APPEAL # 22-771
TAX TYPE: INDIVIDUAL INCOME TAX
TAX YEAR: 2018 AND 2019
DATE SIGNED: 5/4/2023
COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION[1], Respondent.	**INITIAL HEARING ORDER** Appeal No. 22-771 Account No: ##### Tax Type: Individual Income Tax Tax Years: 2018 & 2019 Judge: Halverson

Presiding:
Shannon Halverson, Administrative Law Judge

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

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on November 21, 2022 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. The Taxpayers filed a nonresident Utah individual income tax return for the 2018 tax year and a part-year resident Utah individual income tax return for the 2019 tax year. The Division issued Notices of Deficiency and Estimated Income Tax on March 16, 2022, and made the audit changes based on the Division's determination that the Taxpayers were domiciled in Utah in accordance with Utah Code Ann. §59-10-136 and were, therefore, Utah resident individuals for all of 2018 and 2019. The Division also determined that the Taxpayers had unreported income for each of those years. The Division included all of the Taxpayers' income for the entire 2018 and 2019 tax years as taxable income in

[1] Due to a reorganization at the Tax Commission, the name of the Tax Commission division that was the Respondent in this matter has been changed.

Utah. The amounts of tax and interest due as of the date the Notices of Deficiency were issued are as follows:

REDACTED TABLE

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Ann. §59-10-104(1)(2018)[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) "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
> (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 provides as follows regarding what constitutes domicile in the State of Utah:

> (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

[2] All substantive law citations are to the 2018 version of Utah law, unless otherwise indicated.

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:

(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;
(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;

(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) 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.

Utah Code Ann. §53B-2-101(1) describes an institution of higher education in this state as follows:

(1) The following institutions of higher education are bodies politic and corporate with perpetual succession and with all rights, immunities, and franchises necessary to function as such:

(a) the UNIVERSITY-1;

(b) Utah State University;

(c) Weber State University;

(d) Southern Utah University;

(e) Snow College;
(f) Dixie State University;
(g) Utah Valley University;
(h) Salt Lake Community College;
(i) Bridgerland Technical College;
(j) Davis Technical College;
(k) Dixie Technical College;
(l) Mountainland Technical College;
(m) Ogden-Weber Technical College;
(n) Southwest Technical College;
(o) Tooele Technical College; and
(p) Uintah Basin Technical College.

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.

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

DISCUSSION

The Taxpayers filed a nonresident Utah individual income tax return for the 2018 tax year and a part-year resident Utah individual income tax return for the 2019 tax year, claiming they were part-year residents for the period from November 18, 2019 through December 31, 2019. The Taxpayers asserted that TAXPAYER-1 was not domiciled in Utah and that he was a resident of STATE-1 for the 2018 tax year and for the period from DATE through DATE. The Taxpayers filed 2018 and 2019 federal individual income tax returns with a status of married filing jointly and claimed no dependent exemptions in 2018 and 2019. The Division issued Notices of Deficiency and Audit Change for the 2018 and 2019 tax years on DATE. In the Division's audits, the Division changed the Taxpayers' filing status to full-year resident returns for both the 2018 and 2019 tax years and included all of the Taxpayers' joint income for both of those years. The Division's assessments did 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.[3] The Division's audit included $$$$$ of unreported income and increased the Taxpayer's withholding tax credit by $$$$$ for the 2018 tax year. The Division's audit included $$$$$ of unreported income for the 2019 tax year. The Taxpayers timely appealed the Notices of Deficiency. It is the Division's position that the Taxpayers were domiciled in Utah for the 2018 and 2019 tax years, and thus all of their 2018 and 2019 income was taxable in Utah, regardless of source. It is the Taxpayers' position that TAXPAYER-1 was a resident of STATE-1 for the 2018 tax year and for the period from DATE through DATE and his income earned during that time was earned in STATE-1 and was not taxable in Utah.

The Taxpayers were married for all of 2018 and 2019. The Taxpayers filed their 2018 and 2019 federal individual income tax returns with a status of married filing jointly and claimed no dependent exemptions in either year. The Taxpayers filed their 2018 federal and state individual income tax returns using a STATE-1 address and filed their 2019 federal and state individual income tax returns using a Utah address.

[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.

