

18-539
TAX TYPE: INCOME
TAX YEAR: 2014
DATE SIGNED: 04/30/2019
COMMISSIONERS: M. CRAGUN, R. ROCKWELL, L. WALTERS
EXCUSED: J. VALENTINE
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	INITIAL HEARING ORDER Appeal No. 18-539 Account No. ##### Tax Type: Income Tax Year: 2014 Judge: Chapman
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Presiding:

Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer
 TAXPAYER-2, Taxpayer
For Respondent: REPRESENTATIVE FOR RESPONDENT-1, from Auditing Division
 REPRESENTATIVE FOR RESPONDENT-2, from Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5, on February 25, 2019.

TAXPAYERS (“Petitioners” or “taxpayers”) are appealing Auditing Division’s (the “Division”) assessment of Utah individual income taxes for the 2014 tax year. On March 22, 2018, the Division issued a Notice of Deficiency and Audit Change (“Statutory Notice”), in which it imposed taxes and interest (calculated as of April 21, 2018),¹ as follows:

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>	<u>Interest</u>	<u>Total</u>
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1 Interest continues to accrue until any tax liability is paid. No penalties were imposed.

2014 \$\$\$\$\$ \$0.00 \$\$\$\$\$ \$\$\$\$\$

For the 2014 tax year, the taxpayers filed a federal income tax return, a 2014 Utah part-year resident return, and a 2014 STATE-1 part-year resident return. The taxpayers filed all of these returns with a status of married filing jointly. On the Form TC-40B that accompanied the taxpayers' 2014 Utah return, the taxpayers indicated that they were Utah resident individuals from January 1, 2014 to January 31, 2014, and they allocated \$\$\$\$\$ of their total 2014 federal adjusted gross income ("FAGI") of \$\$\$\$\$ to Utah. On their 2014 STATE-1 return, the taxpayers indicated that they were STATE-1 residents from February 1, 2014 to December 31, 2014, and they allocated \$\$\$\$\$ of their total 2014 FAGI of \$\$\$\$\$ to STATE-1.

At the hearing, however, the taxpayers contended that they were residents of STATE-1, not Utah, for all of the 2014 tax year. The taxpayers explained that they did not know why their 2014 Utah and STATE-1 returns show them to be Utah residents for the first month of 2014 and STATE-1 residents for the last 11 months of 2014. They suggested that perhaps it was a problem associated with the TurboTax software that they used to prepare their 2014 returns. Regardless, the taxpayers explained that on their Utah and STATE-1 returns, they allocated: 1) to Utah the \$\$\$\$\$ of 2014 income that TAXPAYER-1 earned from working in Utah at OCCUPATION-1 ("OCCUPATION-1") throughout 2014;² and 2) to STATE-1 the \$\$\$\$\$ of 2014 retirement income that TAXPAYER-1 received because of his retirement from the OCCUPATION-2 ("OCCUPATION-2") in 2003. The taxpayers contend that none of the retirement income that TAXPAYER-1 received in 2014 is subject to Utah taxation because both taxpayers lived only in STATE-1 during 2014. TAXPAYER-2 did not work or receive any income during the 2014 tax year.

2 TAXPAYER-1 explained that he worked at OCCUPATION-1 nine days every two weeks and that he would drive 130 miles (round-trip) between his home in STATE-1 and OCCUPATION-1 each work day (i.e., he did not stay in Utah at nights).

The Division, on the other hand, has determined that both taxpayers were domiciled in Utah for all of 2014 because TAXPAYER-1 was registered to vote in Utah throughout 2014.³ As a result, the Division has changed the taxpayers' joint 2014 Utah part-year resident return to a joint 2014 Utah full-year resident return and imposed Utah taxes on all of their 2014 income.⁴ For these reasons, the Division asks the Commission to sustain its assessment in its entirety.

