APPEAL #: 23-1187
TAX TYPE: INDIVIDUAL INCOME TAX
TAX YEAR: 2019 AND 2020
DATE SIGNED: 7/3/2024
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.	**INITIAL HEARING ORDER** Appeal No. 23-1187 Account No: ##### Tax Type: Audit - Individual Income Tax Tax Years: 2019 - 2020 Judge: Phan

Presiding:
Jane Phan, Administrative Law Judge

Appearances:
For Petitioners: TAXPAYER
For Respondent: RESPONDENT'S REP-1, Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on April 22, 2024 for an Initial Hearing in accordance with Utah Code §59-1-502.5. Petitioners ("Taxpayers") timely appealed pursuant to Utah Code §59-1-501 Respondent's ("Division's") individual income tax audits for the 2019 and 2020 tax years. The audit tax, penalties and interest that had accrued to the date of the Notices of Deficiency for each tax year are the following:

REDACTED TABLE

APPLICABLE LAW

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

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

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

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.

The factors considered for determination of domicile[1] 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:

[1] Utah Code Sec. 59-10-136 was originally adopted effective for tax year 2012, but was revised effective for tax year 2018. A technical correction was made in 2020 that does not affect the outcome of this decision. The version cited in this Initial Hearing Decision is the 2020 version of the statute. Additional amendments have been made to Utah Code Ann. Sec. 59-10-136 for tax years after the tax years at issue in this appeal. These amendments are inapplicable to this matter.

(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.

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

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

DISCUSSION

For the 2019 tax year, the Taxpayers filed a married filing joint federal income tax return and used as their address on that return their residence in STATE-1. On that return, they claimed

as a dependent TAXPAYER-2's daughter PERSON-1. However, they did not claim a child tax credit under Section 24, Internal Revenue Code, for TAXPAYER-2's daughter, due to the income phase out for that credit. Copies of Taxpayer TAXPAYER's W-2s were provided and they were addressed to him at the Taxpayers' residence in STATE-1.

For their 2019 state income tax return filings, TAXPAYER-2 filed a 2019 Utah Individual Income Tax Return as a Utah resident with the filing status of head of household. On her Utah return she stated only her income, which came from wage income she earned in Utah. The address TAXPAYER-2 provided on her Utah return was the Taxpayers' residence in Utah. TAXPAYER-2's W-2 from her employment was addressed to her at the Taxpayers' Utah residence. TAXPAYER did not file a state return for tax year 2019, and all his wage income was earned from his employment in STATE-1 where a state income tax is not imposed.

For tax year 2020, the Taxpayers filed a married filing joint federal income tax return. They listed their Utah residence as their address on that return. On that return, they again claimed TAXPAYER-2's daughter as a dependent, but did not claim a child tax credit for her. Copies of TAXPAYER's W-2s were provided for tax year 2020 and they were addressed to him at their Utah residence.

For their 2020 state income tax return filings, TAXPAYER-2 had originally filed a Utah Individual Income Tax Return with the filing status of head of household on which she stated only her income, which was again wage income she earned in Utah. None of TAXPAYER's income was included. The address she provided on her Utah return was their Utah residence address. Subsequently, the Taxpayers prepared a Utah married filing joint return on which they claimed TAXPAYER-2 as a Utah resident and TAXPAYER as a nonresident. This return was filed using their Utah address. On that return, on Schedule TC-40B, they listed TAXPAYER-2's income as Utah income and TAXPAYER's income as not being Utah income.

During the audit period, the Taxpayers were married and were not legally separated or divorced. TAXPAYER explained at the hearing that he had never been a Utah resident prior to the tax years at issue and he stated that based on STATE-1 law he was a resident of STATE-1 for the tax years at issue. He explained he had been living in STATE-2 when he and TAXPAYER-2 married in 2015. When they married, due to TAXPAYER-2's joint custody situation with her daughter PERSON-1, she was unable to move from Utah and continued to reside in Utah. TAXPAYER stated that he moved to a suburb of CITY-1, STATE-1, in 2018 to begin employment for a firm in STATE-1. He stated that the STATE-1 employer required full time, in-person work. TAXPAYER'S purchased a residence together in STATE-1 in 2018. TAXPAYER stated that during the audit years at issue he qualified under STATE-1 law to be a STATE-1 resident. The

Taxpayers' STATE-1 residence received the STATE-1 homestead exemption. TAXPAYER had a STATE-1 driver license, was registered to vote in STATE-1 and did not register to vote in Utah during the audit period. His motor vehicle was registered in STATE-1. He generally received his mail in STATE-1. Prior to and during the audit years, TAXPAYER never resided in Utah.

