

APPEAL #21-1747

TAX TYPE: INDIVIDUAL INCOME TAX

TAX YEAR: 2017 AND 2018

DATE SIGNED: 1/16/2024

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 21-1747</p> <p>Account No: #####</p> <p>Tax Type: Audit - Individual Income Tax</p> <p>Tax Years: 2017 & 2018</p> <p>Judge: Halverson</p>
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Presiding:

Shannon Halverson, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER

For Respondent: RESPONDENT'S REP-1, Manager, Income Tax and Education
Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on September 21, 2023 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Taxpayer filed part-year resident Utah individual income tax returns for the 2017 and 2018 tax years. The Division issued Notices of Deficiency and Estimated Income Tax on DATE, and made the audit changes based on the Division's determination that the Taxpayer was domiciled in Utah in accordance with Utah Code Ann. §59-10-136 and was, therefore, a Utah resident individual for all of 2017 and 2018. The Division included all of the Taxpayer's income for the entire 2017 and 2018 tax years as taxable income in Utah and included a small adjustment to the Taxpayer's federal adjusted gross income for the 2018 tax year. The Division issued amended Notices of Deficiency for the 2017

and 2018 tax years on DATE that allowed a credit for taxes paid to another state and reduced the amount of tax owing in each of those years. The amounts of tax and interest due as of the date the amended Notices of Deficiency were issued are as follows:

<u>Tax</u>	<u>Interest¹</u>	<u>Penalties</u>	<u>Total</u>
REDACTED TABLE			

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Ann. §59-10-104(1)(2017)² as follows:

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

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

(q)(i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(B) an individual who is not domiciled in this state but:

(I) maintains a place of abode in this state; and

(II) spends in the aggregate 183 or more days of the taxable year in this state.

However, the Utah Legislature amended the definition of “resident individual” in Utah Code §59-10-103(1)(q) effective for the 2018 tax year as follows:

(q) "Resident individual" means 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.

“State taxable income” is defined in Utah Code Ann. §59-10-103(1)(w) as follows:

(w)"Taxable income" or "state taxable income":

(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;

(ii) for a nonresident individual, is an amount calculated by:

(A) determining the nonresident individual's adjusted gross income for the taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

¹ Pursuant to Utah Code Ann. §59-1-402, interest continues to accrue on any unpaid balance. The Statutory Notices indicated that the interest amounts included in the amended notices were computed to January 6, 2023.

² All substantive law citations are to the 2017 version of Utah law, unless otherwise indicated.

- (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117;
- (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
- (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

“Adjusted gross income” is defined in Internal Revenue Code (“IRC”) §62, in pertinent part, to mean “in the case of an individual, gross income minus the following deductions[.]”

Utah Code Ann. §59-10-136, as in effect for the 2017 tax year, provides as follows:

- (1) (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
 - (i) is the noncustodial parent of a dependent:
 - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
 - (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;
 - (A) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
 - (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
- (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
- (c) For purposes of Subsection (4)(a), an absence from the state:
- (i) begins on the later of the date:
 - (A) the individual leaves this state; or
 - (B) the individual's spouse leaves this state; and
 - (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.
- (d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
- (i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.
- (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
- (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
- (A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

- (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).
- (5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.
- (b) For purposes of this section, an individual is not considered to have a spouse if:
 - (i) the individual is legally separated or divorced from the spouse; or
 - (ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
- (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
- (6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

The Utah Legislature amended Utah Code Ann. §59-10-136 effective beginning with the 2018 tax year. Utah Code Ann. §59-10-136, as in effect for the 2018 tax year, provides as follows:

- (1) (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
 - (i) is the noncustodial parent of a dependent:
 - (C) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
 - (D) 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:
 - (i) votes in this state in a regular general election, municipal general election, primary election, or special election during the taxable year; and
 - (ii) has not registered to vote in another state in that taxable year; 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 or a tax credit 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);
 - (xiii) whether the individual:
 - (A) maintains a place of abode in the state; and
 - (B) spends in the aggregate 183 or more days of the taxable year in the state; or
 - (xiv) whether the individual or the individual's spouse:
 - (A) did not vote in this state in a regular general election, municipal general election, primary election, or special election during the taxable year, but voted in the state in a general election, municipal general election, primary election, or special election during any of the three taxable years prior to that taxable year; and
 - (B) has not registered to vote in another state during a taxable year described in Subsection (3)(b)(xiv)(A).
 - (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (3)(b)(xiii), the commission may by rule define what constitutes spending a day of the taxable year in the state
- (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;
 - (B) 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) Notwithstanding Subsections (2) and (3), for individuals who are spouses for purposes of this section and one of the spouses has domicile under this section, the other spouse is not considered to have domicile in this state under Subsection (2) or (3) if one of the spouses establishes by a preponderance of the evidence that, during the taxable year and for three taxable years prior to that taxable year, that other spouse:
 - (a) is not an owner of property in this state;
 - (b) does not return to this state for more than 30 days in a calendar year;

- (c) has not received earned income as defined in Section 32(c)(2), Internal Revenue Code, in this state;
 - (d) has not voted in this state in a regular general election, municipal general election, primary election, or special election; and
 - (e) does not have a driver license in this state.
- (6) (a) Except as provided in Subsection (5), 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 (6)(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.
- (7) 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 residential exemption, the property owner is required to take certain steps, outlined in Utah Code Ann. §59-2-103.5, below in pertinent part:

- (5) Except as provided in Subsection (6), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that 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 that 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 that property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence.
- (6) A property owner is not required to file a written statement or make the declaration described in Subsection (5) 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.