The taxpayers, on the other hand, contend that they were not domiciled in Utah during 2014. As a result, they contend that Utah should not tax the 2014 retirement income that TAXPAYER-1 received. For these reasons, the taxpayers ask the Commission to find that they properly filed their 2014 Utah part-year resident return and to overturn the Division's assessment.

APPLICABLE LAW

1. Utah Code Ann. §59-10-104(1)⁵ (2014) provides that “a tax is imposed on the state taxable income of a resident individual[.]”

2. For purposes of Utah income taxation, a “resident individual” is defined in UCA §59-10-103(1)(q)(i), as follows:

- (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
- (B) an individual who is not domiciled in this state but:

3 The Division stated that Utah Code Ann. §59-10-136(2)(b) (2014) is the only subsection of Section 59-10-136 under which the taxpayers would be considered to be domiciled in Utah for all of 2014. The Division specifically indicated that neither taxpayer would be considered to be domiciled in Utah for any portion of 2014 under Subsection 59-10-136(3).

4 If the taxpayers are both deemed to be Utah resident individuals for 2014 and if they paid 2014 income taxes to another state, the taxpayers would be entitled to claim a credit against their Utah tax liability, pursuant to Utah Code Ann. §59-10-1003 (2014). The taxpayers' 2014 STATE-1 return, however, shows that STATE-1 did not impose any 2014 income taxes on the taxpayers. As a result, it does not appear that this credit would apply to the taxpayers' circumstances. The taxpayers did not argue otherwise and explained that they had no 2014 STATE-1 tax liability, in part, because STATE-1 does not tax retirement income received by retired servicemembers. The Commission notes that the taxpayers may also not have had any 2014 STATE-1 tax liability because the taxpayers did not allocate to STATE-1 any of the income that TAXPAYER-1 received from his employment at OCCUPATION-1.

5 All substantive law citations are to the 2014 version of Utah law, unless otherwise indicated.

- (I) maintains a place of abode in this state; and
- (II) spends in the aggregate 183 or more days of the taxable year in this state.

3. Effective for tax year 2012 (and applicable to the 2014 tax year at issue), Utah Code Ann.

§59-10-136 provides guidance concerning the determination of “domicile,” as follows:

- (1) (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
- (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
 - (i) is the noncustodial parent of a dependent:
 - (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
 - (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and
 - (ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).
- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
 - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
 - (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or
 - (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.
- (3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:
 - (i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and
 - (ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

- (b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:
- (i) whether the individual or the individual's spouse has a driver license in this state;
 - (ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;
 - (iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;
 - (iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return;
 - (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;
 - (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
 - (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
 - (viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
 - (ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
 - (x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
 - (xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or
 - (xii) whether the individual is an individual described in Subsection (1)(b).
- (4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
- (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
 - (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
 - (A) return to this state for more than 30 days in a calendar year;
 - (B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
 - (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

- (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
 - (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.
- (b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
- (c) For purposes of Subsection (4)(a), an absence from the state:
- (i) begins on the later of the date:
 - (A) the individual leaves this state; or
 - (B) the individual's spouse leaves this state; and
 - (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.
- (d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
- (i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.
- (e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
- (ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
- (A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
 - (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).
- (5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.
- (b) For purposes of this section, an individual is not considered to have a spouse if:
- (i) the individual is legally separated or divorced from the spouse; or
 - (ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
- (c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

(6) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

4. For the 2014 tax year, Utah Code Ann. §20A-2-305 provided for names to be removed or not be removed from the official voter register, as follows in pertinent part:

(1) The county clerk may not remove a voter's name from the official register because the voter has failed to vote in an election.