TAXPAYER-2 had previously been renting in Utah. However, TAXPAYER'S purchased a Utah residence in 2018, which is where she resided during tax year 2019 and 2020. Mr. and TAXPAYER-2 were on the title and on the deed as joint owners of the Utah residence during the tax years at issue in the audit and the residence received the Utah primary residential exemption. TAXPAYER-2 had a Utah driver license and her vehicle was registered in Utah. TAXPAYER-2 had never registered to vote in Utah. TAXPAYER-2's daughter resided in Utah and TAXPAYER-2 was employed in Utah for both audit years. TAXPAYER-2 generally received her mail at the Utah address. TAXPAYER stated at the hearing that TAXPAYER-2's employment in Utah was such that she had Thursdays through Sundays off, and would travel to STATE-1 regularly. However, TAXPAYER-2 was in Utah more than half of the year in 2019 and 2020. TAXPAYER stated that he rarely traveled to Utah and his time spent in Utah was less than 20 days per year.

TAXPAYER-2's daughter attended SCHOOL-1 in Utah, which is a public secondary school, during the tax year 2019 and through DATE, when she graduated from high school. The Taxpayers had stated on their domicile survey that TAXPAYER-2 attended SCHOOL-2 in 2020. TAXPAYER-2 did not attend the hearing and when asked for the actual period of TAXPAYER-2's attendance at SCHOOL-2, TAXPAYER did not remember and was not able to provide a reliable answer, although he thought that she had finished her bachelor's degree in nursing in DATE. TAXPAYER-2 had attended as a Utah resident and paid Utah resident tuition. Given the lack of information from the Taxpayers regarding the actual dates of attendance in 2020, and that the Taxpayers have the burden of proof in this proceeding, the Tax Commission concludes for purposes of this Initial Hearing Decision that TAXPAYER-2 attended SCHOOL-2 for all of tax year 2020.

At the hearing, the Taxpayers did not dispute that TAXPAYER-2 was a Utah resident individual for tax years 2019 and 2020. It was, instead, their position that TAXPAYER was not a Utah resident individual and his income, which was from his employment in STATE-1, was not taxable to Utah. TAXPAYER argued that based on STATE-1 law he was a resident of STATE-1. Additionally, he pointed out that even though STATE-1 did not have an individual income tax, it had higher property and other taxes, and he was not getting a credit for those taxes paid to STATE-1.

The Division's representative stated that it is the Division's position that both Taxpayers were domiciled in Utah for all of tax year 2019 and 2020 based on the provisions of Utah Code Ann. §59-10-136. For tax year 2019, the Division argued that domicile was established under Subsections 59-10-136(2), (3) and (6). For tax year 2020, the Division argued that domicile was established under Subsection (1) and (6).

The Division's representative did not argue Subsection (1) to be applicable for tax year 2019, but he did argue it to be applicable for tax year 2020. Subsection 59-10-136(1) provides that an individual is considered to be domiciled in Utah if "a dependent with respect to whom the individual or the individual's spouse claims a personal exemption 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 . ." The Taxpayers had claimed TAXPAYER-2's daughter as a dependent on their federal income tax return and TAXPAYER-2's daughter did attend a Utah public secondary school. However, the Division acknowledged that by tax year 2019 individuals no longer could claim personal exemptions for their dependents on their federal income tax return and the Taxpayers did not claim a child tax credit on their federal income tax return for TAXPAYER-2's daughter, due to being over the income phase out limit.