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

The Commission has promulgated Administrative Rule R861-1A-42 to provide additional guidance on the waiver of interest, as follows in pertinent part:

- (2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

Utah Code Ann. §59-1-1417 provides, "in a proceeding before the commission, the burden of proof is on the petitioner..."

DISCUSSION

The Taxpayer filed a part-year resident Utah individual income tax return for the 2017 tax year, claiming she was a part-year Utah resident for the period from DATE to DATE, and a part-year resident Utah individual income tax return for the 2018 tax year, claiming she was a part-year Utah resident for the period from DATE through DATE. The Taxpayer asserted that she was not domiciled in Utah and that she was a resident of STATE-1 for the periods of DATE through DATE, DATE through DATE and DATE through DATE. The Taxpayer filed 2017 and 2018 federal individual income tax returns with a status of single and claimed no dependent exemptions in 2017 and 2018. The Division issued Notices of Deficiency and Audit Change for the 2017 and 2018 tax years on DATE. In the Division's audits, the Division changed the Taxpayer's filing status to full-year resident returns for both the 2017 and 2018 tax years and included all of the Taxpayer's income for both of those years. The Division also increased the Taxpayer's adjusted gross income by \$\$\$\$ and indicated that change was made due to a typographical error made by the Taxpayer on her 2018 Utah individual income tax return. The Taxpayer timely appealed the Notices of Deficiency. The Division issued amended Notices of Deficiency for the 2017 and 2018 tax years on DATE. The Division's amended audit assessments provided a credit for income taxes imposed by another state because the Taxpayer submitted her 2017 and 2018 STATE-1 individual income tax returns showing that she paid income tax to STATE-1 in 2017 and 2018.³ It is the Division's position that the Taxpayer was domiciled in Utah for the 2017 and 2018 tax years, and thus all of her 2017 and 2018 income was taxable in Utah, regardless of source. It is the Taxpayer's position that she was a resident of STATE-1 for the

³ 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.

periods of DATE through DATE, DATE through DATE and DATE through DATE and her income earned during those time periods was earned in STATE-1 and was not taxable in Utah.

The Taxpayer was not married for all of 2017 and 2018. She indicated that she was previously married but separated from her husband in 2014 and her divorce was finalized in 2016. She filed her 2017 and 2018 federal individual income tax returns with a status of single and claimed no dependent exemptions in either year. The Taxpayer used a Utah address on her 2017 and 2018 federal income tax returns. The Taxpayer filed her 2017 and 2018 STATE-1 individual income tax returns as a nonresident individual and used a Utah address on those returns.

The Taxpayer stated at the Initial Hearing that she lived and worked in STATE-1 for the periods of DATE through DATE, DATE through DATE, and DATE through DATE. She indicated that, prior to resigning in DATE, she was working as an Assistant Professor of Spanish at BUSINESS-1 (BUSINESS-1) for ##### years. She indicated that her contracts were for ##### months every year from DATE until DATE. She indicated that she received tenure after teaching there for ##### years. She indicated that her last day of work was in DATE, and, after that, she resigned in approximately DATE before the next semester started. She indicated that she resigned knowing that the University was going to terminate all the humanities professors' contracts because the University decided to no longer offer humanities classes. However, she indicated that she did not return to Utah until DATE because she was out of the country attending a conference in CITY-1 and CITY-2, COUNTRY-1. She indicated that she stayed in Utah once she returned in DATE and did not return to STATE-1, even though she did not resign until DATE. In addition to the income earned from BUSINESS-1 in 2017, the Taxpayer was issued a W-2 Form for the 2017 tax year from BUSINESS-2 in CITY-3, Utah, and she allocated \$\$\$\$ in wages, salaries and tips and \$\$\$\$ of pension and annuity income as Utah sourced income on her 2017 Utah individual income tax return. In addition to the income earned from BUSINESS-1 in 2018, the Taxpayer was issued a W-2 Form for the 2018 tax year from BUSINESS-3 in CITY-4, Utah, and she allocated \$\$\$\$ of wages, salaries, and tips and \$\$\$\$ of IRA, pension, and annuity income as Utah sourced income on her 2018 Utah individual income tax return.

The Taxpayer indicated that she purchased a townhome located at ADDRESS-1 that she owned for three years. She indicated that she sold the townhome prior to 2017. She indicated that she does not have the exact date that the townhome was sold but indicated that it was sold around the time she got divorced, which was prior to 2017. She indicated that after the townhome was sold, she rented homes out in CITY-5 and CITY-6, STATE-1. She indicated that the homes she was renting were very old homes, and she rented a home from an adjunct professor. She indicated that the last home she rented was located in CITY-5, STATE-1, and was not finished. She

indicated that she paid \$\$\$\$ per month for that home and paid utilities and expenses. She indicated that she only rented the homes for ##### months, and she would come back to Utah for approximately three months in the summers because she had them off. She indicated that, when she would return to Utah, she would stay at her sister's home or in a home that she owned located in CITY-7, Utah.

The Taxpayer's submitted information indicated that she owned a property located at ADDRESS-2, in 2017 and 2018. The Division submitted evidence showing that the Taxpayer's property located at ADDRESS-2, received the residential exemption for the 2017 and 2018 tax years. The Taxpayer indicated that her son, who she did not claim as a dependent on her federal and state individual income tax returns, resided in the residence in 2017 and for a portion of 2018, while he attended BUSINESS-4. The Taxpayer indicated that she was not charging him rent while he was residing in the home. She indicated that he would oversee and maintain the home. She indicated that she would stay in the home with her son sometimes and sometimes she would stay with her sister. She indicated that, when she would stay in the home with her son, she had access to the whole house, including the kitchen, the living room, one bedroom, one bathroom, and the garage. She indicated that the home has ##### bedrooms, and she would stay in the main room, which is a master bedroom that has a private bathroom. She indicated that he would stay in another room with a bathroom down the hall. She stated that she did not have to ask permission to come into the home. She indicated that her son graduated from BUSINESS-4 in 2018, and he bought his own home when she moved back to Utah in 2018.

