APPEAL # 23-1121
TAX TYPE: INDIVIDUAL INCOME TAX
TAX YEAR: 2019 AND 2020
DATE SIGNED: 5/15/2025
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, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 23-1121 Account No: ##### Tax Type: Audit - Individual Income Tax Tax Years: 2019 and 2020 Judge: Marshall

Presiding:
Jan Marshall, Administrative Law Judge

Appearances:
For Petitioner: PETITIONER'S REP-1, Attorney for Petitioners
For Respondent: RESPONDENT'S REP-1, Assistant Attorney General

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission and was scheduled for a Formal Hearing on DATE, in accordance with Utah Code Ann. §63G-4-201 et seq. The parties waived the hearing, and asked the Commission to issue a decision based upon the Respondent's Brief, Petitioner's Brief, and Respondent's Reply Brief.[1] The Commission issued an Order Requiring Additional Information on DATE. The parties submitted a Joint Response to Order Requiring Additional Information on DATE. Based upon the pleadings and stipulated evidence, the Tax Commission hereby makes its:

FINDINGS OF FACT[2]

[1] The Commission notes that typically, the Petitioner would file an opening Brief, the Respondent would submit a Brief in response, and the Petitioner would file a reply Brief.
[2] The Respondent set out the facts of the case in Respondent's Brief. The Petitioner agreed that the Division's statement of facts was accurate in Respondent's Brief. Unless otherwise noted, the Findings of Fact are taken from the agreed upon facts set forth in the Respondent's Brief.

1. The Respondent ("Division") issued Notices of Deficiency and Audit Change for the 2019, and 2020 tax years on DATE to TAXPAYER-1. For the 2019 tax year, the Division determined that audit tax of $$$$$ was due, and interest was assessed in the amount of $$$$$ through DATE.[3] For the 2020 tax year, the Division determined that audit tax of DATE was due, and interest was assessed in the amount of $$$$$ through DATE. The Division did not assess audit penalties for either the 2019 or the 2020 tax year. (Pleadings).
2. For the 2019 tax year, the Division changed TAXPAYER-1 filing status from "Married Separate" to "Married Joint." The Division increased the federal adjusted gross income from $$$$$ to $$$$$, decreased the state tax deducted on federal Schedule A from $$$$$ to $$$$$, increased the standard or itemized deductions from $$$$$ to $$$$$, and reduced the retirement credit from $$$$$ to $$$$$. (Pleadings).
3. For the 2020 tax year, the Division changed TAXPAYER-1 filing status from "Married Separate" to "Married Joint." The Division increased the federal adjusted gross income from $$$$$ to $$$$$, decreased the state tax deducted on federal Schedule A from $$$$$ to $$$$$, increased the standard or itemized deductions from $$$$$ to $$$$$, and reduced the retirement credit from $$$$$ to $$$$$. (Pleadings).
4. TAXPAYERS ("Taxpayers") timely filed a Petition for Redetermination for the 2019 and 2020 tax years on DATE. The parties refer to the period of DATE through DATE as the "audit period" or "current audit period" throughout their Briefs. (Pleadings and Respondent's Brief).
5. The Division had previously audited the Taxpayers for the 2012, 2013, 2014, and 2015 tax years. The parties refer to the period of DATE through DATE, as the "prior audit period." The Taxpayers appealed the prior audit period. In its Findings of Fact, Conclusions of Law and Final Decision for Appeal No. 16-1603, the Commission found that the Taxpayers were domiciled in Utah throughout the prior audit period. (Respondent's Brief and Exhibit A to Respondent's Brief).
6. The Taxpayers appealed the Commission's Findings of Fact, Conclusions of Law and Final Decision in Appeal No. 16-1603 to the district court (Case No. 190903607). The Commission, not the Division, was a party in the district court case. (Respondent's Brief).
7. The Commission and Taxpayers settled the district court case for the prior audit period, as well as the 2016 and 2017 tax years. The 2016 and 2017 tax years were not part of the district court case. (Respondent's Brief).

[3] Interest continues to accrue on any unpaid balance.

8. In the Stipulation for the prior audit period, the Tax Commission did not concede that TAXPAYER-2 was not domiciled in Utah. Further, TAXPAYER-1 did not admit she had unreported Utah income. The Division asserted that the settlement amounts in the Stipulation were consistent with these premises. (Respondent's Brief and Exhibit B to Respondent's Brief).
9. TAXPAYER-2 and TAXPAYER-1 were married in Utah on DATE. They have never obtained a legal separation or divorce.[4] (Respondent's Brief).
10. TAXPAYER-2 lived and worked in CITY-1, STATE-1, for at least the past 20 years. During that same time, TAXPAYER-1 lived and worked in CITY-2, Utah. (Respondent's Brief).
11. During the current audit period (DATE, through DATE), the Taxpayers filed married filing jointly federal returns. TAXPAYER-1 filed married filing separately Utah resident returns, and TAXPAYER-2 did not file Utah returns.[5] During the prior audit period, the Taxpayers had filed married filing jointly federal individual income tax returns and married filing jointly nonresident Utah individual income tax returns. (Respondent's Brief).
12. The parties agree that TAXPAYER-1 was domiciled in, and a resident of, Utah for the entirety of the audit period. (Respondent's Brief).
13. For several years, including during both the current audit period and prior audit period, TAXPAYERS jointly owned residential property located at ADDRESS-1, and jointly owned another residential property located at ADDRESS-2. The Taxpayers claimed the primary residential exemption on the CITY-2, Utah property in each year of the audit period. (Respondent's Brief).
14. TAXPAYER-2 primarily occupied the property in CITY-1, STATE-1, and TAXPAYER-1 primarily occupied the property in CITY-2, Utah. (Respondent's Brief).
15. The CITY-1, STATE-1 home is approximately ##### square feet sitting on a #####-acre lot. The CITY-2, Utah home is approximately ##### square feet (plus a partially finished basement of the same size) sitting on a #####-acre lot. (Respondent's Brief).
16. The Taxpayers did not have any dependent children during the audit period. (Respondent's Brief).

[4] The facts in this paragraph are taken from the Findings of Fact, Conclusions of Law, and Final Decision issued in Appeal No. 16-1603, which in turn were based on the parties' stipulation of facts. The Taxpayers stated, and the Division does not dispute, that the facts enumerated have not changed from the prior audit period, except for some information about vehicle ownership.
[5] Division's Answer to Petition for Redetermination, Statement of Fact 1.