The Division argued that for tax year 2020 the Taxpayers were domiciled in Utah based on a different provision of Subsection 59-10-136(1). Subsection (1)(a)(ii) provides that an individual is domiciled in Utah if, "(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. The Division pointed out that because TAXPAYER-2 attended SCHOOL-2 as a resident student for all of 2020, paid resident tuition, and SCHOOL-2 is an institution of higher education described in Section 53B-2-101, TAXPAYER was also domiciled in Utah under this provision[2].

It was the Division's position for tax year 2019 that the Taxpayers were both domiciled in Utah pursuant to Subsections (2)(a) and (c). The Division's representative argued that the Taxpayers are presumed domiciled under Subsection (2)(a), as they owned a home in Utah that received the primary residential exemption. The primary residential exemption provides a 45% reduction in the value of residential property in Utah. The Taxpayers did not refute that they had received this exemption on their Utah residence for tax years 2019 and 2020. The Division's representative stated that the Division does not believe the Taxpayers are presumed domiciled in

[2] The Commission acknowledges that a taxpayer has challenged the constitutionality of this provision in *Tischmack v. Utah State Tax Commission*, No. 20230443-SC currently pending before the Utah Supreme Court.

Utah under Subsection (2)(b). He stated that it does not appear that either of the Taxpayers were registered to vote in Utah. However, the Division's representative stated that the Taxpayers are presumed to be domiciled in Utah under Subsection (2)(c) for tax year 2019, as TAXPAYER-2 had filed a Utah resident individual income tax return for 2019, asserting that she was a resident of Utah for that tax year.

The Division's representative stated that Subsection (3) provides that an individual is considered to be domiciled in this state if the individual or the individual's spouse has a permanent home in this state and the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state. The Division's representative noted that Subsection (3)(b) identifies a number of factors that are to be considered in determining whether an individual is considered to be domiciled in Utah and based on these factors, the Taxpayers would also be domiciled in Utah.

The Division's representative stated that Subsection (4) provides that an individual is not considered to be domiciled in Utah if they are absent from the state for at least 761 days and certain other circumstances are met. He stated that the statute provides that the individual and the individual's spouse must both be absent from the state for at least 761 days. The Division's representative stated that because TAXPAYER-2 resided in Utah for both tax years 2019 and 2020, the Taxpayers did not meet this exception to the domicile statute.

The Division's representative stated that Subsection (5) allows one spouse to be domiciled in Utah while the other spouse is domiciled outside of Utah, if certain conditions are met. He stated that one of the conditions is that the spouse who asserts that they do not have Utah domicile in Utah does not own property in this state. The Division's representative stated that because both Taxpayers owned the residence in Utah, the Taxpayers do not meet the conditions of Subsection (5).

After concluding that both Taxpayers were domiciled in Utah under Subsection (1) for tax year 2020 and under Subsection (2) for tax year 2019, the Division's representative also pointed to Subsection (6). The Division noted that the Taxpayers were not legally separated or divorced in 2019 or 2020, and had filed married filing joint federal income tax returns for both tax years at issue.

The Division's representative stated that in order to avoid the double taxation of income, a credit is allowed for taxes imposed by another state. He stated that STATE-1 does not have an income tax, therefore a credit may not be claimed for taxes imposed by another state.

The Tax Commission considers the facts and arguments presented by the parties and applies the applicable law. For the years at issue, Utah Code §59-10-103(1)(q) provided that a

person is a Utah resident individual if they are domiciled in this state. Utah Code §59-10-136 addresses when an individual is considered or is not considered to have domicile in Utah.Pursuant to Utah Code §59-10-136, the Commission must determine whether one or both of the Taxpayers is considered to be domiciled in Utah "in accordance with this section," specifically in accordance with Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3). In instances where the actions of only one spouse meets the circumstances described in Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3), the Commission has generally found that both spouses are considered to be domiciled in Utah under the applicable subsection, and that such a conclusion is supported by Subsection 59-10-136(6)(a).