TAXPAYER-1 stated at the Initial Hearing that he lived and worked in STATE-1 in 2018 and for the period from DATE through the middle of the summer in 2019. He indicated that he resided in an apartment located at ADDRESS-1. He indicated that he leased the apartment and the lease expired on DATE. At the Initial Hearing, TAXPAYER-1 stated that he extended the lease for a period of time after the lease expired but was not sure of the exact date that the lease extension ended. He indicated that he moved to Utah after the lease extension ended in the middle of the summer of 2019 and resided in a home the Taxpayers owned located at ADDRESS-2. The Taxpayers' submitted information indicated that TAXPAYER-2 resided in Utah in 2018 and 2019 in a home the Taxpayers owned located at ADDRESS-2. The Taxpayers' submitted information indicated that TAXPAYER-1 worked as a Sales Vice President for BUSINESS-1, which is located at ADDRESS-3 from DATE through DATE and that he worked from STATE-1 for BUSINESS-2, which is a company based in CITY-1, Utah, from DATE through DATE and then subsequently worked for BUSINESS-2 in Salt Lake City. TAXPAYER-1 indicated at the Initial Hearing that when he worked for BUSINESS-2 from DATE through DATE, he was employed in STATE-1 to represent them on oil and gas issues in STATE-1. He indicated that he had full knowledge that it was a Utah based company. He stated that he took a different role at BUSINESS-2 as of DATE, when he began working in Utah. The Taxpayers' submitted information indicated that TAXPAYER-2 was employed as a Graduate Assistant by the UNIVERSITY-1 from DATE through DATE and was employed as a Nurse Practitioner/Adjunct Instructor from DATE through the date their information was submitted to the Division. TAXPAYER-1 indicated at the Initial Hearing that he returned to Utah one weekend a month, which was approximately two or three days a month. He estimated that he was in Utah for about 24 to 30 days a year. He indicated that TAXPAYER-2 would return to STATE-1 every other weekend.

The Taxpayers' submitted information indicated that they owned two properties in Utah in 2018 and 2019. One of the Taxpayers' properties was located at ADDRESS-2 and was purchased in DATE. The Taxpayers indicated that TAXPAYER-2 lived in this property in 2018 and 2019 and TAXPAYER-1 moved into this property in the middle of the summer of 2019. The Division submitted evidence showing that the Taxpayers' property located at ADDRESS-2 received the residential exemption for the 2018 and 2019 tax years. The other Utah property that the Taxpayers owned in 2018 and 2019 was a property located at ADDRESS-2. Their submitted information indicated that the Taxpayers purchased this property in 2014 as a rental property and that they did not occupy the property at all during 2018 or 2019. The Taxpayers' submitted

information indicated that this property was leased as a nightly rental. The Taxpayers' submitted information indicated that the L6 Canyon Resorts property was sold on December 9, 2019.

The Taxpayers' submitted information indicated that TAXPAYER-2 attended the UNIVERSITY-1 from DATE through DATE. The Taxpayers submitted a domicile survey, which indicated that she paid out-of-state tuition for the first year but was awarded a Graduate Assistant role which came with in-state tuition as part of the benefit package. The Taxpayers provided a summary of TAXPAYER-2's tuition/housing charges for the Fall 2016 semester and for the Spring 2017 semester to demonstrate that she was charged out-of-state tuition.

The Taxpayers' submitted information indicated that TAXPAYER-1 was registered to vote in STATE-1 in 2018 and 2019. TAXPAYER-1 stated at the Initial Hearing that he could not recall whether he voted in STATE-1 in 2018 or 2019. The Taxpayers' submitted information indicated that TAXPAYER-2 was not registered to vote in 2018 or 2019 and was not eligible to vote during this period due to her COUNTRY-1 citizenship and status as permanent resident of the United States.

The Taxpayers' submitted information indicated that both Taxpayers held Utah driver licenses in 2018 and 2019. However, TAXPAYER-1 stated at the Initial Hearing that the Taxpayers had both Utah and STATE-1 driver licenses. He stated that his STATE-1 driver license expired on DATE and stated that he does not believe he had a Utah driver license in 2018.

The Taxpayers' submitted information indicated that TAXPAYER-1 leased a VEHICLE-1 that was registered in STATE-1 in 2018 and 2019 and TAXPAYER-2 owned a VEHICLE-2 that was registered in Utah in 2018 and 2019. The Taxpayers' submitted information also indicated they were not members of a church, club, or other organization in 2018 or 2019.