The Taxpayer indicated that she did not attend an institution of higher education in Utah in 2017 or 2018. The Taxpayer's submitted information indicated that she was registered to vote in STATE-1 in 2017 and 2018. The Taxpayer registered to vote in Utah on DATE and voted in a general election in Utah on November 6, 2018. The Taxpayer's submitted information indicated that she held a Utah driver license in 2017 and 2018. The Taxpayer owned a VEHICLE-1 in 2017 and 2018 that was registered in Utah. The Taxpayer's submitted information indicated that she was a member of a local congregation and attended church services while residing in CITY-5, STATE-1 in 2017 and 2018⁴. She indicated that she was also a member of the CITY-5 Democratic Party. She indicated that she was the advisor for two fraternities at BUSINESS-1 and created a radio program and podcasts for a local radio station in STATE-1.

The Taxpayer's submitted information indicated that she used a mailbox assigned to her at BUSINESS-1 for all University mail and contracts. She indicated that she used her CITY-7,

⁴ The Commission notes that the Taxpayer did not provide information regarding her church membership or attendance while residing in Utah during 2017 and 2018.

Utah address for basic/local mail and some advertisements. She indicated that she did not make any declarations of residency on any other state documents. She indicated that she was summoned to jury duty as a resident of STATE-1.

The Taxpayer stated at the Initial Hearing that she believes that she was not domiciled in Utah because she lived in STATE-1, she worked in STATE-1, she purchased a townhome in CITY-5, STATE-1, and she was receiving the majority of her work related mail at the University address in STATE-1. She stated that she believes she was living in STATE-1 and only visiting Utah. She indicated that she obtained her PhD at the BUSINESS-5 but was unable to find a full-time job in Utah. She stated that she had to keep her house in CITY-7, Utah in case it was needed and let her son stay there because he has diabetes and was dealing with difficult health issues. She stated that she paid property taxes in Utah while living in STATE-1.

The Taxpayer stated that she believes that the law in Utah regarding domicile is unfair because she lived, worked, and paid taxes in STATE-1 for seven years. She stated that she is disputing the audits because she believes people in similar situations where their income is not earned in Utah should not have to pay taxes on the income not earned in Utah. She argued that it is not fair to tax income not earned in Utah and argued that the law needs to be changed and challenged. She stated that she does not feel that it is fair to have to pay taxes in Utah when she was unable to find a job in Utah.

The Division's representative stated that the Division's position is that the Taxpayer was domiciled in Utah for the 2017 and 2018 tax years. He noted that the original assessments changed the Taxpayer's income tax returns from part-year to full-year resident returns. He indicated that the assessments also increased the Taxpayer's federal adjusted gross income by \$\$\$\$ for the 2018 tax year. He stated that there was a typographical error on the Taxpayer's Utah income tax return and \$\$\$\$ was the Taxpayer's federal adjusted gross income that was reported on the Taxpayer's federal income tax return. He indicated that the Division issued amended Notices of Deficiency for the 2017 and 2018 tax years and provided a credit for taxes paid to another state for each of those years.

The Division's representative noted that the Taxpayer used her CITY-7, Utah address on her STATE-1 income tax returns for the 2017 and 2018 tax years. He noted that the Taxpayer did not file her STATE-1 income tax returns as a resident and approximately \$\$\$\$ of the Taxpayer's 2017 income was not STATE-1 sourced income. He also noted that the nonresident schedule was not included with the copy of the Taxpayer's 2018 STATE-1 individual income tax return that was submitted as evidence in this appeal but noted that the STATE-1 income percentage was %%%%.

The Division's representative stated at the Initial Hearing that the Division determined that the Taxpayer was domiciled in Utah under Utah Code Ann. §59-10-136. He stated that Utah Code Ann. §59-10-104 requires resident individuals to pay Utah income tax on their state taxable income, which includes all income regardless of the source of the income. He noted that Utah Code Ann. §59-10-103 defines "resident individual." He stated that the definition of resident individual includes a person who is domiciled in Utah under Utah Code Ann. §59-10-136 regardless of the number of days the individual is in the state. He indicated that the determination of domicile in this appeal was made under the provisions in Subsection 59-10-136(2), which creates rebuttable presumptions of domicile and includes a rebuttable presumption of domicile if an individual claims a residential exemption on property owned by the Taxpayer, if the taxpayer votes in Utah in a general election, or if the taxpayer asserts residency on a Utah income tax return. He stated that there is a question as to whether the Taxpayer's son is considered a tenant in this appeal but argued that the Taxpayer's son was not a tenant because the Taxpayer used the home during the audit period and did not need permission to use the home.

The Division's representative stated that the Division does not believe that the Taxpayer rebutted the presumptions of domicile in Subsection 59-10-136(2). He indicated that the Taxpayer had a Utah driver license and had a vehicle that was registered in Utah. He argued that the earned income factor is neutral because the Taxpayer earned income in both Utah and STATE-1 in both 2017 and 2018 but acknowledged that most of the Taxpayer's income was earned in STATE-1. He acknowledged that the Taxpayer was a member and attended local congregational services in STATE-1 and also acknowledged that the taxpayer was involved in several other clubs and organizations in STATE-1. He argued that the nature and quality of the living accommodations support a finding that the Taxpayer was domiciled in Utah in 2017 and 2018, because the Taxpayer was only renting homes in STATE-1 for ##### month periods and the Taxpayer owned a home that was located in CITY-7, Utah. He also noted that the Taxpayer used the CITY-7, Utah address on her federal and state individual income tax returns. He argued that there are four factors that support a finding that the Taxpayer was domiciled in Utah, two factors were neutral, and there was only one factor, the location of the Taxpayer's churches and clubs, that supports a finding that she was not domiciled in Utah.