(2) The county clerk shall remove a voter's name from the official register if:

- (a) the voter dies and the requirements of Subsection (3) are met;
- (b) the county clerk, after complying with the requirements of Section 20A-2-306, receives written confirmation from the voter that the voter no longer resides within the county clerk's county;
- (c) the county clerk has:
 - (i) obtained evidence that the voter's residence has changed;
 - (ii) mailed notice to the voter as required by Section 20A-2-306;
 - (iii) (A) received no response from the voter; or
(B) not received information that confirms the voter's residence; and
 - (iv) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice;
- (d) the voter requests, in writing, that the voter's name be removed from the official register;
- (e)⁶ the county clerk receives a returned voter identification card, determines that there was no clerical error causing the card to be returned, and has no further information to contact the voter;
- (f) the county clerk receives notice that a voter has been convicted of any felony or a misdemeanor for an offense under this title and the voter's right to vote has not been restored as provided in Section 20A-2-101.3 or 20A-2-101.5; or
- (g) the county clerk receives notice that a voter has registered to vote in another state after the day on which the voter registered to vote in this state.

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5. For the 2014 tax year, where a change of residence occurred, Utah Code Ann. §20A-2-306 provided for names to be removed or to not be removed from the official voter register, as follows in pertinent part:

(1) A county clerk may not remove a voter's name from the official register on the grounds that the voter has changed residence unless the voter:

6 Effective May 9, 2017, Subsection 20A-2-305(2)(e) was deleted from the statute.

- (a) confirms in writing that the voter has changed residence to a place outside the county; or
 - (b) (i) has not voted in an election during the period beginning on the date of the notice required by Subsection (3), and ending on the day after the date of the second regular general election occurring after the date of the notice; and
(ii) has failed to respond to the notice required by Subsection (3).
- (2) (a) When a county clerk obtains information that a voter's address has changed and it appears that the voter still resides within the same county, the county clerk shall:
- (i) change the official register to show the voter's new address; and
 - (ii) send to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
- (b) When a county clerk obtains information that a voter's address has changed and it appears that the voter now resides in a different county, the county clerk shall verify the changed residence by sending to the voter, by forwardable mail, the notice required by Subsection (3) printed on a postage prepaid, preaddressed return form.
- (3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE
- We have been notified that your residence has changed. Please read, complete, and return this form so that we can update our voter registration records. What is your current street address?

Street	City	County	State	Zip
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If you have not changed your residence or have moved but stayed within the same county, you must complete and return this form to the county clerk so that it is received by the county clerk no later than 30 days before the date of the election. If you fail to return this form within that time:

- you may be required to show evidence of your address to the poll worker before being allowed to vote in either of the next two regular general elections; or
- if you fail to vote at least once from the date this notice was mailed until the passing of two regular general elections, you will no longer be registered to vote. If you have changed your residence and have moved to a different county in Utah, you may register to vote by contacting the county clerk in your county.

Signature of Voter"

.....

- (4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the names of any voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election.
- (b) The county clerk may remove the names of voters from the official register during the 90 days before a regular primary election and the 90 days before a regular general election if:
- (i) the voter requests, in writing, that the voter's name be removed; or
 - (ii) the voter has died.
- (c) (i) After a county clerk mails a notice as required in this section, the clerk may list that voter as inactive.
- (ii) An inactive voter shall be allowed to vote, sign petitions, and have all other privileges of a registered voter.

(iii) A county is not required to send routine mailings to inactive voters and is not required to count inactive voters when dividing precincts and preparing supplies.

6. For the instant matter, UCA §59-1-1417(1) (2019) provides guidance concerning which party has the burden of proof, as follows:

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

DISCUSSION

Pursuant to Subsection 59-1-1417(1), the taxpayers have the burden of proof in this matter. At issue is whether the taxpayers were Utah resident individuals for the 2014 tax year. The Division contends that the taxpayers were Utah resident individuals for all of 2014, while the taxpayers contend that they were not Utah resident individuals for any portion of 2014. For the 2014 tax year, Subsection 59-10-103(1)(q)(i) provides that a person is a Utah resident individual under either of two scenarios: 1) if the person is domiciled in Utah (the “domicile test”); or 2) if the person maintains a place of abode in Utah and spends 183 or more days of the taxable year in Utah (the “183 day test”).