17. Neither TAXPAYER-2 nor TAXPAYER-1 was enrolled in a Utah institution of higher education during the audit period. (Respondent's Brief).
18. TAXPAYER-2 was registered to vote in STATE-1 during the audit period. (Respondent's Brief).
19. TAXPAYER-2 has never voted in Utah. He has voted in STATE-1. (Joint Response).
20. TAXPAYER-1 was registered to vote in Utah during the audit period. (Respondent's Brief).
21. TAXPAYER -1voted in Utah in 2016, 2017, 2018, 2019, and 2020. (Joint Response).
22. During the audit period, TAXPAYER-2 maintained a STATE-1 driver license, and TAXPAYER-1 maintained a Utah driver license. (Respondent's Brief).
23. During the audit period, the Taxpayers jointly owned a VEHICLE-1, a VEHICLE-2, and a VEHICLE-3. TAXPAYER-1 separately owned a VEHICLE-4. The parties indicated that TAXPAYER-1 is listed as the primary owner and TAXPAYER-2 is listed as the secondary owner for both the VEHICLE-1 and the VEHICLE-2.[6] TAXPAYER-1 is the sole owner of the VEHICLE-4. (Respondent's Brief).
24. The VEHICLE-1 was registered and insured in Utah during the audit period. (Joint Response).
25. The VEHICLE-2 was registered in Utah during the audit period. (Joint Response).
26. The VEHICLE-4 was registered in Utah during the audit period. It was insured in Utah for the first part of 2019, and was insured in STATE-1 for the remainder of 2019 through 2020. (Joint Response).
27. The VEHICLE-3 was registered in Utah during the audit period. It was insured in STATE-1 in 2018,[7] and was insured in Utah in the spring of 2019 through 2020. (Joint Response).
28. During the audit period, TAXPAYER-2 attended a church in CITY-1, STATE-1. (Respondent's Brief and Joint Response).
29. During the audit period, TAXPAYER-1 attended a church in CITY-2, Utah. (Joint Response).
30. During the audit period, TAXPAYER-2 used the CITY-1, STATE-1 address as his mailing address. (Respondent's Brief).

[6] The Commission notes that although the title application lists a primary owner and a co-owner, both TAXPAYER-2 and TAXPAYER have the same rights in the vehicles. Further, the Commission notes that any assertion or inference that TAXPAYER-1 may have greater rights in the vehicles because she is listed as the "primary owner" is incorrect.

[7] The Commission notes that the 2018 tax year is not part of this appeal, but is the date the parties provided in their Joint Response.

31. During the audit period, TAXPAYER-2 used the CITY-1, STATE-1 address for all government contact purposes that he is aware of. (Joint Response).
32. During the audit period, TAXPAYER-1 used the CITY-2, Utah address for all government contact purposes that she is aware of. (Joint Response).
33. TAXPAYER-2 denied asserting residency in the State of Utah for any purpose during the audit period. TAXPAYER-1 asserted residency in Utah for all purposes. (Joint Response).
34. During the audit period the Taxpayers used a Utah certified public accountant. (Respondent's Brief).
35. The Taxpayers listed a CITY-1, STATE-1 address on their state and federal returns for the 2019 and 2020 tax years. (Joint Response).
36. TAXPAYER-2 earned income in 2019 and 2020 from his job at the BUSINESS-1 in CITY-1, STATE-1. The parties did not indicate where, or if, TAXPAYER had earned income in 2019 and 2020.[8] (Joint Response).
37. During the audit period, TAXPAYER-2 only saw medical providers in STATE-1. (Respondent's Brief).
38. The Taxpayers did not provide any information on TAXPAYER medical providers. (Respondent's Brief and Joint Response).
39. The Taxpayers asserted that TAXPAYER-2 spent zero days in Utah during the audit period. (Joint Response).
40. The Taxpayers raised a number of constitutional arguments in Petitioner's Brief, which are incorporated by reference herein. (Petitioner's Brief).

APPLICABLE LAW[9]

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

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

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

[8] The Commission notes that it had asked the Taxpayers to provide "the physical location in which earned income (as defined in Section 32(c)(2), Internal Revenue Code) is earned by both TAXPAYER-2 and TAXPAYER-1 for both 2019 and 2020," and the Taxpayers only provided information with regard to TAXPAYER-2.

[9] The Commission cites to and applies the 2019 version of the Utah Code, unless otherwise noted.

Effective for the 2019 and 2020 tax years, Utah Code Ann. §59-10-103(1)(q) defines "resident individual" as follows:

> "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.

For the audit period, the factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136, 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 or a tax credit under Section 24, Internal Revenue Code, 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 or a tax credit under Section 24, Internal Revenue Code, 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 or a tax credit under Section 24, Internal Revenue Code, 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 under Section 24, Internal Revenue Code, 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 or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
(c) For purposes of Subsection (4)(a), an absence from the state:
(i) begins on the later of the date:
(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

(ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) 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. §59-2-103.5 sets forth the procedures to obtain the primary residential exemption under Section 59-2-103, as follows:

(1) Subject to Subsection (8), for residential property other than part-year residential property, a county legislative body may adopt an ordinance that requires an owner to file an application with the county board of equalization before a residential exemption under Section 59-2-103 may be applied to the value of the residential property if:

(a) the residential property was ineligible for the residential exemption during the calendar year immediately preceding the calendar year for which the owner is seeking to have the residential exemption applied to the value of the residential property;

(b) an ownership interest in the residential property changes; or

(c) the county board of equalization determines that there is reason to believe that the residential property no longer qualifies for the residential exemption.

(2) (a) The application described in Subsection (1) shall:

(i) be on a form the commission prescribes by rule and makes available to the counties;

(ii) be signed by all of the owners of the residential property;

(iii) certify that the residential property is residential property; and

(iv) contain other information as the commission requires by rule.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules prescribing the contents of the form described in Subsection (2)(a).

(3) (a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of part-year residential property, an owner of the property shall:

(i) file the application described in Subsection (2)(a) with the county board of equalization; and

(ii) include as part of the application described in Subsection (2)(a) a statement that certifies:

(A) the date the part-year residential property became residential property;

(B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the

calendar year for which the owner seeks to obtain the residential exemption; and

(C) that the owner, or a member of the owner's household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture, and equipment of the owner's tenant.

(b) An owner may not obtain a residential exemption for part-year residential property unless the owner files an application under this Subsection (3) on or before November 30 of the calendar year for which the owner seeks to obtain the residential exemption.

(c) If an owner files an application under this Subsection (3) on or after May 1 of the calendar year for which the owner seeks to obtain the residential exemption, the county board of equalization may require the owner to pay an application fee of not to exceed $50.

(4) Except as provided in Subsection (5), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, the property owner shall:

(a) file a written statement with the county board of equalization of the county in which the property is located:

(i) on a form provided by the county board of equalization; and

(ii) notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence; and

(b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.

(5) A property owner is not required to file a written statement or make the declaration described in Subsection (4) if the property owner:

(a) changes primary residences;

(b) qualified to receive a residential exemption authorized under Section 59-2-103 for the residence that was the property owner's former primary residence; and

(c) qualifies to receive a residential exemption authorized under Section 59-2-103 for the residence that is the property owner's current primary residence.

(6) Subsections (2) through (5) do not apply to qualifying exempt primary residential rental personal property.

(7) (a) Subject to Subsection (8), for the first calendar year in which a property owner qualifies to receive a residential exemption under Section 59-2-103, a county assessor may require the property owner to file a signed statement described in Section 59-2-306.

(b) Subject to Subsection (8) and notwithstanding Section 59-2-306, for a calendar year after the calendar year described in Subsection (7)(a) in

which a property owner qualifies for an exemption described in Subsection 59-2-1115(2) for qualifying exempt primary residential rental personal property, a signed statement described in Section 59-2-306 with respect to the qualifying exempt primary residential rental personal property may only require the property owner to certify, under penalty of perjury, that the property owner qualifies for the exemption under Subsection 59-2-1115(2).

(8) (a) Subject to the requirements of this Subsection (8) and except as provided in Subsection (8)(c), on or before May 1, 2020, a county assessor shall:

(i) notify each owner of residential property that the owner is required to submit a written declaration described in Subsection (8)(b) within 30 days after the day on which the county assessor mails the notice under this Subsection (8)(a); and

(ii) provide each owner with a form described in Subsection (8)(e) to make the written declaration described in Subsection (8)(b).