The Division's representative stated that the Division's position is that the Division does not believe that the presumptions of domicile have been rebutted. He also noted the presumption of domicile in Subsection 59-10-136(2)(c) also applies because the Taxpayer asserted residency on a Utah income tax return in both years. He noted that she declared residency in Utah from DATE to DATE and from DATE through DATE. He also stated that the voting presumption in

Subsection 59-10-136(2)(b) arises in 2018 because the Taxpayer voted in Utah in a regular general election on November 5, 2018. However, he noted that the Taxpayer did not register to vote in Utah until DATE, which is during a time frame that is not in dispute.

The Division's representative stated that after reviewing all the factors, the Division does not believe the presumptions of domicile have been rebutted. He also indicated that the Division believes that the Taxpayer is domiciled under the provisions of Subsection 59-10-136(3) if the Commission finds that the presumptions of domicile under Subsection 59-10-136(2) are rebutted based on the Taxpayer's submitted information. He stated that the Division believes that the Taxpayer is domiciled in Utah. He noted that no penalties were assessed on the audits. He stated that the Division is asking the Commission to uphold the amended audits issued on DATE.

The Taxpayer concluded by requesting clemency from the Commission because she is retired and does not make the money she used to make. She stated that she is older and does not have a large 401(k). She stated that she only has Social Security income and a part-time job.

Commission Findings & Analysis

The Taxpayer has the burden of proof in this matter under Utah Code Ann. §59-1-1417. For the 2017 tax year, Utah Code Ann. §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"). For the 2018 tax year, Utah Code Ann. §59-10-103(1)(q) provides that a person is a Utah resident individual if an individual is domiciled in Utah.

The Division asserted that the Taxpayer is a Utah full-year resident individual for the 2017 and 2018 tax years because she is considered to have domicile in Utah. Accordingly, the Commission must apply the facts to the Utah income tax domicile law that is applicable for the 2017 and 2018 tax years to determine whether the Taxpayer is considered to be domiciled in Utah for those years. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. It contains several subsections addressing when a taxpayer is considered to have domicile in Utah and additional subsections addressing when a taxpayer is not considered to have domicile in Utah.

Utah Code Ann. §59-10-136(5)(a)⁵ 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) of Utah Code Ann. §59-10-136 provides that an

⁵ The Commission notes that Subsection (5) of Utah Code Ann. §59-10-136 was renumbered to Subsection (6) effective for the 2018 tax year.

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. In this case, the Taxpayer was divorced for the years at issue in this appeal and filed federal returns with a single filing status for each of the years at issue. The Taxpayer is not considered to have a spouse for purposes of Utah Code Ann. §59-10-136.

The Commission must first determine whether the Taxpayer is considered to be domiciled in Utah "in accordance with this section," and must analyze whether the taxpayer is considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3).

Utah Code Ann. §59-10-136(4) provides that an individual is not considered to have domicile in the State of Utah under Subsection §59-10-136(1), (2), or (3) if the individual was absent from the state for at least 761 consecutive days and certain other qualifications are met. The Taxpayer did not argue that she is not considered to be a Utah domiciliary under Subsection 59-10-136(4) for any portion of the audit period. The Commission finds that the Taxpayer does not meet the qualifications of Subsection (4) for reasons including that the Taxpayer indicated that, although she left the state to move to STATE-1, she returned to Utah during the summer months to visit family. Subsection (4)(a)(ii)(A) requires that during the 761 day period, an individual may not return to the State of Utah for more than 30 days in each of the calendar years at issue. The Taxpayer did not provide any information to demonstrate that those summer family visits did not exceed 30 calendar days in each year at issue in this appeal. The Commission finds that the Taxpayer has not submitted sufficient evidence to demonstrate that she was absent from Utah for at least 761 consecutive days and did not return to Utah for more than 30 calendar days in either the 2017 or 2018 calendar year. Thus, the Taxpayer does not qualify under Subsection §59-10-136(4) as being considered not domiciled in the State of Utah.

The Taxpayer is not domiciled in Utah under the provisions of Utah Code Ann. §59-10-136(1). If a dependent claimed on the individual's or individual's spouse's federal income tax return is enrolled in a Utah public kindergarten, elementary, or secondary school, the individual is considered domiciled in Utah. The Taxpayer did not claim a dependent on her 2017 or 2018 federal or state income tax returns. 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 Taxpayer was not enrolled as a resident student in a Utah institution of higher education during the 2017 or 2018 tax year.

The Taxpayer is presumed domiciled in Utah because she claimed the residential exemption on the home she owned in CITY-7, Utah for the 2017 and 2018 tax years. 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...