The Division does not argue that the taxpayers are Utah resident individuals for the 2014 tax year under the 183 day test. Instead, the Division contends that the taxpayers are 2014 Utah resident individuals under the domicile test. As a result, the Commission must apply the facts to the Utah domicile law in effect for 2014 to determine whether the taxpayers are considered to be domiciled in Utah during 2014 (as the Division

contends) or whether the taxpayers are not considered to be domiciled in Utah during 2014 (as the taxpayers contend).

I. Additional Facts.

The taxpayers grew up in Utah and married in YEAR (around the time that TAXPAYER-1 joined the OCCUPATION-2). Since their marriage in YEAR, the taxpayers have not been legally separated or divorced. After TAXPAYER-1 retired from the OCCUPATION-2, the taxpayers lived in STATE-2 from 2004 to 2009. In 2009, the taxpayers moved back to Utah, where they lived until they moved to STATE-1 in July 2012. The taxpayers lived in STATE-1 from July 2012 to March 2015, when they moved back to Utah (where they continue to live).

During the 2014 tax year, the taxpayers did not own any real property in Utah. In addition, the taxpayers did not rent a home in Utah during 2014 because TAXPAYER-1 would return from his Utah job at OCCUPATION-1 to the taxpayers' home near CITY-1, STATE-1 at night. Because their STATE-1 mail box was located about one mile from their STATE-1 home, the taxpayers had a post office box in CITY-2, Utah, where they received their mail while they lived in STATE-1 (including the 2014 tax year at issue). During 2014, the taxpayers used the address of their Utah post office box to file their 2013 income tax returns. The taxpayers did not claim any dependents on their 2014 federal return, and neither taxpayer attended an institution of higher education during 2014.

During 2014, both taxpayers attended a church in STATE-1, but they were not members of a club or other similar organization in any state. Also during 2014, one or both taxpayers obtained STATE-1 resident fishing licenses, and neither of the taxpayers obtained a Utah hunting or fishing license. During 2014, both taxpayers had STATE-1 driver's licenses (which they obtained in late 2012 or early 2013), and all of their motor vehicles were registered in STATE-1.

When TAXPAYER-2 obtained her STATE-1 driver's license in 2012 or 2013, she also registered to vote in STATE-1. TAXPAYER-2 voted in STATE-1 during the July 2012 to March 2015 period that the taxpayers lived in STATE-1. TAXPAYER-1 proffered that he never voted in STATE-1 and does not know if he registered to vote in STATE-1 when he obtained his STATE-1 driver's license. The taxpayers, however, have the burden of proof in this matter and have not provided any evidence to show that TAXPAYER-1 was registered to vote in STATE-1 during 2014. As a result, the Commission finds that for purposes of this decision, TAXPAYER-1 was not registered to vote in STATE-1 during any portion of the 2014 tax year at issue.

The Division concluded that TAXPAYER-2 was not registered to vote in Utah during 2014 because it could not find any Utah voting information to show that she had ever been registered to vote in Utah. For TAXPAYER-1, however, the Division found Utah voting information that shows that TAXPAYER-1 registered to vote in Utah in 2009. In addition, this Utah voting information showed several actions taken in regards to TAXPAYER-1's Utah voter registration after 2009, including: 1) an action taken on March 26, 2012 that is described as "status was active changed to inactive;" and 2) an action taken on January 26, 2015 that is described as "made removable and placed in state holding area due to inactivity."

TAXPAYER-1 contends that if his Utah voter registration was in an "inactive status" from March 26, 2012 to January 26, 2015 (which would include all of the 2014 tax year), he was not registered to vote in Utah during 2014. The Division, however, proffers that during the period that an individual's Utah voter registration is in an "inactive status," the individual is still registered to vote in Utah and can vote in Utah if the individual goes to the polls. The Division indicated, however, that an "inactive voter" will not receive mailings such as voter identification cards and mail-in ballots. The Division further proffers that once an individual's Utah voter registration is "made removable and placed in state holding area due to inactivity," the individual is no longer registered to vote in Utah. As a result, the Division claims that TAXPAYER-1 was registered to

vote in Utah while he was in an “inactive status” (which included all of 2014) and that his Utah voter registration was not terminated until January 26, 2015.