Utah Code Ann. §59-10-136(6)(a) provides that, subject to the exception provided in Subsection (5), if an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state. Subsection (6)(b) of Utah Code Ann. §59-10-136 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 year in question. The Taxpayers were not legally separated or divorced, nor did they claim a married filing separate filing status for purposes of filing a federal individual income tax return for the 2019 or 2020 tax year. Thus, the Taxpayers are considered to be each other's spouse for purposes of Utah Code Ann. §59-10-136.

Utah Code Ann. §59-10-136(4) provides that an individual is not considered to have domicile in the State of Utah under Subsection 59-10-136(1), (2), or (3) if the individual and the individual's spouse were absent from the state for at least 761 consecutive days and certain other qualifications are met. The Taxpayers do not meet the qualifications of Subsection (4) because TAXPAYER-2 was not absent from Utah for at least 761 consecutive days. Thus, the Taxpayers do not qualify under Subsection 59-10-136(4) as being considered not domiciled in Utah.

The Commission must next consider whether the conditions of Subsection (5) are met for TAXPAYER to not be considered to have domicile in Utah the 2019 or 2020 tax year. 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. To be considered to not have domicile in this state under Subsection (2) or (3), one of the spouses must establish by a preponderance of the evidence that the conditions are met for the tax year at issue, and for three taxable years prior to the tax year at issue. The first condition is that the individual is not an owner of property in this state. The Taxpayers jointly owned a residence in Utah for the entire audit period, thus the first

condition is not met. Because neither of the Taxpayers has satisfied the first condition, and each of the five conditions must be met in order for an individual to not be considered to have domicile in Utah under Subsection (2) or (3), the Commission declines to analyze the remaining conditions. The Taxpayers have not shown that they have 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.

Based on the information presented, the Taxpayers were not domiciled in Utah under Subsection 59-10-136(1) for tax year 2019, but they were domiciled in Utah under that Subsection for all of tax year 2020, based on the assumption that TAXPAYER-2 attended SCHOOL-2 for all of 2020. Subsection 59-10-136(1) provides, "(a) An individual is considered to have domicile in this state if: (i) . . . 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." For both years, the Taxpayers claimed TAXPAYER-2's daughter as a dependent on their federal returns. However, as the Division had conceded, a personal exemption or tax credit under Section 24, Internal Revenue Code was not claimed with respect to the daughter.

For tax year 2020, TAXPAYER-2 was "a resident student in accordance with Section 53B-8-102 who [was] enrolled in an institution of higher education described in Section 53B-2-101 in this state." Resident students enjoy a significant financial benefit from resident tuition. SCHOOL-2 is an institution of higher education described in Section 53B-2-101 in this state. Because TAXPAYER-2 attended SCHOOL-2 as a resident student and paid resident tuition in 2020, the Taxpayers are considered to be domiciled in Utah under this provision.

Because the Taxpayers are not considered to be domiciled in Utah under Subsection (1) for tax year 2019, the Tax Commission looks to Subsection (2). Subsection (2) of Utah Code Ann. §59-10-136 sets forth three circumstances that create a rebuttable presumption of domicile in Utah. The Taxpayers are presumed to be domiciled in Utah throughout the 2019 and 2020 tax years because their Utah residence 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:
> (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 their Utah residence for all of the 2019 and 2020 tax years, 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.[3] 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. Therefore, under Utah Code Ann.

[3] An application for the primary residential exemption is not required in COUNTY-1 where the Taxpayers' residence was located.

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

The Taxpayers are also presumed to be domiciled in Utah for tax years 2019 and 2020 under Utah Code Ann. §59-10-136(2)(c). Utah Code Ann. §59-10-136(2)(c) provides as follows:

> There is a rebuttable presumption that an individual is considered to have domicile in this state if:
> (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

TAXPAYER-2 asserted residency in Utah on her 2019 Utah individual income tax return and on her 2020 original Utah individual income tax return, as well as her amended or subsequent 2020 Utah individual income tax return.