(b) Each owner of residential property that receives a notice described in Subsection (8)(a) shall file a written declaration with the county assessor under penalty of perjury:

(i) certifying whether the property is residential property or part-year residential property;

(ii) certifying whether during any portion of the current calendar year, the property receives a residential exemption under Section 59-2-103; and

(iii) certifying whether the property owner owns other property in the state that receives a residential exemption under Section 59-2-103, and if so, listing:

(A) the parcel number of the property;

(B) the county in which the property is located; and

(C) whether the property is the primary residence of a tenant.

(c) A county assessor is not required to provide a notice to an owner of residential property under Subsection (8)(a) if the situs address of the residential property is the same as any one of the following:

(i) the mailing address of the residential property owner or the tenant of the residential property;

(ii) the address listed on the:

(A) residential property owner's driver license; or

(B) tenant of the residential property's driver license; or

(iii) the address listed on the:

(A) residential property owner's voter registration; or

(B) tenant of the residential property's voter registration.

(d) If an ownership interest in residential property changes, the new owner of the residential property, at the time title to the property is transferred to the new owner, shall make a written declaration under penalty of perjury:

(i) certifying whether the property is residential property or part-year residential property;

(ii) certifying whether the property receives a residential exemption under Section 59-2-103; and

(iii) certifying whether the property owner owns other property in the state that receives a residential exemption under Section 59-2-103, and if so, listing:
(A) the parcel number of the property;
(B) the county in which the property is located; and
(C) whether the property is the primary residence of a tenant.

(e) The declaration required by Subsection (8)(b) or (d) shall:
(i) be on a form the commission prescribes and makes available to the counties;
(ii) be signed by all of the owners of the property; and
(iii) include the following statement:
"If a property owner or a property owner's spouse claims a residential exemption under Utah Code Ann. §59-2-103 for property in this state that is the primary residence of the property owner or the property owner's spouse, that claim of a residential exemption creates a rebuttable presumption that the property owner and the property owner's spouse have domicile in Utah for income tax purposes. The rebuttable presumption of domicile does not apply if the residential property is the primary residence of a tenant of the property owner or the property owner's spouse."

(f) The written declaration made under Subsection (8)(d) shall be remitted to the county assessor of the county where the property described in Subsection (8)(d) is located within five business days of the title being transferred to the new owner.

(g) (i) If, after receiving a written declaration filed under Subsection (8)(b) or (d), the county determines that the property has been incorrectly qualified or disqualified to receive a residential exemption, the county shall:
(A) redetermine the property's qualification to receive a residential exemption; and
(B) notify the claimant of the redetermination and its reason for the redetermination.
(ii) The redetermination provided in Subsection (8)(g)(i)(A) shall be final unless appealed within 30 days after the notice required by Subsection (8)(g)(i)(B).

(h) (i) If a residential property owner fails to file a written declaration required by Subsection (8)(b) or (d), the county assessor shall mail to the owner of the residential property a notice that:
(A) the property owner failed to file a written declaration as required by Subsection (8)(b) or (d); and
(B) the property owner will no longer qualify to receive the residential exemption authorized under Section 59-2-103 for the property that is the subject of the written declaration if the property owner does not file the written declaration required by Subsection (8)(b) or (d) within 30 days after the day on which the county assessor mails the notice under this Subsection (8)(h)(i).
(ii) If a property owner fails to file a written declaration required by Subsection (8)(b) or (d) after receiving the notice described in Subsection (8)(h)(i), the property owner no longer qualifies to receive the residential exemption authorized under Section 59-2-103

in the calendar year for the property that is the subject of the written declaration.

(iii) A property owner that is disqualified to receive the residential exemption under Subsection (8)(h)(ii) may file an application described in Subsection (1) to determine whether the owner is eligible to receive the residential exemption.

(i) The requirements of this Subsection (8) do not apply to a county assessor in a county that has, for the five calendar years prior to 2019, had in place and enforced an ordinance described in Subsection (1).

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

(1) In a proceeding before the commission, the burden of proof is on the petitioner except for determining the following in which the burden of proof is on the commission:
   (a) whether the petitioner committed fraud with intent to evade a tax, fee, or charge;
   (b) whether the petitioner is obligated as the transferee of property of the person that originally owes a liability or a preceding transferee, but not to show that the person that originally owes a liability is obligated for the liability; and
   (c) whether the petitioner is liable for an increase in a deficiency if the increase is asserted initially after a notice of deficiency is mailed in accordance with Section 59-1-1405 and a petition under Part 5, Petitions for Redetermination of Deficiencies, is filed, unless the increase in the deficiency is the result of a change or correction of federal taxable income:
      (i) required to be reported; and
      (ii) of which the commission has no notice at the time the commission mails the notice of deficiency.

(2) Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall:
   (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer; and
   (b) construe a statute providing an exemption from or credit against the tax, fee, or charge strictly against the taxpayer.

ARGUMENTS

Respondent's Brief

At issue is whether, under the specific facts of this case, after Utah's domicile statute was amended by the Utah Legislature during the 2019 General Session, and after the Utah Supreme Court's ruling in *Buck v. Utah State Tax Comm'n*, 506 P.3d 584 (Utah 2022), TAXPAYERS are considered to be domiciled in Utah during the audit period. The Taxpayers challenged the Division's determination that they were domiciled in Utah for the tax years 2012 through 2017 under similar facts. The parties settled the 2012 through 2017 tax years as part of the resolution of

Third District Case No. 190903607.[10] It is the Division's position that both TAXPAYER-2 and TAXPAYER-1 are considered to be domiciled in Utah after the 2019 General Session amendments to Utah Code Ann. §59-10-136, which had retrospective operation for a taxable year beginning on or after January 1, 2018, and that this determination is consistent with the Utah Supreme Court's ruling in *Buck*.

It is the Division's position that both TAXPAYER-2 and TAXPAYER-1 are considered to be domiciled in Utah for the audit period. The Division stated that the amendments to Utah Code Ann. §59-10-136 made in 2019 General Session S.B. 13, Income Tax Domicile Amendments ("S.B. 13"), which had retrospective operation to tax year 2018, established an exception to Utah domicile where one spouse may be considered to have domicile in Utah while the other spouse does not. The Division argued that although the amendment provides an additional basis to find that one spouse is domiciled in Utah and one spouse is not domiciled in Utah, the Taxpayers do not qualify for the exception in Utah Code Ann. §59-10-136(5).[11]

The Division stated that the Commission considered a similar issue with facts similar to the instant case under the amended law in Appeal No. 22-771.[12] The taxpayers in Appeal No. 22-771 were a married couple who had filed joint federal tax returns. The taxpayers jointly owned properties in Utah. The wife lived in one of the properties, and that property received the primary residential exemption. The husband worked outside of Utah, and returned to Utah only a few days per year. The Division noted in its Brief that like the instant case, there was a question in Appeal No. 22-771 as to whether the husband was domiciled in Utah, or whether the exception under Subsection 59-10-136(5) was met. The Commission found as follows in Appeal No. 22-771:

> 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

[10] The Commission notes that the Tax Commission did not concede that TAXPAYER-2 was not domiciled in Utah. Further, TAXPAYER-1 did not admit she had unreported Utah income. However, the Division asserted that the settlement amounts in the Stipulation were consistent with those premises.