The Taxpayers' submitted information indicated that TAXPAYER-1 used the ADDRESS-1 address of his STATE-1 residence for personal matters and correspondence and various utility and insurance bills and TAXPAYER-2 used the ADDRESS-2 address for virtually all of her purposes. They indicated that they did not make any declarations of residency on any other state documents. TAXPAYER-2 was licensed as a registered nurse in the state of Utah in 2018 and 2019 and obtained her Advanced Practice Registered Nurse (APRN) license in Utah effective DATE.

TAXPAYER-1 argued at the Initial Hearing that he lived in STATE-1 for 35 years and the state of STATE-1 recognized him as a full-time resident of STATE-1. He indicated that he was registered to vote in STATE-1, he maintained a home in STATE-1, his vehicle was registered in STATE-1, and he maintained a STATE-1 driver license. He stated that he was employed by an oil

and gas engineering company in STATE-1 and his office was in STATE-1. He indicated that his employer did not have an office or employees in the state of Utah.

TAXPAYER-1 stated that his wife applied to multiple schools and eventually accepted a position at the UNIVERSITY-1. He indicated that she received a full ride scholarship that included a Graduate Assistant position. He stated that his wife applied to the UNIVERSITY-1 as an out-of-state student. He indicated that the Taxpayers purchased the property on ADDRESS-2 in DATE and indicated that TAXPAYER-2 moved to Utah approximately 60 to 90 days before her program began in DATE. He indicated that TAXPAYER-2 has lived in Utah ever since she moved here. He indicated that the Taxpayers were under the assumption that TAXPAYER-2 would return to STATE-1. However, he indicated that she decided to stay in Utah, so TAXPAYER-1 looked for a job that allowed him to work remotely. He indicated that the Taxpayers would see each other every other weekend. He stated that one spouse would fly to Utah or STATE-1 every other week. TAXPAYER-1 estimated that he was in Utah between 24 to 30 days each year. He indicated that TAXPAYER-2 graduated from the UNIVERSITY-1 and now works and specializes in Utah, STATE-2, and STATE-3.

TAXPAYER-1 stated that when he received the Notices of Deficiency, he was advised that he would not have been considered a resident of Utah if the Taxpayers had filed their federal and state income tax returns with a status of married filing separately. However, he stated that it was too late to file with a status of married filing separately by the time he became aware that he would be considered domiciled in Utah. He indicated that when TAXPAYER-2 came to Utah, the Taxpayers sold their house in STATE-1, and TAXPAYER-1 rented an apartment in STATE-1. He indicated that they used the money from the sale of their STATE-1 home to buy the house in Utah. TAXPAYER-1 stated that he never made any money in the state of Utah, he did not live in the state of Utah, he had a car that was registered in STATE-1, he paid bills in STATE-1, and he did not have a business location in Utah. He argued that there is no way he would have known that by being here for 24 to 30 days of the year he would be considered a Utah resident. He argued that he would not have known he was domiciled in Utah and argued that the law is unfair.

The Division's representative stated at the Initial Hearing that the Division believes that the Taxpayers are domiciled in Utah for the 2018 and 2019 tax years. He indicated that in Utah Code Ann. §59-10-136, there are several tests used to determine if an individual is domiciled in Utah. He noted that in Utah Code Ann. §59-10-136(1), an individual is automatically considered domiciled in Utah if the Taxpayer or the Taxpayer's spouse is a resident student at a public institution of higher education. The Division's representative indicated that the Taxpayers went to great lengths to demonstrate that TAXPAYER-2 was an out-of-state student and indicated that she

could not apply as an in-state student. The Division's representative noted that the Taxpayers provided a summary of TAXPAYER-2's tuition/housing charges for the Fall 2016 semester and for the Spring 2017 semester. The Division's representative also noted that the Taxpayers' submissions only included the tuition/housing charges for the Fall of 2016 and Spring of 2017, and the Division has not seen similar documentation for 2018 or 2019. The Division's representative stated that he believes that TAXPAYER-2 was not classified as a nonresident student in 2018 and 2019. He argued that if the Commission determines that TAXPAYER-2 was a resident student in 2018 and 2019, and the Taxpayers filed joint returns, then TAXPAYER-1 would also be considered to have Utah domicile under Utah Code Ann. §59-10-136(1).