Utah Code Ann. Subsections 59-10-136(2)(a) and (c) create rebuttable presumptions of domicile. The Legislature did not provide what circumstances are sufficient, or are not sufficient, to rebut the presumptions in Utah Code Ann. §59-10-136(2), leaving it to the Courts and the Commission to determine which circumstances are sufficient, or not sufficient, to rebut the presumptions of domicile found in Subsection 59-10-136(2). The Commission has considered grounds for rebuttal in numerous prior decisions. In addition, the Utah Supreme Court held in *Buck v. Tax Comm'n*, 2022 UT 11 (February 24, 2022) that "...the presumption of domicile that results from claiming a primary residential property tax exemption is rebuttable. And…taxpayers are not statutorily barred from having a meaningful opportunity to rebut the presumption." Furthermore, the 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). Thus, the Commission will consider multiple factors for rebuttal of the Subsection (2) presumptions, as described by the Court in *Buck*.

In this matter, the factors enumerated in *Buck* support that the Taxpayers were domiciled in Utah and have not rebutted the presumptions. TAXPAYER-2 lived in Utah with a daughter who attended school in Utah, worked in Utah, attended SCHOOL-2 in Utah as a resident student and paid resident tuition, owned property in Utah where both parties received significant financial benefit from receiving the primary residential exemption, had a Utah driver license, registered a

vehicle in Utah, and received mail in Utah. While TAXPAYER does not have similar significant ties to Utah, other than the joint ownership of the Utah home with TAXPAYER-2, the plain language of Utah Code Subsections 59-10-136(2), (5) and (6) make it clear that the Utah legislature expressly intended that if an individual is considered to have domicile in Utah under Subsections (1), (2) or (3), the individual's spouse is also considered to have domicile in Utah. Because the Taxpayers have not rebutted the presumptions of domicile found in Subsections 59-10-536(2)(a) and (c), they are considered to have domicile in Utah for tax years 2019 and 2020.

The Taxpayers are not presumed to be domiciled in Utah for the 2019 and 2020 tax years 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…

Neither of the Taxpayers were registered to vote in Utah during the audit period or in the years prior, and had not voted in Utah. TAXPAYER had registered to vote in STATE-1.

Based on all of the facts and circumstances presented in this matter the Commission finds the Taxpayers were domiciled in Utah for all of 2019 and 2020 pursuant to Utah Code Ann. §59-10-136.As the Commission finds pursuant to Utah Code Ann. §59-10-136 that both Taxpayers were domiciled in Utah for the 2019 and 2020 tax years, they meet the definition of "resident individuals" whose income is subject to tax in Utah under Utah Code Ann. §59-10-104(1). Utah imposes a tax on the state taxable income of resident individuals pursuant to Utah Code §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 only 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 argued or 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. Their Utah individual tax amount would be subject to a credit for the individual income taxes imposed by another state; however, as STATE-1 does not impose an individual income tax, there is no credit to apply.

Penalties for failure to timely file a tax return and for failure to timely pay the tax when due were assessed with the audit for tax year 2019. Interest has accrued on the balances due for tax years 2019 and 2020 pursuant to Utah Code Sections 59-1-401 & 59-1-402. Utah Code Subsection 59-1-401(14) does provide that the Commission may waive, reduce or compromise penalties and interest upon a showing of reasonable cause. Utah Admin. Rule R861-1A-42 sets out what constitutes reasonable cause for waiver of penalties, and separately what constitutes reasonable cause for waiver of interest. The Tax Commission has generally waived penalties in domicile cases based on equitable considerations due to the complex and fact-specific nature of domicile issues. For these reasons, the Tax Commission finds there is reasonable cause to waive all of the audit penalties.

Under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove "that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." The Taxpayers did not assert a basis for waiver of interest.

After review of the evidence submitted by the parties at the hearing and the applicable law, the Taxpayers were domiciled in Utah for all of tax years 2019 and 2020, and the audit tax and interest should be sustained for the audit period. There is reasonable cause, however, for waiver of all of the audit penalties.

Jane Phan
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 upholds the Division's audit as to the audit tax and interest accrued

thereon. The Commission finds reasonable cause for waiver of the audit penalties assessed for tax year 2019. It is so ordered.

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

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

or emailed to:

taxappeals@utah.gov

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2024.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

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