[11] The Commission notes that the Division referred to "spousal domicile" in its Brief, and defined that as "where one spouse is presumed domiciled in Utah based on the domicile of the other spouse in Utah under 59-10-136(6)." The Division then stated, "[o]nce the presumption of spousal domicile is established, the inquiry turns to whether there are any applicable exceptions to this presumption of spousal domicile." The Commission rejects the Division's interpretation of the statute. There is no presumption of "spousal domicile." The only "presumptions" found in Section 59-10-136 are in Subsection (2).

[12] The Division noted in its Brief that the decision was not publicly available, and that a redacted version had been provided to the Taxpayers' counsel. The Commission has now completed redacting the decision in Appeal No. 22-771, and it is available online at at tax.utah.gov/commission-office/decisions.

> 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.
> . . . .
>
> 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 Commission further concluded that:
>
> 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 Division noted that because both spouses owned property under the facts of Appeal No. 22-771, the Commission determined that the exception to domicile in Subsection 59-10-136(5) did not apply. Thus, the husband in Appeal No. 22-771 could not claim that he was not considered to have domicile in Utah under Subsection 59-10-136(5).

In its Brief, the Division stated that the Taxpayers' counsel argued that the statement in Subsection 59-10-136(5) that "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) . . ." should mean that the determination of domicile under Subsections (2) and (3) should be made separately for each spouse. The Division argued this statutory interpretation is incorrect and makes the exception to domicile in Subsection 59-10-136(5) superfluous. The Division argued that in order to give meaning to the S.B. 13 amendment adding Subsection (5) to Utah Code Ann. §59-10-136, Subsections (5)(a) through (e) must provide the exclusive basis for finding that one spouse is domiciled in Utah and the other spouse is not considered to have domicile in Utah.[13] The Division noted that the Utah Supreme Court recently concluded that "[w]e thus 'interpret statutes to give meaning to all parts, and avoid rendering portions of the statute superfluous.'" [Citing *Summit Operating, LLC v. Utah State Tax Comm'n*, 2012 UT 91, 11] (cleaned up). "When we can ascertain the intent of the legislature from the statutory terms alone, no other interpretive tools are needed . . . ." *Bagley v. Bagley*, 2016 UT 48, 10, 387 P.3d 1000 (cleaned up). *Miller Theatres, Inc. v. Tax Com'n*, 2024 UT 8, ¶16.

The Division asserted that TAXPAYERS were both considered to be domiciled in Utah during the audit period, and asked the Commission to sustain this determination.

Petitioner's Brief

In their Brief, the Taxpayers stated that the Legislature has not defined the term "domicile," and the Utah Supreme Court in *Buck v. Utah State Tax Comm'n*, 506 P.3d 584 (Utah 2022) recently stated this of the term "domicile":

> When courts refer to domicile, they are referring generally 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.'" Lilly v. Lilly, 2011 UT App 53, 13, 250 P.3d 994 (alteration in original) (quoting BLACK'S LAW DICTIONARY 558 (9th ed. 2009)). And in applying these rather orthodox principles of domicile, courts look to a multiplicity of factors including, but most certainly not limited to, "the places where 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." *Coury v. Prot*, 85 F.3d 244, 251 (5th Cir. 1996). "No single factor is determinative." *Id*.

[13] The Commission notes that this statement is incorrect. For example, federal law provides such an exception for certain spouses where one spouse is in military service, and this exception is applicable to Utah individual income taxes.

The Taxpayers argued that domicile generally requires two elements: 1) physical presence in a state, and 2) the intent to make such state a home. *See Texas v. Florida*, 306 U. S. 398, 424 (1939); *Russell v. New Amsterdam Casualty Co.*, 325 F.2d 996, 998 (8th Cir. 1964); *Rodriguez-Diaz v. SierraMartinez*, 853 F.2d 1027, 1029 (1st Cir. 1988). The Taxpayers asserted that if these two elements do not coexist, a new domicile cannot be established. *Sivalls v. United States*, 205 F. 2d 444, 446 (5th Cir. 1953), cert. denied 346 U. S. 898 (1953). The Taxpayers noted that the Supreme Court of the United States in *District of Columbia v. Murphy*, 62 S.Ct. 303, 314 U.S. 441, 86 L.Ed. 329 (1941), stated, "The place where a man lives is properly taken to be his domicile until facts adduced establish the contrary." The Taxpayers also asserted that a person can have only one domicile at a time. *Valentin v. Hosp. Bella Vista*, 254 F.3d 358, 367 (1st Cir. 2001); *General Electric Co. v. Cugini*, 640 F. Supp. 113, 115 (D.P.R.1986). *See also Shafer v. Children's Hospital Society*, 265 F.2d 107, 120-21 (D.C. Cir. 1959); *Hardin v. McAvoy*, 216 F.2d 399, 403 (5th Cir. 1954); *Syme v. Rowton*, 555 F. Supp. 33, 36 (D. Mont. 1982). The Taxpayers argued that upon reaching the age of majority, any individual may thereafter choose his own domicile. *Sivalls v. United States*, 205 F. 2d 444, 446 (5th Cir. 1953), cert. denied 346 U. S. 898 (1953); *Sasse v. Sasse*, 41 Wash. 2d 363, 249 P. 2d 380, 381 (1952). The Taxpayers also asserted that domicile is not lost until a new one is acquired, and it is presumed to continue until the taxpayer sustains the burden of proving a change. *Lawrence v. Mississippi Tax Comm.*, 286 U.S. 276 (1932). The Taxpayers maintained that the Division acknowledged that nothing has changed in the Taxpayers' circumstances, and thus the Taxpayers question why the Division is asserting the Taxpayers are domiciled in Utah.

In their Pre-Hearing Brief, the Taxpayers asserted that TAXPAYER-2 was not able to choose his domicile, but rather it was forced upon him as the result of applying Utah's domicile statute. The Taxpayers noted that the Division's Brief addressed an argument that Subsection 59-10-136(5)'s statement "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)" means that the determination of domicile under Subsections (2) and (3) is made separately for each spouse. The Taxpayers noted that the Division's Brief goes on to argue that "this statutory interpretation is incorrect and makes the statutory amendment listing the exceptions to spousal domicile in 59-10-136(5) (a) through (e) superfluous. To give meaning to the amendment adding subsection (5) in effect in 2018[14] and 2019, the list of grounds for the exemption to spousal domicile in Subsections (a) through (e) must provide the exclusive

[14] The Commission notes that the 2018 tax year is not at issue in this appeal. The audit period at issue is the 2019 and 2020 tax years.

bases[15] for finding an exception to the domicile of one spouse where the other spouse is domiciled in Utah." The Taxpayers argued that the Division's interpretation is flawed because it does not allow for a rebuttable presumption as *Buck* and Utah Code §59-10-136(2) and (3) allow for.[16] The Taxpayers noted that the Court in *Buck* stated, "[n]o single factor is determinative" as to domicile, and argued that the Division's position is that property ownership alone is determinative as to domicile.