The Division's submitted information included the 2017 and 2018 property tax records showing that the Taxpayer's property located at ADDRESS-2 received the residential exemption for both the 2017 and 2018 tax years at issue in this appeal. 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. The Commission takes administrative notice that COUNTY-1 enacted COUNTY-1 Local Ordinance 3.10.020, which requires a property owner to file an application with COUNTY-1 to receive a residential exemption under Utah Code Ann. §59-2-103, as follows:

- A. All owners of residential property as defined in Utah Code § 59-2-102(34) shall submit an application to the Board of Equalization no later than March 1 of the current tax year for exemption from property taxes for residential property used as a primary residence. A separate application shall be filed for each parcel of property. The application shall include the following information for each specific parcel of property for which the exemption is requested:
 1. the owner(s) of record of the property;
 2. the property parcel number;
 3. the location of the property;
 4. the basis of the owner's knowledge of the use of the property;
 5. a description of the use of the property;
 6. evidence of domicile of the inhabitant(s) of the property; and
 7. the signature of all owners of the property certifying that the property is residential property.
- B. In the event that an application is not timely filed, an appeal to file a late application may be granted by the Board of Equalization, upon a finding of good cause, on an individual appeal basis, for the current tax year only. Applications for exemption shall be accepted for the current year only.
- C. Except for nursing homes, mixed commercial and residential use properties, and all properties receiving a partial residential exemption, all of which are required to file an application each year, if the Board of Equalization allows an owner the residential exemption, the Board may not require the owner to file another signed statement in order to receive the residential exemption for that property unless;
 1. the property did not receive the residential exemption during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;

2. any ownership interest in the property changes; or
3. the Board of Equalization determines that there is reason to believe that the property no longer qualifies for the residential exemption in accordance with Utah Code § 59-2-103.

However, COUNTY-1 enacted COUNTY-1 Local Ordinance 3.10.040, which provides a grandfather provision to the provision that requires a property owner to file an application with COUNTY-1 to receive a residential exemption under Utah Code Ann. §59-2-103, as follows:

As of the effective date of this chapter, a property that is currently listed by the County as having a residential exemption and is an owner occupied residential property, apartment, and other rental property that is being used as the primary residence of the occupants (not including nursing homes or mixed commercial and residential use properties) shall not be required to file an application to continue its status, unless the Board of Equalization or the Assessor determines that there is reason to believe that the property no longer qualifies for the residential exemption in accordance with Utah Code § 59-2-103, or any ownership interest in the property changes. A property that is initially listed by the County as having a residential exemption; is an owner occupied residential property, apartment, and other rental property that is being used as the primary residence of the occupants (not including nursing homes or mixed commercial and residential use properties); and is constructed after the effective date of this ordinance, shall not be required to file the residential exemption application, unless the County Board of Equalization or the Assessor determines that there is reason to believe that the property no longer qualifies for the residential exemption in accordance with Utah Code § 59-2-103, or any ownership interest in the property changes.

Thus, the residential exemption created by the Utah Legislature generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property. COUNTY-1 has added the second step of requiring a formal application in order to receive the benefit of the exemption but applies that formal application requirement in limited circumstances. Thus, the claim for the exemption 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 COUNTY-1 generally asserts an enduring claim to the residential exemption. Thus, the presumption of domicile under Utah Code Ann. §59-10-136(2)(a) arises for the Taxpayer as she claimed a residential exemption for the home she owned in CITY-7, Utah for the 2017 and 2018 tax years.

Furthermore, a Utah property on which an individual claims the residential exemption is considered their “primary residence” unless the property owner takes certain affirmative steps outlined in Utah Code Ann. §59-2-103.5. 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 Taxpayer is presumed domiciled in Utah under Utah Code Ann. §59-10-136(2)(a) because she did not provide any evidence to indicate that she had stated she was not qualified to receive the residential exemption. The Taxpayer did not notify the county that her CITY-7 home was no longer qualified to receive the residential exemption. In addition, the Taxpayer did not check the proper box on Part 7 of her Utah individual income tax returns to indicate that she no longer qualified to receive the residential exemption for the CITY-7, Utah home. Thus, the presumption of domicile under Utah Code Ann. §59-10-136(2)(a) arises for the 2017 and 2018 tax years.

Utah Code Ann. §59-10-136(6)⁶ provides that “whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.” The Taxpayer indicated that the CITY-7 home was the primary residence of her son, who she stated resided in the home while she was residing in STATE-1. The Commission has considered what is meant by “tenant” for purposes of this subsection in *Appeal No. 16-117*⁷. In *Appeal No. 16-117* the property owners owned a residence in Washington and a residence in Utah. They were residing in STATE-1 and their adult son was residing at the Utah residence. However, the property owners would periodically return to Utah and stay in their Utah property. They did not relinquish their rights to possess their Utah property while their adult son was residing in the Utah residence. Additionally, the property owners’ adult son did not pay rent or utilities, but he was supposed to maintain the residence while the property owners were away. The Commission concluded in *Appeal No. 16-117* that the adult son residing in the property and maintaining it while the property owners were away was not considered a tenant. The Commission finds that, similar to the situation in *Appeal No. 16-117*, the Taxpayer’s son is not considered a tenant in this appeal because the Taxpayer’s son did not pay rent and the Taxpayer still had the right to use and reside at the property whenever she wanted, and she did so for significant periods of time throughout the audit period. Thus, Subsection 59-10-136(6)⁸ does not preclude the rebuttable presumption under Subsection 59-10-136(2)(a) from arising because the Taxpayer has not demonstrated that the CITY-7 home was the primary residence of a tenant.

⁶ The Commission notes that Utah Code Ann. §59-10-136(6) was renumbered to Subsection 59-10-136(7) for the 2018 tax year. Although the numbering may have shifted between the audit years, the provisions cited did not change substantively during the audit period.

⁷ See *Initial Hearing Order, Appeal No.16-117*, Utah State Tax Commission (January 18, 2017). Redacted copies of this and other decisions can be viewed on the Commission’s website at <http://www.tax.utah.gov/commission-office/decisions>.

⁸ As noted above, Utah Code Ann. §59-10-136(6) was renumbered to Subsection 59-10-136(7) for the 2018 tax year, but the provisions cited did not change substantively during the audit period.