The taxpayers, who again have the burden of proof, have not provided any information to refute the Division’s assertion that TAXPAYER-1 would be registered to vote in Utah while his Utah voter registration was in an “inactive status.” As a result, the Commission finds that TAXPAYER-1 was registered to vote in Utah throughout the 2014 tax year.⁷

II. Applying the Facts to the 2014 Domicile Law.

UCA §59-10-103(1)(q)(i)(A) defines a “resident individual” as “an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state[.]” For the 2014 tax year, a taxpayer’s domicile for income tax purposes is determined under Section 59-10-136, which contains four subsections addressing when a taxpayer is considered to have domicile in Utah (Subsections (1), (2), (3), and (5)) and a fifth subsection addressing when a taxpayer is not considered to have domicile in Utah (Subsection (4)).⁸

A. Section 59-10-136(5)(b). For a married individual, it is often necessary to determine whether that individual is considered to have a “spouse” for purposes of Section 59-10-136. Subsection 59-10-

⁷ This finding is consistent with prior Commission decisions in which an individual’s Utah voter registration was in an “inactive status.” *See, e.g., USTC Appeal No. 18-793* (Initial Hearing Order Feb. 22, 2018), in which the Commission explained that Subsection 20A-2-305(2)(c) provides that a Utah county clerk shall remove a voter’s name from the official Utah voter register if: 1) the county clerk obtains evidence that the voter’s residence has changed; 2) the county clerk mails notice to the voter as required by Section 20A-2-306; 3) the county clerk receives no response from the voter or does not receive information that confirms the voter’s residence; and 4) the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice.

⁸ Prior to tax year 2012, an individual’s income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) (“Rule 2”), which provided, in part, criteria to be used when determining an individual’s income tax domicile and which referred to a non-exhaustive list of domicile factors in Utah Admin. Rule R884-24P-52 (2011) (“Rule 52”) (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile beginning with the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

136(5)(b) provides that a married individual is *not* considered to have a spouse for purposes of Section 59-10-136 if the individual is legally separated or divorced from the individual's spouse or if the individual and the individual's spouse file federal income tax returns with a status of married filing separately. Neither of these circumstances applies to the taxpayers for the 2014 tax year because the taxpayers were not legally separated or divorced during this year and because they filed a 2014 joint federal return. Accordingly, for the 2014 tax year, each taxpayer is considered to have a spouse for purposes of Section 59-10-136.

B. Subsection 59-10-136(4). The taxpayers do not argue that they are *not* considered to be Utah domiciliaries under Subsection 59-10-136(4) for any portion of 2014. This subsection applies to an individual who is "absent from the state" if certain requirements are met, two of which are that the individual and the individual's spouse must both be absent from Utah for at least 761 consecutive days and neither the individual nor the individual's spouse return to Utah for more than 30 days in a calendar year. Although the taxpayers lived in STATE-1 for at least 761 consecutive days that included all of 2014, TAXPAYER-1 returned to Utah more than 30 days in a calendar year for all years that the taxpayers lived in STATE-1. As a result, the taxpayers do not meet all of the Subsection 59-10-136(4) requirements for a 761-day or more period that includes any portion of the 2014 tax year. Accordingly, Subsection 59-10-136(4) does not apply to the taxpayers' circumstances, and the taxpayers are not considered to *not* be domiciled in Utah during any portion of 2014 under this subsection.