The Taxpayers argued that the correct interpretation of Subsections 59-10-136(5) and (6) would be to allow the factors of Subsection 59-10-136(5) to create a rebuttable presumption of domicile for the "other spouse." The Taxpayers argued that the Division's interpretation of Subsections 59-10-136(5) and (6) has denied TAXPAYER-2 the opportunity to rebut the presumption of domicile under Subsection 59-10-136(2)(a) because he is married. It is the TAXPAYER-1 position that TAXPAYER-2 should be allowed to rebut the presumption of domicile in Subsection (2)(a) without any regard to TAXPAYER-1. The Taxpayers argued that the Division's interpretation of the statute renders Utah Code §59-10-136(2)(a) superfluous as to TAXPAYER-2. The Taxpayers argued the Commission should allow Subsection 59-10-136(5) to define when a rebuttable presumption of domicile applies. It is the TAXPAYER-1 position that such an interpretation gives effect and meaning to Section 59-10-136 as whole for both married and single taxpayers. The Taxpayers stated that as the Division interprets the statute, a married person's domicile would be forced to be the State of Utah if their spouse is domiciled in Utah and they own any type of property in Utah. The Taxpayers argued that this interpretation is contrary to the longstanding jurisprudence that allows a person to choose their domicile, as set forth in the Taxpayers' arguments above.

The Taxpayers noted that Utah Code §59-10-136(6)(a) states, "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." The Taxpayers argued that it is critical to note that the words "if" and "then" are omitted from Utah Code §59-10-136(6)(a). In other words, the Taxpayers argued that Utah Code §59-10-136(6)(a) does not read, "Except as provided in Subsection (5), IF an individual is considered to have domicile in this state in accordance with this section, THEN the individual's spouse is considered to have domicile in this state." The Taxpayers argued that the omission of the conditional conjunction

[15] The Commission has also found that federal law provisions for members of the military may result in one spouse having domicile in Utah while the other spouse does not.

[16] There is no presumption of domicile in Subsection 59-10-136(5). It is an exception to a finding of domicile. Further, Subsection (3) includes no rebuttable presumption of domicile, but provides a separate basis for determining domicile if an individual does not meet the requirements of Subsection (1) or (2).

"if-then" suggests that each spouse's domicile should be evaluated separately "in accordance with this section." The Taxpayers argued that this lends support to its premise that Subsection (5) is merely describing definitively when a spouse should not be considered a domiciliary of Utah, and when the rebuttable presumption should apply. The Taxpayers maintained that no reasonable interpretation of Utah Code Ann. §59-10-136 should foreclose a spouse's ability to rebut a presumption of domicile. The Taxpayers argued that TAXPAYER-2 should be allowed to rebut the presumption under Utah Code §59-10-136(2)(a) as applied only to him, and not to TAXPAYER-1, in evaluating TAXPAYER-2's ownership of the CITY-2 home, which qualifies for the primary residential exemption, because it is TAXPAYER-1 primary residence.

The Taxpayers maintained that the Division's argument frustrates the plain language of the statute and cannot control. The Taxpayers argued that the operative language of Subsection 59-10-136(5) expressly limits and proscribes its application to Subsections 59-10-136(2) and (3). The Taxpayers argued that Subsection 59-10-136(5) should be interpreted as a legislative reaction to *Buck*[17], allowing the Division a clear and simple exception to performing a lengthy analysis and weighing of evidence in response to the assertion of domicile under Subsection 59-10-136(2)[18]. The Taxpayers asserted that this interpretation would also make rational sense of the statute. Otherwise, it would follow that TAXPAYER-2 is not domiciled in Utah under Subsection 59-10-136(2) because of *Buck*. The Taxpayers asserted that TAXPAYER-1 is considered to be domiciled in Utah under Subsections 59-10-136(2) and (3), but TAXPAYER-2 is only considered to be domiciled in Utah because of Subsection 59-10-136(6), and creates an "illogical loop" where TAXPAYER-2 cannot demonstrate that he is not domiciled in Utah under the provisions of Subsection 59-10-136(2). The Taxpayers argued that Subsection 59-10-136(5) should operate similarly to Subsection 59-10-136(4). The Taxpayers noted that in Appeal No. 18-1717, pg. 22, Footnote 21, the Commission noted that Subsection (4) "provides an exception from being considered to be domiciled in Utah." The Taxpayers also argued that the Commission should continue to follow its "longstanding precedent" that Subsection 59-10-136(6)(a) "does not provide independent grounds for finding that an individual is domiciled in Utah" as the Commission found in Appeal No. 19-1221, pg. 16.

[17] The Commission notes that S.B. 13 took effect in May 2019, with retrospective operation for a taxable year beginning on or after January 1, 2018. The Court issued its decision in *Buck* on February 24, 2022. The Commission rejects the Taxpayers' assertion that Subsection 59-10-136(5) was a legislative reaction to the *Buck* decision.

[18] The Commission notes that the Utah Supreme Court in *Buck* specifically considered the rebuttable presumption found in Subsection 59-10-136(2)(a), and did not address the application of Subsection 59-10-136(3).

The Taxpayers contended that there is ambiguity in how Utah Code §59-10-136(5) and (6) should be interpreted and applied. The Taxpayers maintained that it is unclear how the analysis should be made. For example, the Taxpayers questioned that since TAXPAYER is listed as the "spouse" taxpayer on the tax returns filed for the Audit Period, whether she is then "the individual" referred to in Utah Code §59-10-136(6)(a). The Taxpayers questioned whether the analysis of Utah Code §59-10-136(6)(a) applies to each of them. The Taxpayers argued that this ambiguity should be resolved in the favor of the Taxpayers. The Taxpayers noted that Utah Code Ann. §59-1-1417(2) provides, "Regardless of whether a taxpayer has paid or remitted a tax, fee, or charge, the commission or a court considering a case involving the tax, fee, or charge shall: (a) construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer . . . ." Additionally, the Taxpayers asserted that "if any doubt exists as to the meaning of the statute, 'our practice is to construe taxation statutes liberally in favor of the taxpayer, leaving it to the legislature to clarify an intent to be more restrictive if such intent exists.'" *Hercules Incorporated v. Utah State Tax Commission*, 2000 UT App 372, ¶12, 21 P.3d 231 (citing *Wasatch County Bd. of Equalization v. State Tax Comm'n*, 944 P.2d 370, 374 (Utah 1997) (quoting *Salt Lake County v. State Tax Comm'n*, 779 P.2d 1131, 1132 (Utah 1989))). The Taxpayers argued that the Division and the Commission have been mandated by both the Utah Legislature and the Utah Supreme Court to construe Utah Code §59-10-136(6)(a) (2019) in the favor of the Taxpayers and not in favor of the Division. The Taxpayers argued that in this matter, construing the statute in favor of the Taxpayers would require that Utah Code §59-10-136(6)(a) be analyzed to construe TAXPAYER-2 as being the "individual" rather than the spouse "in accordance with this section." The Taxpayers asserted that this interpretation would allow a presumption of domicile to be rebutted, and that such an analysis would show that TAXPAYER-2's income is not taxable to the State of Utah as he is a nonresident.