The Division's representative stated that the second test to determine whether a taxpayer is domiciled in Utah is if there is a rebuttable presumption that the Taxpayer is domiciled in Utah under Utah Code Ann. §59-10-136(2). He noted that a taxpayer is presumed domiciled under Subsection 59-10-136(2) if the taxpayer owns a home in Utah that receives the residential exemption, if the taxpayer voted in Utah, or if the taxpayer claimed to be a Utah resident on a Utah individual income tax return. The Division's representative argued that the Taxpayers owned a home in CITY-2 and claimed the residential exemption on that home. Additionally, the Division's representative argued that the Taxpayers claimed to be part-year residents on their 2019 individual income tax return from DATE through DATE.

The Division's representative stated that the third test to determine whether a taxpayer is domiciled in Utah considers 14 facts and circumstances outlined in Subsection 59-10-136(3). The Division's representative argued that TAXPAYER-2 would be considered a Utah resident even if she was a nonresident student because she has many residency ties to the state of Utah and would be considered domiciled in Utah under Subsection 59-10-136(3). He noted that she resided in Utah, she had a Utah driver license, her income was earned in Utah, her motor vehicle was registered in Utah, and she spent more than 183 days in Utah. The Division's representative argued that those factors outweigh any residency factors in another state. He argued that under Subsection (3) she is considered to be domiciled in Utah and because the Taxpayers filed married filing joint returns, if an individual has domicile in the State of Utah then the individual's spouse is domiciled in Utah pursuant to Subsection 59-10-136(6). The Division acknowledged that there are two exceptions for an individual to not be considered to be domiciled in Utah under Subsections 59-10-136(4) and (5) but argued that the Taxpayers do not qualify for these exceptions during the audit period.

The Division's representative stated that both Taxpayers were domiciled in Utah in 2018 and 2019 and the Division's assessments for the 2018 and 2019 tax years should be upheld.

The Division's representative noted that the Notice of Deficiency for the 2018 tax year increased the Taxpayers' federal adjusted gross income by $$$$$ to match a federal adjustment, which included unreported income amounts of $$$$$ for royalties and $$$$$ of wages paid to TAXPAYER-2 from the UNIVERSITY-1. He stated that even if the Taxpayers are determined to not have domicile in the state, those amounts would need to be included as taxable income in Utah. The Division's representative noted that the Notice of Deficiency for the 2019 tax year increased the Taxpayers' income by $$$$$ and indicated that the income amounts were determined from reported 1099 retirement distributions that were not included as income on the Taxpayers' income tax returns. The Division's representative stated that the dates of those distributions matter because both distributions were allocated to TAXPAYER-1, and if those distributions were received while TAXPAYER-1 was a Utah resident individual then the distributions are taxable in Utah. He stated that the Division does not know when the distributions occurred and does not have the dates of distributions.

TAXPAYER-1 concluded by stating that he lived and worked in STATE-1 in 2018 and for a portion of 2019. He argued that the Division's position is that because his wife was domiciled in Utah he is automatically domiciled in Utah and argued that is not a rational position. He argued that he was in Utah for less than 30 days each year to see his wife, he did not do anything malicious to evade paying taxes, and he did not live or work in the state of Utah. He expressed concern that he should have been informed that he should have amended his filing status to a married filing separate filing status. He argued that the Division waited until two weeks after the deadline to file an amended federal return to issue the Notice of Deficiency.

Commission Findings & Analysis

The Taxpayers have the burden of proof in this matter under Utah Code Ann. §59-1-1417. For the 2018 and 2019 tax years, Utah Code Ann. §59-10-103(1)(q) provides that a person is a Utah resident individual if an individual is domiciled in this state.

The Division asserted that the Taxpayers are Utah full-year resident individuals for the 2018 and 2019 tax years because they are 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 2018 and 2019 tax years to determine whether the Taxpayers are 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 four 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.

The Taxpayers are each other's spouse for the years at issue. Utah Code Ann. §59-10-136(6)(a) provides that if an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is also considered to have domicile in this state. Subsection (6)(b) provides that an individual is not considered to have a spouse if the individual is legally separated or divorced from the spouse, or the individual and individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. The Taxpayers filed 2018 and 2019 federal income tax returns with a married filing jointly filing status. The Taxpayers provided testimony at the Initial Hearing that they were not legally separated or divorced throughout 2018 and 2019. Thus, the Commission finds that the Taxpayers are each other's spouse for the years at issue in this appeal.