As a result, the Commission must analyze whether the taxpayers are considered to be domiciled in Utah for all of the 2014 tax year under the remaining subsections of Section 59-10-136 (i.e., under Subsections 59-10-136(1), (2)(a), (2)(b), (2)(c), and (3)). If a person meets the criteria found in *any one* of these subsections, that person is considered to be domiciled in Utah, even if the person does not meet the criteria found in any of the other subsections. It is clear that the taxpayers would not be considered to be domiciled in Utah under Subsection 59-10-136(1) or (2)(a) because the taxpayers did not claim any dependents on their

2014 federal income tax return, did not attend an institution of higher education during 2014, and did not own any real property in Utah during 2014. Of the remaining subsections (Subsections 59-10-136(2)(b), (2)(c), and (3)), the Commission will begin its analysis with Subsection 59-10-136(2)(b) because the Division contends that this is the only subsection under which the taxpayers would be considered to be domiciled in Utah for all of 2014.

C. Subsection 59-10-136(2)(b). Under this subsection, an individual is presumed to be domiciled in Utah if the individual or the individual's spouse is registered to vote in Utah, unless the presumption is rebutted. For reasons discussed earlier, the Commission has found that TAXPAYER-1 was registered to vote in Utah during all of 2014. As a result, both taxpayers will be considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), unless they are able to rebut this presumption for all or a portion of this tax year.⁹

Because Subsection 59-10-136(2)(b) involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual whose actions give rise to this presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to this presumption *is not* considered to have domicile in Utah.¹⁰ However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-

⁹ Admittedly, TAXPAYER-2 was not registered to vote in Utah during 2014. However, Subsection 59-10-136(2)(b) provides that an individual is presumed to be domiciled in Utah if either that individual *or* that individual's spouse is registered in Utah. As a result, this presumption arises for *both* taxpayers for all of 2014 because of TAXPAYER-1's Utah voter registration. Furthermore, where the presumption has arisen for both taxpayers, the taxpayers cannot rebut the presumption for only one of the taxpayers. Either the presumption is rebutted for both taxpayers, or the presumption is not rebutted for both taxpayers. This conclusion is supported by Subsection 59-10-136(5)(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.

¹⁰ The Legislature did not provide that being registered to vote in Utah is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

136(2)(b) presumption. As a result, it is left to the Commission to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

The Commission has previously found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to be domiciled in Utah under Rule 52, the property tax rule used to determine income tax domicile for tax years prior to 2012. It is arguable that using the “old” income tax domicile criteria found in the pre-2012 version of Rule 2 and/or in Rule 52 to determine an individual’s income tax domicile for years when Section 59-10-136 is in effect would be giving the Legislature’s “new” income tax domicile law little or no effect, which the Commission declines to do.¹¹

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

In addition, the Commission acknowledges that neither of the taxpayers voted in Utah during the 2014 tax year at issue, but this alone is insufficient to rebut the presumption.¹³ Moreover, the Commission has found

11 That being said, the Commission is not precluded from considering certain facts that might be described in Rule 52 when determining whether a Subsection 59-10-136(2) presumption has been effectively rebutted. However, the Commission will not determine an individual’s income tax domicile for 2012 and subsequent tax years solely from the factors found in Rule 52.

12 This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) “if the requirements of Subsection (1) or (2) are not met[.]” As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if Subsection 59-10-136(1) or one of the presumptions of Subsection 59-10-136(2) does not apply.

13 See *USTC Appeal No. 15-720* (Initial Hearing Order Mar. 6, 2016), in which the Commission found that the Subsection 59-10-136(2)(b) presumption was not rebutted for the period that an individual was registered to vote in Utah, but had not voted in Utah. The Commission explained that it reached this conclusion, at least in part, because the Utah Legislature elected to use voting registration, not actual voting, as the criterion that could trigger domicile. Redacted copies of this and other selected Commission decisions can be reviewed on the Commission’s website at <https://tax.utah.gov/commission-office/decisions>.

that registering to vote in a state other than Utah within a reasonable time of moving to that state may be sufficient to rebut the Subsection 59-10-136(2)(b) presumption. The taxpayers, however, have not provided evidence to show that TAXPAYER-1 (the taxpayer who was registered to vote in Utah during 2014) was registered to vote in STATE-1 during 2014. As a result, showing that TAXPAYER-2 (who was not registered to vote in Utah in 2014) was registered to vote in STATE-1 during 2014 is insufficient to rebut the Subsection 59-10-136(2)(b) presumption that has arisen for both of them because of TAXPAYER-1's Utah voter registration.