The Taxpayer is not presumed domiciled in Utah for the 2017 tax year under Utah Code Ann. §59-10-136(2)(b). Utah Code Ann. §59-10-136(2)(b) effective for the 2017 tax year provides as follows:

- (1) 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 presumption of Utah Code Ann. §59-10-136(2)(b) does not apply in this case for the 2017 tax year because the Taxpayer was not registered to vote in Utah in 2017. Rather, the Taxpayer was registered to vote in STATE-1 during the 2017 tax year.

The Taxpayer is presumed to be domiciled in Utah for the period of DATE through DATE because she voted in the regular general election in Utah on November 5, 2018. The version of Utah Code Ann. §59-10-136(2)(b) that was in effect for the 2018 tax year 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:
 - (i) votes in this state in a regular general election, municipal general election, primary election, or special election during the taxable year; and
 - (ii) has not registered to vote in another state in that taxable year . . .

The Division's submitted information showed that the Taxpayer registered to vote in Utah on DATE and voted in the regular general election in Utah on November 5, 2018. However, the Taxpayer provided a voter registration card showing that she registered to vote in STATE-1 on DATE and indicated that she continued to be registered to vote in STATE-1 until she registered to vote in Utah on DATE. Thus, the Commission finds that the presumption of domicile under Subsection 59-10-136(2)(b) only arises for the period from DATE through DATE because the Taxpayer voted in the regular general election in Utah on November 5, 2018.

The Taxpayer is also presumed domiciled in Utah from DATE to DATE and from DATE through DATE under Subsection 59-10-136(2)(c) because she filed part-year resident Utah individual income tax returns for the 2017 and 2018 tax years, declaring she was a part-year resident of Utah for those periods. Utah Code Ann. §59-10-136(2)(c) provides as follows:

- (2) 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 Taxpayer filed a 2017 part-year resident Utah individual income tax return declaring she was a resident of Utah from DATE to DATE and filed a 2018 part-year resident Utah individual income tax return declaring she was a resident of Utah from DATE to DATE. Thus, the Taxpayer is presumed domiciled in Utah under Subsection 59-10-136(2)(c) for that period.

The Legislature did not specify what circumstances are sufficient or are not sufficient to rebut the presumptions in Utah Code Ann. §59-10-136(2), leaving it to the courts and the Commission to determine which circumstances are sufficient or not sufficient to rebut the presumptions of domicile found in Subsection §59-10-136(2). The Utah Supreme Court held in *Buck v. Tax Comm'n*, 506 P.3d 584, 2022 UT 11 (February 24, 2022) that “. . . the presumption of domicile that results from claiming a primary residential property tax exemption is rebuttable. And . . . taxpayers are not statutorily barred from having a meaningful opportunity to rebut the presumption.” The Commission has determined that the Taxpayer is presumed domiciled under Subsection 59-10-136(2)(a) for the entire 2017 and 2018 tax years, is presumed domiciled under Subsection 59-10-136(2)(b) for the period from DATE through DATE, and is presumed domiciled under Subsection 59-10-136(2)(c) for the periods from DATE to DATE and from DATE through DATE. Thus, the Commission must analyze whether the Taxpayer has rebutted the presumption of domicile under Subsection 59-10-136(2)(a) for the entire 2017 and 2018 tax years, whether the Taxpayer has rebutted the presumption of domicile under Subsection 59-10-136(2)(b) for the period from DATE through DATE, and whether the Taxpayer has rebutted the presumption of domicile under Subsection 59-10-136(2)(c) for the periods from DATE to DATE and from DATE through DATE⁹.

The Utah Supreme Court, in *Buck v. Utah State Tax Comm'n*, noted that domicile is generally referring to “[t]he place at which a person has been physically present and that the person regards as home” or “a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.”¹⁰ Furthermore, the Supreme Court held in *Buck v. Utah State Tax Comm'n* that a multiplicity of domicile factors should be reviewed when determining whether a taxpayer rebutted the presumptions of domicile

⁹ The Commission has previously held that the Subsection 59-10-136(2) presumptions were rebutted based on a number of circumstances. The Commission notes that none of the circumstances are present in this case that would allow the Taxpayer to rebut any of the Subsection 59-10-136(2) presumptions based on the Commission’s prior decisions. Redacted copies of those and other selected Commission decisions can be reviewed on the Commission’s website at <https://tax.utah.gov/commission-office/decisions>.

¹⁰ *Buck v. Utah State Tax Comm'n*, 2022 UT 11, P34, 506 P.3d 584, 589.