The Taxpayers argued that it appears the Commission has not treated this situation uniformly, and thus the ambiguity in treatment should be construed in favor of the Taxpayers. The Taxpayers stated that in Appeal No. 20-929, the Commission appears to apply its longstanding precedent that Subsection 59-10-136(6) is not an independent basis for domicile. The Taxpayers asserted that in that appeal, tax years 2016, 2017, and 2018 were at issue and the Commission recognized that 2018 fell under the new law. The Taxpayers argued that the Commission stated, "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)… and that such a conclusion is supported by Subsection 59-10-136(5)(a)."[19]

Respondent's Reply Brief

The Division argued in its reply Brief that TAXPAYER-2 is considered to be domiciled in Utah under the Commission's prior interpretation of Utah Code Ann. §59-10-136 made after the Utah Supreme Court's decision in *Buck*. In its Reply Brief, the Division reiterated the arguments made in its Brief regarding the applicability of the Commission's decision in Appeal No. 22-771. The Division again asserted that Mr. and Mrs. Kiel may not rebut a Subsection 59-10-136(2) presumption for only one of the Taxpayers, that Mr. Kiel has not met the requirements of Subsection 59-10-136(5) to not be considered domiciled in Utah, and that the Commission's findings in Appeal No. 22-771 support these conclusions. The Division argued that the Taxpayers' proposed interpretation of Subsection 59-10-136(5) ignores that the Legislature used the word "and" between Subsection 59-10-136(5)(d) and (e). Thus, the Division argued, each of the five factors in Subsection 59-10-136(5) must be met in order for a spouse to be considered not domiciled in Utah. The Division asked the Commission to find that both TAXPAYERS were considered to be domiciled in Utah for the audit period under Section 59-10-136.

ANALYSIS

The Commission first considers whether the enactment of Subsection 59-10-136(5), which creates an exception to Utah's domicile statute that would allow one spouse to be considered to have domicile in Utah while the other spouse does not, result in one or both of the Taxpayers not having domicile in Utah. For the exception under Subsection 59-10-136(5) to apply, one of the spouses must meet all of the following requirements: must not be an owner of property in Utah; must not return to Utah for more than 30 days in a calendar year; must not receive earned income, as defined in Section 32(c)(2), Internal Revenue Code, in Utah; must not have voted in Utah in a regular general election, municipal general election, primary election, or special election; and must not have a driver license in this state.[20]

TAXPAYER-2 meets all of the requirements to qualify for this exception, except for the requirement that he must not be an owner of property in Utah. Both TAXPAYERS jointly owned

[19] The Commission notes that effective for the 2018 tax year, Utah Code Ann. §59-10-136(5)(a) was renumbered as §59-10-136(6)(a) as a part of S.B. 13.

[20] Although the Division asserted that Subsection 59-10-136(5) provides the only exception in Utah's domicile statute where one spouse may have domicile in Utah while the other spouse does not have domicile in Utah, the Commission notes that in prior cases, the Commission has recognized an additional circumstance involving military service where one spouse is considered to have domicile in Utah and the other spouse is not considered to have domicile in Utah. This exception to domicile is required by federal law. Neither of the parties have asserted that military service is relevant to determining TAXPAYERS domicile in this matter.

the CITY-2, Utah home during the entire audit period. The Taxpayers have not asserted that TAXPAYER-1 meets any of the requirements to qualify for this exception. The Commission finds that TAXPAYER-1 does not meet any of the requirements to qualify for this exception, except that it is unclear whether she received earned income in Utah during the audit period. The Commission requested that the TAXPAYERS provide information regarding the physical location in which earned income (as defined in Section 32(c)(2), Internal Revenue Code) was earned by both TAXPAYER-2 and TAXPAYER-1 for both 2019 and 2020 in its Order Requiring Additional Information. The TAXPAYERS did not provide the requested information with regard to TAXPAYER-1. The Taxpayers have the burden of proof in this matter, and the Commission finds that TAXPAYER-1 has failed to establish that she has not received earned income in Utah. Regardless, neither TAXPAYER-2 nor TAXPAYER-1 meet all of the requirements of Subsection 59-10-136(5) for the exception to apply. Consequently, the Commission must look to the other provisions of Section 59-10-136 in determining whether TAXPAYER-2 and/or TAXPAYER-1 are considered to have domicile in Utah.

Before turning to the application of the other provisions of Section 59-10-136 in this matter, the Commission makes several observations. First, the Taxpayers have urged the Commission to view the enactment of the exception under Subsection 59-10-136(5) as the Legislature's response to the *Buck* decision. The Commission finds that this argument lacks merit. The Commission observes that 2019 General Session S.B. 13, Income Tax Domicile Amendments ("S.B. 13"), took effect on May 14, 2019, and had retrospective operation to a taxable year beginning on or after January 1, 2018. The Commission further notes that the Utah Supreme Court issued the *Buck* decision on February 24, 2022, which is almost three years after the effective date of S.B. 13. Thus, the enactment of S.B. 13 could not have been the Legislature's reaction to *Buck*.

Furthermore, the Taxpayers have seemingly argued that Subsection (5) should operate as a rebuttable presumption, and urges the Commission to weigh each of the requirements of the exception based on a preponderance of the evidence. The Commission finds this argument to be unpersuasive. Had the Legislature intended for Subsection 59-10-136(5) to be interpreted to be a rebuttable presumption, the Legislature could have certainly stated so in drafting Subsection 59-10-136(5). For example, the Legislature clearly stated in Subsection 59-10-136(2) that "[t]here is a rebuttable presumption" that an individual is considered to have domicile in the state if certain circumstances are present. There is no similar language in Subsection 59-10-136(5) to suggest that the Legislature intended this subsection to be a "rebuttable presumption." It appears that the Taxpayers are urging the Commission to adopt an interpretation that the Taxpayers

consider to be a better tax policy. However, the role of the Commission is not to interpret statutes in a manner that promotes what the Taxpayers consider to be a better tax policy. That is the role of the Legislature. The Commission is required to interpret and administer the laws as written. Thus, the Commission declines to interpret Subsection 59-10-136(5) to be a rebuttable presumption.

The Commission now considers whether TAXPAYERS are considered to have domicile in Utah under Subsection 59-10-136(1), (2), or (3).[21] In instances where the actions of only one spouse meet the circumstances described in Subsection 59-10-136(1), (2), 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).

The Taxpayers are not considered to be domiciled in Utah under Utah Code Ann. §59-10-136(1) for the 2019 or 2020 tax year. If a dependent claimed on the individual's or individual's spouse's federal individual income tax return is enrolled in a Utah public kindergarten, elementary, or secondary school, the individual is considered to be domiciled in Utah. The Taxpayers did not claim any dependents on their federal returns during the tax years at issue. Additionally, Subsection (1) provides that if an individual or individual's spouse is a resident student enrolled in an institution of higher education in Utah, the individual is considered to be domiciled in Utah. Neither of the Taxpayers were enrolled at an institution of higher education in Utah.

Subsection (2) of Utah Code Ann. §59-10-136 sets forth three circumstances that create a rebuttable presumption of domicile in Utah. 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).

A. The Taxpayers are presumed to be domiciled in Utah for the entire audit period because their jointly owned CITY-2 home received the primary residential exemption. 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:

[21] The Commission notes that Subsection 59-10-136(4) provides an additional exception to Utah's domicile statute that applies if a taxpayer, ***and*** the TAXPAYER-1 spouse, if any, are absent from the state for at least 761 consecutive days. In this matter, neither party asserted that the exception in Subsection 59-10-136(4) applied to the TAXPAYERS, and both of the TAXPAYERS were not absent from the state for at least 761 consecutive days at any point during the audit period. Further, the Taxpayers together benefited from and claimed a residential exemption on the property they jointly owned in CITY-2, Utah, where TAXPAYER-1 resides.

> (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;
> . . . .

For the presumption to arise, an individual, or the individual's spouse, must have claimed the exemption on a Utah home, and the home on which the exemption is claimed must be considered the "primary residence" of the individual or the individual's spouse in accordance with the guidance provided in Utah Code Ann. §59-2-103.5(4).