The taxpayers also contend that they should be able to rebut the Subsection 59-10-136(2)(b) presumption for all of 2014 because TAXPAYER-1's Utah voter registration was on "inactive status" for all of 2014. As mentioned earlier, TAXPAYER-1's Utah voter registration was placed on "inactive status" on March 26, 2012, and it remained on "inactive status" until January 26, 2015, when a Utah county clerk removed TAXPAYER-1's name from the official voter registry in accordance with Section 20A-2-305.

Subsection 20A-2-305(2)(c) provides that after a Utah voter is placed on "inactive status" in accordance with Subsection 20A-2-306 (after a Utah county clerk mails a notice concerning an address change), a Utah county clerk *shall* remove the voter's name from the official voter registry if "the voter has failed to vote or appear to vote in an election during the period beginning on the date of the notice described in Section 20A-2-306 and ending on the day after the date of the second regular general election occurring after the date of the notice[.]" After the March 26, 2012 date that TAXPAYER-1 was placed on "inactive status," he did not vote in any Utah election held through and including the second regular general election, which occurred on November 4, 2014.¹⁴ As a result, pursuant to Subsections 20A-2-305(2)(c) and 20A-2-306(1)(b), a Utah county clerk could not have removed TAXPAYER-1's name from the official voter registry prior to

14 For the 2014 tax year, "regular general election" was defined in Utah Code Ann. §20A-1-102(69) to mean "the election held throughout the state on the first Tuesday after the first Monday in November of each even-numbered year for the purposes established in Section 20A-1-201." Subsequent to the 2014 tax year, this definition has not been amended, but it has been renumbered.

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November 5, 2014, but was required to remove his name on or after this date. A Utah county clerk subsequently removed TAXPAYER-1's name from the official voter registry on January 26, 2015.

Pursuant to Subsection 20A-2-306(4)(c), a Utah voter on "inactive" status is "allowed to vote, sign petitions, and have all other privileges of a registered voter[,]" but might not receive "routine mailings." As a result, it appears that TAXPAYER-1 was still allowed to vote, sign petitions, and have all other privileges of a Utah registered voter for all of the 2014 tax year. For these reasons, the Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption for the January 1, 2014 to November 4, 2014 portion of 2014 that his Utah voter registration was on "inactive status" and during which the Utah county clerk was precluded by law from removing his name from the official registry.

However, for the November 5, 2014 to December 31, 2014 portion of 2014 that TAXPAYER-1's Utah voter registration was on "inactive status" and during which the Utah county clerk could have removed his name from the official voter registry, the Commission finds that the Subsection 59-10-136(2)(b) presumption has been rebutted where TAXPAYER-1 was the only one of the taxpayers registered to vote in Utah for this portion of 2014. It is not unreasonable that it took the Utah county clerk between two and three months to remove TAXPAYER-1's name from the official voter registry once the second regular general election of November 4, 2014 occurred without TAXPAYER-1's having voted. Nevertheless, where the clerk was required to remove TAXPAYER-1's name from the official voter registry on or after November 5, 2014, and where the clerk did not remove his name until January 26, 2015, the Commission finds that the Subsection 59-10-136(2)(b) presumption has been rebutted for the period occurring after the November 4, 2014 election. Specifically, the presumption is rebutted for the November 5, 2014 to December 31, 2014 portion of the 2014 tax year that is at issue.

