Subsection 59-10-136(1)(a)(i) provides that an individual is considered to be domiciled in Utah if 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. Because the taxpayers claimed their four children as dependents on their joint 2016 and 2017 federal returns and because three of those four children attended a Utah public kindergarten or elementary school from DATE, 2016 until the school year ended in 2016, and from the date school began in August, 2017 to the end of the audit period on DATE, 2017, both taxpayers would be considered to be domiciled in Utah for this portion of the audit period, unless the exception found in Subsection 59-10-136(1)(b) is met.

Subsection 59-10-136(1)(b) provides that an individual may not be considered to be domiciled in Utah under Subsection 59-10-136(1)(a)(i) if the individual is the noncustodial parent of a dependent whom the individual claimed as a personal exemption on their federal return and who is enrolled in a Utah public kindergarten, elementary, or secondary school; and if the individual is divorced from the custodial parent. For the 2016 and 2017 tax years, neither taxpayer was the noncustodial parent of any of their dependents, and neither taxpayer was divorced from the custodial parent of any of their dependents. Accordingly, the Subsection 59-10-136(1)(b) exception is not applicable to the taxpayers' circumstances. Because the Subsection 59-10-136(1)(b) exception does not apply, both taxpayers are considered to be domiciled in Utah from DATE, 2016 until the school year ended in 2016, and from the date school began in August 2017, to DATE, 2017 under Subsection 59-10-136(1)(a)(i).

Subsection 59-10-136(1)(a)(ii). Under this subsection, an individual is considered to be domiciled in Utah if the individual or the individual's spouse is a resident student enrolled in a Utah institution of higher education. During 2016 and 2017, neither taxpayer was enrolled in a Utah institution of higher education. Accordingly, neither taxpayer is considered to be domiciled in Utah for any portion of 2016 and 2017 under Subsection 59-10-136(1)(a)(ii).

Subsection 59-10-136(2)(a). Subsection 59-10-136(2)(a) 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. Neither party relied on Subsection 59-10-136(2)(a) to support their respective positions. Nevertheless, the taxpayers owned their first CITY-2 home from DATE, 2016 to DATE, 2016, and owned their second CITY-2 home from the second week of DATE 2017, to the end of the audit period on DATE, 2017. TAXPAYER-1 stated that the first CITY-2 home received the primary residential exemption for the period that the taxpayers owned it. He did not state whether the taxpayers received the primary residential exemption on the second CITY-2 home at the initial hearing and did not provide information on the taxpayers' domicile survey as to whether the second CITY-2 home received the residential exemption. However, the taxpayers have the burden of proof in this matter, and have not provided testimony or other information to establish that the taxpayers did not receive the residential exemption on the second CITY-2 home for the portion of the audit period that the taxpayers owned it. Therefore, the Commission finds that the taxpayers received the residential exemption on the taxpayers' second CITY-2 home from the second week of DATE 2017, until the end of the audit period on DATE, 2017. As a result, the taxpayers would be domiciled in Utah under Subsection 59-10-136(2)(a) for the portion of the audit period that they owned the first CITY-2 home and the portion of the audit period that they owned the second CITY-2 home, unless they were able to rebut the presumption.[24]

Based on this limited analysis of Subsection 59-10-136(2)(a), the Commission finds that both taxpayers would be considered to be domiciled in Utah under this subsection for the portion of the audit period that they owned the first CITY-2 home and the portion of the audit period that they owned the second CITY-2 home. However, the taxpayers have admitted that they were domiciled in Utah for this period. In addition, the Commission has previously found that the taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(2)(b) for the entire

24 Because the Commission has already found the taxpayers to be domiciled under Subsection 59-10-136(2)(b) for the entire 2016 and 2017 tax years, which include the periods during which the taxpayers owned the first CITY-1home and the second CITY-1home, the Commission will forego some of the Subsection 59-10-136(2)(a) analysis that it would have otherwise made had this subsection been more critical to resolving the appeal.

2016 and 2017 tax years. As a result, the Commission will not discuss the Subsection 59-10-136(2)(a) presumption any further.

Subsection 59-10-136(2)(c). Subsection 59-10-136(2)(c) provides that an individual is presumed to be domiciled in Utah if the individual or the individual's spouse asserts Utah residency on a Utah income tax return, unless the presumption is rebutted. On their 2016 Utah return, the taxpayers asserted that they were Utah resident individuals from DATE, 2016 to DATE, 2016. On the taxpayers' 2017 Utah return, the taxpayers asserted that they were Utah resident individuals from DATE, 2017 to DATE, 2017. As a result, the taxpayers would also be considered to be domiciled in Utah from DATE, 2016 to DATE, 2016, and from DATE, 2017 to DATE, 2017, under Subsection 59-10-136(2)(c), unless they were able to rebut this presumption.

The Commission has already found the taxpayers to be domiciled in Utah from the DATE, 2016 to DATE, 2016, and DATE, 2017 to DATE, 2017 portions of the audit period for which the Subsection 59-10-136(2)(c) presumption has arisen. However, the Commission will make some limited observations about Subsection 59-10-136(2)(c). The taxpayers admit that they were domiciled in Utah for the DATE, 2016 to DATE, 2016, and DATE, 2017 to DATE, 2017, portions of the audit period for which the Subsection 59-10-136(2)(c) presumption has arisen and, thus, do not attempt to rebut the Subsection 59-10-136(2)(c) presumption for these portions of the audit period. As a result, the Commission finds that the taxpayers are also considered to be domiciled in Utah from DATE, 2016 to DATE, 2016, and DATE, 2017 to DATE, 2017.

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

Utah for the entire 2016 and 2017 tax years under Subsections (1) and/or (2), Subsection (3) has no applicability to this appeal.

E. Conclusion. Based on the foregoing, the taxpayers are found to be domiciled in Utah under various subsections of Section 59-10-136 for the entire 2016 and 2017 tax years. Consequently, pursuant to Subsection 59-10-103(1)(q)(i)(A), the taxpayers are Utah resident individuals for the entire 2016 and 2017 tax years. For these reasons, the Commission should sustain the Division's assessments in their entirety.

## DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's 2016 and 2017 assessments in their entirety. 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 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.**