The Taxpayers are considered to have claimed the residential exemption on the CITY-2 home for the entire audit period, satisfying the first element for the presumption to arise. Utah Code Ann. §59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Utah Code Ann. §59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county adds the second step of requiring formal application in order to receive the benefit of the exemption. The claim persists until the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner). Therefore, simply owning a residential property in a Utah county that does not require an application (which includes most Utah counties), generally asserts an enduring claim to the residential exemption.

For purposes of determining the second element, whether the residence is the individual's or the individual's spouse's primary residence, Utah Code Ann. §59-10-136 and §59-2-103.5(4) are read in concert. A Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; and 2) declare on the property owner's Utah individual income tax return for the taxable year that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence. The Taxpayers did not take either of these steps during the period in question.

Further, the Commission also notes that effective May 14, 2019, Utah Code Ann. §59-2-103.5(8) provided that county assessors were required to notify a property owner by May 1, 2020 that the property owner was required to submit a written declaration within 30 days of the

notice, and provide the owner with the form to make such a written declaration. The declaration was required to include the following statement:

> If a property owner or a property owner's spouse claims a residential exemption under Utah Code Ann. §59-2-103 for property in this state that is the primary residence of the property owner or the property owner's spouse, that claim of residential exemption creates a rebuttable presumption that the property owner and the property owner's spouse have domicile in Utah for income tax purposes. The rebuttable presumption of domicile does not apply if the residential property is the primary residence of a tenant of the property owner or the property owner's spouse.

Utah Code Ann. §59-2-103.5 provides certain exceptions to the requirement for a county to require a property owner to submit a written declaration under Subsection 59-2-103.5(8). One exception is if a county has, for the five calendar years prior to 2019, had in place and enforced an ordinance described in Subsection 59-2-103.5(1) to require an application before a primary residential exemption may be applied to the value of residential property. The Commission takes administrative notice that Davis County has not adopted an ordinance in accordance with Utah Code Ann. §59-2-103.5(1). The Taxpayers have the burden of proof in this matter. They have not asserted that they did not file such a declaration, or that any other exception applies that would not require them to file such a declaration, and the Taxpayers have acknowledged that their CITY-2 home did receive the primary residential exemption during the years at issue. The declaration clearly states that a claim of residential exemption creates a rebuttable presumption that both a property owner and the property owner's spouse have domicile in Utah for income tax purposes.

Under Utah Code Ann. §59-10-136(2)(a), the Taxpayers are presumed domiciled in Utah for all of the 2019 and 2020 tax years.

B. The Taxpayers are presumed to be domiciled in Utah for the entire audit period under Utah Code Ann. §59-10-136(2)(b), which provides as follows:

> (2) 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:
> (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; . . . .

TAXPAYER-1 voted in Utah elections during the 2019 and 2020 tax years. By doing so, a presumption of domicile has arisen for TAXPAYERS.

C. The Taxpayers are presumed to be domiciled in Utah for the entire audit period under Utah Code Ann. §59-10-136(2)(c). 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.

TAXPAYER-1 filed Utah resident individual income tax returns for the 2019 and 2020 tax year. By doing so, a presumption of domicile has arisen for TAXPAYERS.[22]

At issue in this matter is whether the TAXPAYERS are able to rebut the presumptions that have arisen under Subsections 59-10-136(2)(a), (2)(b), and (2)(c), and in particular whether TAXPAYER-2 is able to rebut the presumptions separately from TAXPAYER-1. The Commission notes that in the *Buck* case, the Utah Supreme Court considered whether the Bucks, who were a married couple that moved their family, including their two children, from Utah to reside in Florida, were able to rebut the presumption of domicile in Subsection 59-10-136(2)(a) that arose because they claimed a primary residential exemption on the Utah home in which neither spouse resided. The *Buck* case did not address the issue of whether married taxpayers who reside in different states are able to rebut a Subsection 59-10-136(2) presumption for only one of the taxpayers. Thus, this issue is left for the Commission to interpret.

The Division correctly stated that in prior cases, including in Appeal No. 22-771 cited by the Division, the Commission has found that "[t]axpayers cannot rebut the presumptions for only one of the Taxpayers. Either the presumptions are rebutted for both [t]axpayers, or the presumptions are not rebutted for both [t]axpayers. 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)." The Commission notes that it does not have jurisdiction to address the Taxpayers' constitutional arguments. *See State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979), in which the Utah Supreme Court stated that "[a]lthough the Tax Commission must of necessity interpret the taxing statutes and make determinations as to their applicability, it has been stated that 'it is not for the tax commission to determine questions of legality or constitutionality of legislative enactment'" (citing *Shea v. State Tax Commission*, 101 Utah 209, 120 P.2d 274 (Utah 1941)). *See* also *Nebeker v. State Tax Comm'n*, 34 P.3d 180 (Utah 2001). The Commission is

[22] In prior Commission decisions, the Commission has recognized numerous grounds for rebutting a presumption under Subsection 59-10-136(2) that relate to the presumption itself. However, neither of the parties argued that one or more of these grounds apply in this matter.

required to interpret and administer the statute as written and, as stated above, to presume its constitutionality. Thus, the presumptions must be rebutted or not rebutted for both TAXPAYERS.

The Utah Supreme Court held in *Buck* 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 where 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 facts in this case are distinguishable from the facts in *Buck*. As stated above, in *Buck*, both Mr. and Mrs. Buck and their children moved from Utah to Florida. Mr. Buck's employment was in Florida. Mr. and Mrs. Buck lived in the Florida home that they rented, along with their two sons. The Bucks' sons attended school in Florida. Mr. and Mrs. Buck and their children attended church in Florida, and were involved in community activities and events in Florida. The Bucks obtained Florida driver licenses and registered to vote in Florida. Some of the Bucks' vehicles were registered in Utah while other vehicles were registered in Florida. The *Buck* case detailed other ties that the Bucks had in Florida, and the Utah Supreme Court noted that "the Bucks arranged their lives around their Florida residence."

In contrast to the Bucks, TAXPAYERS did not arrange their lives around a single residence in a single state during the audit period. The TAXPAYERS jointly owned homes in both CITY-2, Utah, and CITY-1, STATE-1. TAXPAYER-2 lived in STATE-1 and TAXPAYER lived in Utah during the audit period. All of the Taxpayers' vehicles were registered in Utah. In the spring of 2019, and through 2020, the VEHICLE-4 was insured in STATE-1, while the Taxpayers' other vehicles were all insured in Utah. TAXPAYER-1 voted in Utah in 2019 and 2020. While TAXPAYER-2 was registered to vote in STATE-1, facts were not provided to establish whether TAXPAYER-2 actually voted in STATE-1 during the audit period. Similarly, TAXPAYER-2 held a STATE-1 driver license and TAXPAYER held a Utah driver license. TAXPAYER-2 earned income in STATE-1. It is unclear whether or where TAXPAYER-1 earned income. However, the Taxpayers have the burden of proof in this matter and have not shown that TAXPAYER-1 did not earn income in Utah. TAXPAYER-2 attended church in STATE-1, while TAXPAYER-1 attended church in Utah. In considering the totality of the circumstances and looking at the TAXPAYERS'

joint connections to Utah, these connections to Utah are not insignificant. In light of the plain language of the statute, combined with the Commission's prior precedent that presumptions must be either rebutted or not rebutted for both Taxpayers, and that the Commission must presume that enactments of the Legislature are constitutional, the Commission finds that the TAXPAYERS have not rebutted the presumptions of Utah domicile that have arisen under Subsections 59-10-136(2)(a), (b), and (c).