The Commission must first determine whether one or both of the taxpayers is considered to be domiciled in Utah "in accordance with this section," specifically in accordance with Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3). In instances where the actions of only one spouse meet the circumstances described in Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3), the Commission has generally found that both spouses are considered to be domiciled in Utah under the applicable subsection, and that such a conclusion is supported by Subsection 59-10-136(6)(a). As a result, the Commission must analyze whether the taxpayers are 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 and the individual's spouse were absent from Utah for at least 761 consecutive days and certain other qualifications are met. The Taxpayers do not argue that they are not considered to have domicile in Utah under Subsection 59-10-136(4) for any portion of the audit period. The Commission finds that the Taxpayers do not meet the qualifications of Subsection (4) for reasons including that TAXPAYER-2 resided in Utah throughout the years at issue in this appeal. Subsection (4)(a)(ii)(A) requires that during the 761 day period, neither the individual nor the individual's spouse return to the State of Utah for more than 30 days in each of the calendar years at issue in this appeal. Thus, the Commission finds that both Taxpayers were not absent from Utah for 761 consecutive days and do not qualify under Subsection 59-10-136(4) as being considered not domiciled in the State of Utah.

Utah Code Ann. §59-10-136(5) provides that the spouse of an individual who is domiciled in Utah is not considered to have domicile in Utah under Subsection 59-10-136(2) or (3) if the following qualifications are met :

> ". . . 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.

The Commission finds that the Taxpayers' submitted information is not sufficient to demonstrate by a preponderance of the evidence that the requirements of Utah Code Ann. §59-10-136(5) are met because both Taxpayers owned property in this state during all of 2018 and 2019 and because both Taxpayers held a Utah driver license for at least a portion of the years at issue in this appeal. Thus, the Commission finds that neither Taxpayer qualifies as being considered not domiciled in the state of Utah under Subsection 59-10-136(5) for any portion of the audit period.

The Taxpayers are domiciled in Utah under Utah Code Ann. §59-10-136(1) for the period from DATE through DATE[4] but are not domiciled in Utah under the provisions of Utah Code Ann. §59-10-136(1) for the period from DATE through DATE. Utah Code Ann. §59-10-136(1) 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.

An individual is considered to have domicile in this state if the individual or the individual's spouse is a resident student who is enrolled in an institution of higher education described in Utah Code Ann. §53B-2-101 in this state. The Taxpayers indicated that TAXPAYER-2 was enrolled as a graduate student at the UNIVERSITY-1 from DATE through DATE. The UNIVERSITY-1 is an institution of higher education described in Utah Code Ann. §53B-2-101. The Taxpayers asserted that TAXPAYER-2 applied to the UNIVERSITY-1 as a nonresident student and was considered a nonresident student. The Taxpayers submitted a summary of

[4] The Commission takes administrative notice that the 2019 UNIVERSITY-1 commencement exercises were held on DATE. *See* REDACTED URL (last visited March 23, 2023).

TAXPAYER-2's tuition/housing charges for the Fall 2016 semester and for the Spring 2017 semester. However, the Taxpayers' responses to the Division's domicile survey indicated that the first year she attended the UNIVERSITY-1 she paid out-of-state tuition but indicated that she was awarded a Graduate Assistant role that came with in-state tuition as part of the benefit package. Furthermore, as noted by the Division's representative, the Taxpayers' submissions only included the tuition/housing charges for the Fall of 2016 and Spring of 2017, and the Taxpayers did not provide similar documentation for 2018 or 2019. The Commission finds that TAXPAYER-2 was enrolled in an institution of higher education described in Utah Code Ann. §53B-2-101 in this state for the 2018 tax year and for the period from DATE through DATE, and finds that the Taxpayers' submissions are not sufficient to demonstrate that the Taxpayer was enrolled as a nonresident student at the UNIVERSITY-1 in 2018 and for the period from DATE through DATE. Thus, pursuant to Subsection 59-10-136(1)(a)(ii), the Commission finds that the Taxpayers are both domiciled in Utah for the period from DATE through DATE because TAXPAYER-2 was enrolled in an institution of higher education described in Utah Code Ann. §53B-2-101, and the Taxpayers have not demonstrated that she was enrolled as a nonresident student from DATE through DATE.