in Subsection 59-10-136(2) and stated that the multiplicity of factors that should be considered when applying principles of domicile should include but are not limited to “the places where the [individual] exercises civil and political rights, pays taxes, maintains bank accounts, belongs to clubs and churches, has places of business or employment, and maintains a home for his [or her] family,” (citing *Coury v. Prot*, 85 F.3d 244, 251 (5th Cir. 1996)), further noting “[n]o single factor is determinative” (internal citations omitted). In *Buck v. Utah State Tax Comm’n*, the Utah Supreme Court determined that the taxpayers in that appeal had rebutted the presumption of domicile under Subsection 59-10-136(2)(a) and considered the following factors in making that determination: (1) the taxpayers owned a home in Bluffdale, Utah and claimed a residential exemption on that home; (2) the taxpayers resided in a home they leased in Florida that was superior in nature and quality to the home they owned in Bluffdale, Utah; (3) the Taxpayers’ work was based out of Florida; (4) the taxpayers’ dependent children were enrolled in school in Florida; (5) one of the taxpayers spent eleven or so full or partial days and the other spouse spent twenty-two full or partial days in Utah during the year at issue; (6) the Taxpayers’ children obtained their routine medical care in Florida; (7) the taxpayers’ children participated in youth athletic programs in Florida; (8) the taxpayers belonged to a local congregation and attended local religious services in Florida; (9) the taxpayers held a gym membership in Florida; (10) the taxpayers were involved in several volunteer efforts in Florida; (11) the taxpayers’ pets received their care from a Florida veterinarian; (12) the taxpayers were both issued Florida driver licenses; (13) the taxpayers were registered to vote in Florida; (14) the taxpayers owned six vehicles and a trailer and four of the vehicle were registered in Florida, while the remaining two vehicles were registered in Utah and used by family members residing in Utah and the trailer was registered in Utah and used in a business partly owned by the taxpayers but operated by a family member; (15) the taxpayers received the majority of their mail at their Florida address but did get a lesser amount of mail at the Bluffdale address; (16) one of the taxpayers obtained a nonresident hunting license in Utah; (17) the taxpayers had no income from a source in Utah during the year at issue; (18) the taxpayers did not file a Utah income tax return for the year at issue; (19) the taxpayers filed state income tax returns in California, Missouri, Ohio, and Wisconsin for the year at issue; and (20) the taxpayers’ tax returns were all filed using an address in New Jersey, which was the location of their accountant, and all the taxpayers’ returns indicated that they were Florida residents.

By comparison, the multiplicity of factors the parties have submitted for the Commission’s consideration in this appeal include the following: (1) the Taxpayer owned a home in CITY-7, Utah and claimed a residential exemption on that home; (2) the Taxpayer resided in

STATE-1 and leased various homes for nine month periods in STATE-1 from DATE to DATE, from DATE to DATE, and from DATE until she moved to Utah in DATE that were inferior in both nature and quality; (3) the Taxpayer worked as a tenured Assistant Professor of Spanish at BUSINESS-1 (BUSINESS-1) in STATE-1 for the 2017 tax year and through DATE; (4) the Taxpayer received Utah sourced income from BUSINESS-2 in CITY-3, Utah, and from an annuity in 2017 and Utah sourced income from BUSINESS-3 in CITY-4, Utah, and from an annuity in 2018; (5) the Taxpayer resided in Utah in her home located in CITY-7, Utah for approximately three and a half months in 2017 and moved to Utah in the DATE; (6) the Taxpayer was registered to vote in STATE-1 until DATE; (7) the Taxpayer's adult son resided in the CITY-7, Utah residence while the Taxpayer was residing in STATE-1 and did not pay rent but did fulfill maintenance responsibilities for the property; (8) the Taxpayer was a member of a local congregation and attended local church services in STATE-1; (9) the Taxpayer was a member of the Democratic party in STATE-1; (10) the Taxpayer was issued a Utah driver license in both 2017 and 2018; (11) the Taxpayer owned one vehicle that was registered in Utah in both 2017 and 2018; (12) the Taxpayer received official University mail at the University address but received basic/local mail at her CITY-7 address; (13) the Taxpayer filed part-year Utah income tax returns and claimed residency in Utah from DATE to DATE and from DATE through DATE; (14) the Taxpayer filed a STATE-1 income tax return but did not file the return as a STATE-1 resident in 2017 or 2018; and (15) the Taxpayer used her CITY-7, Utah address on her 2017 and 2018 federal income tax returns, her 2017 and 2018 STATE-1 income tax returns, and her 2017 and 2018 Utah income tax returns.

The Commission finds that, in considering the weight of the evidence when reviewing a multiplicity of domicile factors based on the submissions and information provided by both parties, the Taxpayer's submissions are not sufficient to rebut the presumptions of domicile under Subsections (2)(a), (2)(b), and (2)(c). Of the factors presented by both parties in determining the Taxpayer's domicile, the factors similar to the Taxpayers in *Buck v. Tax Comm'n* that support the Taxpayer being domiciled in a state other than Utah for the 2017 and 2018 tax years were that although the Taxpayer owned a residence located in Utah and claimed the residential exemption for that property she resided in STATE-1 and leased various homes in STATE-1 while fulfilling her work obligations as an Assistant Professor at BUSINESS-1, she worked in STATE-1 until DATE, she was registered to vote in STATE-1 until DATE, she was a member of a local congregation and attended local church services while residing in STATE-1, she was involved in several clubs and organizations in STATE-1, and she received official University mail at the University address in STATE-1 but received basic/local mail at the CITY-7 address. However,

unlike the Taxpayers in *Buck v. Tax Comm'n*, the factors that support the Taxpayer being domiciled in Utah for the 2017 and 2018 tax years include the fact that the nature and quality of the residence owned by the Taxpayer located in Utah was superior to the nature and quality of the residences leased by the Taxpayer in STATE-1, which were leased for only relatively short-term ##### month periods. In addition, the Taxpayer's adult son resided in the Taxpayer's Utah residence while the Taxpayer was residing in STATE-1 and did not pay rent. The Taxpayer would reside in the CITY-7 residence when she would return to Utah, and she returned to Utah for significant periods of time throughout the audit period. Additionally, the Taxpayer was issued a Utah driver license, she owned only one vehicle that was registered in Utah, she used her CITY-7, Utah address on her state and federal returns filed for both the 2017 and 2018 tax years, she filed Utah income tax returns in both 2017 and 2018 and asserted part-year residency in Utah in each of those years, she filed her STATE-1 income tax returns as a nonresident, and she earned income in Utah in both 2017 and 2018. In this appeal, the Commission finds that the preponderance of the evidence, taken as a whole, is insufficient to indicate that STATE-1 was the Taxpayer's true, fixed, principal, and permanent home and the factors that support the Taxpayer being domiciled in Utah outweigh the factors that support a finding that the Taxpayer is domiciled in a state other than Utah in 2017 and 2018. Thus, the Commission finds that the Taxpayer's submitted information is insufficient to rebut the presumptions of domicile under Subsections 59-10-136(2)(a), (b), and (2)(c).