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 Subsections 59-10-136(2)(a), (2)(b), and (2)(c) for the entire 2019 and 2020 tax years.

Pursuant to Utah Code Ann. §59-10-136, the Commission finds that the Taxpayers were domiciled in Utah for the 2019 and 2020 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.

CONCLUSIONS OF LAW

A. For the audit period, Utah Code Ann. §59-10-103(1)(q) provided that an individual is a Utah resident individual for the period that the individual is considered to have domicile in this State. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah and also when an individual is not considered to have domicile in Utah.

B. Utah Code Ann. §59-10-136 examines the actions of an individual and/or the individual's spouse in determining whether the spouses are considered to have domicile in Utah.

C. The Taxpayers are considered to be each other's spouses for purposes of Utah Code Ann. §59-10-136. Utah Code Ann. §59-10-136(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 the individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the taxable year in question. The Taxpayers were not legally separated or divorced during the audit period. Further, the Taxpayers did not claim married filing separate filing status for purposes of filing a federal individual income tax return for the 2019 or 2020 tax year.

D. The Taxpayers have not satisfied the exception to domicile in Utah Code Ann. §59-10-136(4). Subsection 59-10-136(4) provides that an individual is not considered to have domicile in Utah if "the individual and the individual's spouse are absent from the state for at least 761 consecutive days" and certain other enumerated requirements are met. In this case, the Taxpayers did not argue that the exception to domicile under Utah Code Ann. §59-10-136(4) would result in either of the Taxpayers not having domicile in Utah. The Commission finds that neither TAXPAYERS are found to not have domicile in Utah during the audit period under §59-10-136(4) for reasons including that both spouses were not absent from the state for at least 761 consecutive days and the Taxpayers together benefited from and claimed a residential exemption on the property they jointly own in CITY-2, Utah, where TAXPAYER-1 resides.

E. The Taxpayers have not satisfied the exception to domicile in Utah Code Ann. §59-10-136(5). Utah Code Ann. §59-10-136(5) provides that for individuals who are spouses, and one of the spouses has domicile in this state, the other spouse is not considered to have domicile in this state under Subsection (2) or (3), if certain conditions are met. As explained previously, the Taxpayers have not shown that either TAXPAYER-2 or TAXPAYER-1 has satisfied all of the conditions of Subsection 59-10-136(5) for the 2019 or 2020 tax year, nor have they shown that they met all of the conditions of Subsection (5) for the three preceding tax years.

F. The Taxpayers are not considered to be domiciled in Utah under Utah Code Ann. §59-10-136(1) for the 2019 or 2020 tax year. As explained above, the Taxpayers did not claim any dependents on their federal returns during the tax years at issue, nor were either of the Taxpayers enrolled at an institution of higher education in Utah.

G. The presumption of domicile under Utah Code Ann. §59-10-136(2)(a) has arisen with respect to TAXPAYER-2 and TAXPAYER-1 for the entire audit period because they claimed the primary residential exemption on a home they jointly owned in CITY-2, Utah. The Taxpayers have not asserted any of the circumstances the Commission has previously established could rebut the presumption.[23] Further, in light of the plain language of the statute, combined with the Commission's prior precedent that presumptions must be either rebutted or not rebutted for both Taxpayers, and that the Commission must presume that enactments of the Legislature are constitutional, the Commission finds that the TAXPAYERS have not rebutted the presumption of Utah domicile that has arisen under Subsection 59-10-136(2)(a) when applying the factors the Utah Supreme Court established in *Buck*.

[23] *See* Utah State Tax Commission Appeal Nos. 17-758, 16-117, and 18-2043.

H. The presumption of domicile under Utah Code Ann. §59-10-136(2)(b) has arisen with respect to TAXPAYER-2 and TAXPAYER-1 for the entire audit period because TAXPAYER-1 voted in Utah elections during the 2019 and 2020 tax years. The Taxpayers have not asserted any of the circumstances that the Commission has previously established to rebut the presumption. Further, in light of the plain language of the statute, combined with the Commission's prior precedent that presumptions must be either rebutted or not rebutted for both Taxpayers, and that the Commission must presume that enactments of the Legislature are constitutional, the Commission finds that the TAXPAYERS have not rebutted the presumption of Utah domicile that has arisen under Subsection 59-10-136(2)(b) when applying the factors the Utah Supreme Court established in *Buck*.

I. The presumption of domicile under Utah Code Ann. §59-10-136(2)(c) has arisen with respect to TAXPAYER-2 and TAXPAYER-1 for the entire audit period, because TAXPAYER-1 filed Utah resident individual income tax returns for the 2019 and 2020 tax years. The Taxpayers have not asserted that any of the circumstances previously established by the Commission to rebut the presumption are present in this case. Further, in light of the plain language of the statute, combined with the Commission's prior precedent that presumptions must be either rebutted or not rebutted for both Taxpayers, and that the Commission must presume that enactments of the Legislature are constitutional, the Commission finds that the TAXPAYERS have not rebutted the presumption of Utah domicile that has arisen under Subsection 59-10-136(2)(b) when applying the factors the Utah Supreme Court established in *Buck*.

J. The Commission declines to review the factors set forth in Utah Code Ann. §59-10-136(3), as the Taxpayers are domiciled in Utah under Subsections 59-10-136(2)(a), (2)(b), and (2)(c) for the entire 2019 and 2020 tax years.

K. Pursuant to Utah Code Ann. §59-10-136, the Commission finds that the Taxpayers were domiciled in Utah for the 2019 and 2020 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.

L. Utah imposes a tax on the state taxable income of a resident individual in Utah Code Ann. §59-10-104(1). 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. 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. 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 2019 and 2020 tax years. Based on the foregoing, the Commission finds that the Division's audits properly include the Taxpayers' joint income for the 2019 and 2020 tax years.

M. There is no reasonable cause to waive interest. Administrative 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.

N. The Commission recognizes that the Taxpayers need to raise any constitutional arguments to the Commission in order to preserve those arguments for any subsequent court action.[24] In this matter, the Taxpayers argued in their Brief that Utah's domicile statute violates the Due Process Clause, the Equal Protection Clause, the Privileges and Immunities Clause, and the Commerce Clause of the Constitution of the United States, either on its face or as applied. However, the Commission does not have jurisdiction to address the Taxpayers' constitutional arguments. *See State Tax Commission v. Wright*, 596 P.2d 634 (Utah 1979), in which the Utah Supreme Court stated that "[a]lthough the Tax Commission must of necessity interpret the taxing statutes and make determinations as to their applicability, it has been stated that 'it is not for the tax commission to determine questions of legality or constitutionality of legislative enactment'" (citing *Shea v. State Tax Commission*, 101 Utah 209, 120 P.2d 274 (Utah 1941)). (*See* also *Nebeker v. State Tax Comm'n*, 34 P.3d 180 (Utah 2001).

[24] The Commission notes that oral arguments were held on DATE before the Utah Supreme Court on a factually similar matter. The Commission is awaiting the Court's decision in that matter.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the Taxpayers were domiciled in Utah for all of 2019 and 2020, and sustains the Division's audit assessment of tax and interest. It is so ordered.

DATED this _____ day of _____, 2025.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights and 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. If you disagree with this order you have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission in accordance with Utah Code Ann. §63G-4-302. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.