The Taxpayers are presumed domiciled in Utah for the 2018 and 2019 tax years under Utah Code Ann. §59-10-136(2)(a) because the home they owned in CITY-2, Utah received the residential property tax exemption for those 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 2018 and 2019 property tax records showing that the Taxpayers' property located at ADDRESS-2 received the residential exemption for both the 2018 and 2019 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 1-12B-1 effective in 2009, which required a property owner to file an application with COUNTY-1 to receive a residential exemption under Utah Code Ann. §59-2-103, as follows:

> 1-12B-1: PROCEDURE:

> A. Time Limit For Filing; Information Required: An applicant, who is the record owner or his/her representative, shall submit an application for a primary residential tax exemption for up to 45% of the fair market value of the property to the county assessor. Such application for exemption must be filed on a form provided by the county assessor for that purpose no later than May 1" and be signed and dated by the owner(s) of record. The form of application provided by the county assessor shall contain, at a minimum, the following:
> 1. Property identification (serial number, address, etc.);
> 2. ldentity of the applicant;
> 3. Owner(s) of record of the property;
> 4. Basis of the applicant's knowledge of the use of the property;
> 5. Authority to make the application on behalf of the owner (if applicable);
> 6. County where property is located;
> 7. Evidence of the domicile of the inhabitants of the property;
> 7. Nature of use of the property; and
> B. Signature of all record owners of the property certifying that the property is residential property.
> B. Failure To File Timely Application: All applications for exemption received after May 1st shall be denied for that tax year.
> C. Changes Require New Application: A new application of primary residence must be filed when ownership or the status of residency changes. Any misrepresentation the application subjects the owner to a penalty equal to the tax on the property's value.
> D. Authority Of Assessor To Verify Status: Submission of the application authorizes the county assessor to request or collect information sufficient to verify primary residence status.
> E. Evidence Of Primary Residence Required; Burden Of Proof: lf an applicant requests a property be designated as a primary residence, the residential exemption should not be granted without conclusive evidence that the property serves as a primary residence. The burden of proof shall remain at all times with the applicant.
> F. Determinations: The COUNTY-1 board of equalization or designated hearing officer shall make all determinations as to the granting of an exemption on or before May 15th of each tax year consistent with state law. ln the event that an application is not filed on or before May 1st, an exemption may be granted by the COUNTY-1 board of equalization or designated hearing officer on an individual appeal basis for the current tax year only. After September 15th, no appeal applications for exemptions will be considered until the following tax year.
> G. Appeal: Taxpayers may appeal determinations of the COUNTY-1 board of equalization within thirty (30) days to the Utah state tax commission, as provided by state law.

Thus, COUNTY-1 is a county that requires a formal application to receive the benefit of the residential exemption. The claim persists until the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner). The Taxpayers did not provide evidence to show that they received the residential exemption without having filed an application. Because the burden of proof is on the Taxpayers, the Commission finds for purposes of this Initial Hearing Order that

the Taxpayers claimed the residential exemption after filing an application to receive the benefit of the residential exemption.

Furthermore, a Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take certain affirmative steps outlined in Utah Code Ann. §59-2-103.5. First, the property owners must file a written statement to notify the county in which the property is located that the property owners no longer qualify to receive the residential exemption allowed for a primary residence. Second, the property owners must declare on their Utah individual income tax returns for the taxable year that the property owners no longer qualify to receive the residential exemption allowed for a primary residence. The Taxpayers are both presumed domiciled in Utah under Utah Code Ann. §59-10-136(2)(a) because they did not provide any evidence to indicate that they had stated they were not qualified to receive the residential exemption. Neither Taxpayer notified the county that their CITY-2 home no longer qualified to receive the residential exemption. In addition, the Taxpayers did not not check the proper box on Part 7 of their Utah individual income tax returns to indicate that they no longer qualified to receive the residential exemption for the home they owned located in CITY-2, Utah. Thus, the presumption of domicile under Utah Code Ann. §59-10-136(2)(a) arises for the 2018 and 2019 tax years for the Taxpayers as the home they owned in CITY-2, Utah received the residential exemption for the 2018 and 2019 tax years.

The Taxpayers are not presumed domiciled in Utah under Utah Code Ann. §59-10-136(2)(b). Utah Code Ann. §59-10-136(2)(b) 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 presumption of Utah Code Ann. §59-10-136(2)(b) does not apply in this case because neither TAXPAYER-1 nor TAXPAYER-2 voted in Utah in a regular general election, municipal general election, primary election, or special election during the 2018 or 2019 taxable year.

The Taxpayers are presumed domiciled in Utah for the period from DATE through DATE under Utah Code Ann. §59-10-136(2)(c) because the Taxpayers filed a part-year resident Utah

individual income tax return for the 2019 tax year declaring they were residents of Utah for the period from DATE through DATE. 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 Taxpayers filed a 2019 part-year resident Utah individual income tax return declaring they were residents of Utah from DATE through DATE. Thus, the Taxpayers are presumed domiciled in Utah under Subsection 59-10-136(2)(c) for that period.