The Commission finds that the Taxpayer has not submitted sufficient evidence to rebut the Subsection 59-10-136(2)(a) presumption of domicile for the entire 2017 and 2018 tax years, has not submitted sufficient evidence to rebut the Subsection 59-10-136(2)(b) presumption of domicile for the period of DATE through DATE and has not submitted sufficient evidence to rebut the Subsection 59-10-136(2)(c) presumption of domicile for the periods from DATE to DATE and from DATE through DATE. The Commission will not analyze the factors found in Utah Code Ann. §59-10-136(3) unless the Commission finds that an individual or the individual's spouse is not domiciled in Utah under Subsection (1) or (2). Subsection (3) sets forth a number of facts and circumstances that, when considered in totality, may support a finding that an individual is domiciled in Utah. 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 parties' submitted information is insufficient to rebut the Subsection 59-10-136(2)(a), Subsection 59-10-136(2)(b), or Subsection 59-10-136(2)(c) presumptions, and, thus, the Commission will not analyze the factors found in Utah Code Ann. §59-10-136(3).

Pursuant to Utah Code Ann. §59-10-136, the Commission finds that the Taxpayer was domiciled in Utah for the entire 2017 and 2018 tax years and, therefore, meets the definition of full-year “resident individual” whose income is subject to tax in Utah under Utah Code Ann. §59-10-104(1) for those tax years.

Utah imposes a tax on the state taxable income of a resident individual in Utah Code Ann. §59-10-104(1) and the state taxable income of a nonresident individual in Utah Code Ann. §59-10-116(1). However, “state taxable income” is defined differently for a resident individual and a nonresident individual. Utah Code Ann. §59-10-103(1)(x)(i) provides that “state taxable income” for a resident individual is federal adjusted gross income subject to additions and subtractions made under Section 59-10-114 and adjustments made under Section 59-10-115, while “state taxable income” for a nonresident individual is calculated by determining federal adjusted gross income subject to additions and subtractions made under Section 59-10-114 and adjustments made under Section 59-10-115 and calculating the portion of that income that is derived from Utah sources in accordance with Section 59-10-117. There is no limitation in the definition of “state taxable income” for a resident individual that the state taxable income be calculated by determining the amount that is derived from Utah sources. Therefore, all income included in the federal adjusted gross income of a resident individual is state taxable income regardless of whether it is derived from Utah sources or is earned in another state unless it is subject to addition or subtraction under Utah Code Ann. §59-10-114 or adjustment under Utah Code Ann. §59-10-115¹¹. The Taxpayer is domiciled in Utah and, therefore, meets the definition of “resident individual” in Utah Code Ann. §59-10-103 for each of the years at issue in this appeal. Thus, all of the income earned by the Taxpayer is included in the Taxpayer’s federal adjusted gross income and meets the definition of state taxable income as there is no requirement that state taxable income for a resident individual be derived from Utah sources. The Taxpayer has not provided evidence that any portion of her federal adjusted gross income is subject to addition or subtraction under Utah Code Ann. §59-10-114 or adjustment under Utah Code Ann. §59-10-115, thus her entire federal adjusted gross income is included in state taxable income that is subject to tax in Utah for the 2017 and 2018 tax years. Based on the foregoing, the Commission finds that the Division’s amended audits properly include the Taxpayer’s income for the 2017 and 2018 tax years.

The Taxpayer also asserted that the application of the domicile law has an unfair impact on individuals whose income is not earned in Utah and asserted that those individuals should not

¹¹ As noted above, state taxable income that is earned in another state is subject to a credit against the Utah tax liability for income taxes imposed by another state, pursuant to Utah Code Ann. §59-10-1003.

have to pay taxes on their income not earned in Utah. The Taxpayer may be suggesting that Utah Code Ann. §59-10-103, §59-10-104, and §59-10-136, which impose an income tax on all the taxable income of a person who is domiciled in Utah, results in bad tax policy in certain situations. While the Commission is tasked with the duty of implementing laws enacted by the Legislature, the Commission is not authorized to amend these laws to achieve what a taxpayer may consider to be a better tax policy. That is the role of the Legislature. The Taxpayer also expressed concern that Utah's imposition of an income tax on the income she earned in STATE-1 results in double taxation of that income. The Commission notes that the Taxpayer's concern regarding the double taxation of her income is addressed by the credit for taxes imposed by another state authorized in Utah Code Ann. §59-10-1003.

The Taxpayer has requested a waiver of interest. With regard to the waiver of interest, Rule R861-1A-42 specifically provides, “[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” Interest is not assessed to punish taxpayers. Instead, interest is assessed to compensate the state for the time value of money. The State of Utah was denied the use of the funds from the time the taxes were originally due. In this appeal, the Taxpayer has the burden of proof and has not provided any information to show that the Commission gave her erroneous information or took inappropriate action that contributed to the error. Thus, the Taxpayer has not demonstrated sufficient grounds for the waiver of interest in this appeal.

Based on the foregoing, the Commission finds that the Division's amended audit assessments of tax and interest for the 2017 and 2018 tax years issued on DATE should be sustained.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the Taxpayer was domiciled in Utah for the 2017 and 2018 tax years and was, therefore, a full-year resident individual of Utah for tax purposes for those years. The Commission sustains the Division's amended audits of income taxes and interest for the 2017 and 2018 tax years. 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

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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
CITY-3, 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 ____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
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.