The Legislature did not provide 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*, 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." Furthermore, the Utah Supreme Court noted that "in applying these rather orthodox principles of domicile, courts look to a multiplicity of factors including, but most certainly not limited to 'the places were the [individual] exercises civil and political rights, pays taxes, owns real and personal property, has driver's and other licenses, 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)) and noted "[n]o single factor is determinative." (Internal citations omitted). The Commission has determined that the Taxpayers are domiciled in Utah under Subsection 59-10-136(1) for the 2018 tax year and for the period from DATE through DATE, are presumed domiciled under Subsection 59-10-136(2)(a) for the entire 2018 and 2019 tax years, and are presumed domiciled under Subsection 59-10-136(2)(c) for the period from DATE through DATE. Thus, the Commission must analyze whether the Taxpayers have rebutted the presumption of domicile under Subsection 59-10-136(2)(a) for the period from DATE through DATE and whether the Taxpayers have rebutted the presumption of domicile under Subsection 59-10-136(2)(c) for the period from DATE through DATE.

The Commission has previously found that the Subsection 59-10-136(2)(a) presumption was rebutted where an individual whose home was receiving the residential exemption disclosed

on their Utah individual income tax return that the home no longer qualified for the exemption (even if the individual did not contact the county directly)[5]. Additionally, the Commission has found that the Subsection 59-10-136(2)(a) presumption was rebutted if the taxpayer whose home was receiving the residential exemption specifically asked the county in which the home was located to remove the exemption and the county did not do so[6]. The Taxpayers did not notify the county that the home located on ADDRESS-2 did not qualify to receive the residential exemption. In addition, the Taxpayers' filed Utah individual income tax returns did not check the proper box on Part 7 of their Utah individual income tax returns to indicate that they did not qualify to receive the residential exemption for the home they owned located in CITY-2, Utah. The Commission finds that the Taxpayers have not rebutted the presumption of domicile under Subsection 59-10-136(2)(a) for the 2018 and 2019 tax years by demonstrating that they notified the County that they were not qualified to receive the residential exemption.

However, the Utah Supreme Court in *Buck v. Tax Comm'n*, held that a multiplicity of domicile factors should be reviewed when determining whether a taxpayer rebutted the presumptions of domicile in Subsection 59-10-136(2). 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 Taxpayers' submissions are not sufficient to rebut the presumptions of domicile under Subsections (2)(a) and (2)(c). Of the factors presented by both parties in determining the Taxpayers' domicile, the factors supporting the Taxpayers being domiciled in a state other than Utah for for the period from DATE through DATE were that TAXPAYER-1 resided in STATE-1 in 2018 and in 2019 until he moved to Utah in the middle of the summer of 2019, TAXPAYER-1 worked in STATE-1 until DATE, the Taxpayers filed a part-year resident 2019 Utah individual income tax return and asserted that they were not Utah residents until DATE, TAXPAYER-1 leased an apartment in STATE-1 until he moved to Utah in the middle of the summer of 2019, and he received mail at the STATE-1 address while he resided there. Additionally, TAXPAYER-1 stated that he held a STATE-1 driver license until DATE, and he owned a vehicle that was registered in STATE-1. However, it is undisputed that the Taxpayers owned a residence located at ADDRESS-2 and TAXPAYER-2 lived in that residence throughout the audit period. In addition, TAXPAYER-2 received all of her mail at the CITY-2 address, she attended an state institution of higher education in the state of Utah as a resident student in 2018 and 2019, she worked for the UNIVERSITY-1 as a Graduate

[5] *See, e.g., Initial Hearing Order, Appeal No. 17-812*, Utah State Tax Commission (March 13, 2018). 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.
[6] *See, e.g. Initial Hearing Order, Appeal No. 17-1589,* Utah State Tax Commission (August 8, 2018).

Assistant, she was issued a Utah driver license, she owned a vehicle that was registered in Utah, and she had a professional license issued by the state of Utah. Furthermore, TAXPAYER-1 moved to Utah in the middle of the summer of 2019, began working in Utah on DATE, and declared residency from DATE through DATE. It is unclear when TAXPAYER-1 was issued a Utah driver license.

The presumptions of domicile have arisen for both Taxpayers under Subsections 59-10-136(2)(a) and (2)(c). The Commission has previously found that where the presumptions under Subsection 59-10-136(2)(a) and (c) have arisen for both Taxpayers, the Taxpayers cannot rebut the presumptions for only one of the Taxpayers. Either the presumptions are rebutted for both Taxpayers, or the presumptions are not rebutted for both Taxpayers. This conclusion is supported by Subsection 59-10-136(6)(a), which provides that an individual is considered to have domicile in Utah if his or her spouse is considered to have domicile in Utah (under a different provision of Section 59-10-136). In this appeal, the Commission finds that the Taxpayers' submitted information is insufficient to rebut the presumptions of domicile under Subsections 59-10-136(2)(a) and (2)(c) for both Taxpayers.

The Commission finds that the Taxpayers are domiciled under Subsection 59-10-136(1) for the 2018 tax year and for the period from DATE through DATE, have not submitted sufficient evidence to rebut the Subsection 59-10-136(2)(a) presumption of domicile for period from DATE through DATE, and have not submitted sufficient evidence to rebut the Subsection 59-10-136(2)(c) presumption of domicile for the period 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 Taxpayers are domiciled in Utah under Subsection 59-10-136(1) for the 2018 tax year and for the period from DATE through DATE, a presumption of domicile in Utah arises under Subsection 59-10-136(2)(a) for the entire 2018 and 2019 tax years, and a presumption of domicile in Utah arises under Subsection 59-10-136(2)(c) for the period from DATE to DATE. The Commission finds that the parties' submitted information is insufficient to rebut the Subsection 59-10-136(2)(a) or Subsection 59-10-136(2)(c) presumption for the period from DATE through DATE.

Pursuant to Utah Code Ann. §59-10-136, the Commission finds that the Taxpayers were domiciled in Utah for the 2018 and 2019 tax years and, therefore, meet the definition of full-year "resident individuals" 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. §59-10-115[7]. The Taxpayers are domiciled in Utah and, therefore, meet the definition of "resident individuals" 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 Taxpayers is included in the Taxpayers' 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 Taxpayers have not provided evidence that any portion of their 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 their entire federal adjusted gross income is included in state taxable income that is subject to tax in Utah for the 2018 and 2019 tax years. Based on the foregoing, the Commission finds that the Division's audits properly include the Taxpayers' joint income for the 2018 and 2019 tax years.

Additionally, the Division's audit for the 2018 tax year indicated that information from the Internal Revenue Service (IRS) indicated that the Taxpayers' federal taxable income increased

[7] 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.

by $$$$$, which included $$$$$ of taxable wages from the UNIVERSITY-1 and $$$$$ of royalties from BUSINESS-3, and the withholding tax credit was increased by $$$$$. The Division's audit for the 2019 tax year indicated that the Taxpayers' 2019 Utah individual income tax return was compared with income information received from the IRS and other sources and indicated that the Taxpayers had $$$$$ of unreported income, which included a $$$$$ taxable distribution from BUSINESS-4 and a $$$$$ taxable distribution from BUSINESS-5, for the 2019 tax year. In accordance with Utah Code Ann. §59-1-1417, the Taxpayers have the burden of proof to show that the audits are incorrect and to support the amounts filed on their returns. "State taxable income" as defined in Utah Code Ann. §59-10-103 is determined from an individual's federal taxable income subject to certain adjustments, using the definition of "adjusted gross income" as set forth in Section 61 of the Internal Revenue Code. In this case, the Taxpayers have not submitted any evidence to refute the Division's determination of the Taxpayers' unreported income for the 2018 or 2019 tax year. Thus, the Commission finds that the Taxpayers have not met the burden of proof to show that the audits are incorrect. Based on the foregoing, the Commission finds that the Division's audits for the 2018 and 2019 tax years should be sustained.

The Taxpayers have 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 Taxpayers have the burden of proof and have not provided any information to show that the Commission gave them erroneous information or took inappropriate action that contributed to the error. Thus, the Taxpayers have not demonstrated sufficient grounds for the waiver of interest in this appeal.

Based on the foregoing, the Commission finds that the Division's audit assessments of tax and interest for the 2018 and 2019 tax years should be sustained.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the Taxpayers were domiciled in Utah for the 2018 and 2019 tax years and were, therefore, full-year resident individuals of Utah for tax purposes for those years. The Commission sustains the Division's audits of income taxes and interest for the 2018 and 2019 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 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 _____, 2023.

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.