In summary, the Subsection 59-10-136(2)(b) presumption has arisen for both taxpayers for all of 2014 because TAXPAYER-1 was registered to vote in Utah throughout 2014. While the taxpayers have not

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rebutted the presumption for the January 1, 2014 to November 4, 2014 portion of 2014, they have rebutted the presumption for the November 5, 2014 to December 31, 2014 portion of 2014. Accordingly, under Subsection 59-10-136(2)(b), the taxpayers are considered to be domiciled in Utah from January 1, 2014 to November 4, 2014.

As a result, both taxpayers are considered to be domiciled in Utah from January 1, 2014 to November 4, 2014, regardless of whether they would also be considered to be domiciled in Utah for all or a portion of this period under either of the two remaining subsections (i.e., Subsections 59-10-136(2)(c) or (3)). Nevertheless, because the Commission has not yet found the taxpayers to be considered to be domiciled in Utah from November 5, 2014 to December 31, 2014, the Commission must analyze whether the taxpayers would be domiciled in Utah for this portion of 2014 under either of these two remaining subsections.

D. Subsection 59-10-136(2)(c). This subsection provides that an individual is presumed to be domiciled in Utah if the individual or the individual's spouse asserts Utah residency on a Utah return. On their 2014 Utah return, the taxpayers asserted that they were Utah resident individuals from January 1, 2014 to January 31, 2014. As a result, the taxpayers would also be considered to be domiciled in Utah for the first month of 2014 under Subsection 59-10-136(2)(c), unless they were able to rebut this presumption. Regardless, the taxpayers did not assert on their 2014 Utah return that they were Utah resident individuals for any portion of the November 5, 2014 to December 31, 2014 portion of 2014 that remains at issue. Accordingly, under Subsection 59-10-136(2)(c), the Commission finds that the taxpayers are not considered to be domiciled in Utah for the November 5, 2014 to December 31, 2014 portion of 2014. As a result, the Commission must analyze whether the taxpayers are considered to be domiciled in Utah from November 5, 2014 to December 31, 2014 under Subsection 59-10-136(3).

E. Subsection 59-10-136(3). Even if an individual is not considered to be domiciled in Utah under Subsection (1), (2)(a), (2)(b), or (2)(c), the individual may still be considered to be domiciled in Utah

based on a preponderance of the evidence relating to 12 specific factors listed in Subsection 59-10-136(3)(b). At the hearing, the Division stated that the taxpayers would not be considered to be domiciled in Utah under Subsection 59-10-136(3) for any portion of the 2014 tax year. In addition, a review of the 12 factors listed in Subsection 59-10-136(3)(b) appears to support the Division's conclusion. Specifically, for the November 5, 2014 to December 31, 2014 portion of 2014 that remains at issue, it appears that five of the relevant factors support a domicile outside of Utah, while only three of the relevant factors support a Utah domicile. As a result, the Commission finds that the taxpayers are not considered to be domiciled in Utah under Subsection 59-10-136(3) for the November 5, 2014 to December 31, 2014 portion of 2014 that remains at issue.

F. Domicile – Summary. Under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for the January 1, 2014 to November 4, 2014 portion of 2014. However, the taxpayers are not considered to be domiciled in Utah under any subsection of Section 59-10-136 for the November 5, 2014 to December 31, 2014 portion of 2014. As a result, pursuant to Subsection 59-10-103(1)(q)(i)(A), both of the taxpayers are considered to be Utah resident individuals from January 1, 2014 to November 4, 2014, but neither of them is considered to be a Utah resident individual from November 5, 2014 to December 31, 2014.

III. Taxpayers' Other Argument.

Even if the taxpayers are considered to be Utah resident individuals for all or a portion of the 2014 tax year, they object to Utah's taxing the income that TAXPAYER-1 received because of his retirement from the OCCUPATION-2. The taxpayers acknowledge that Utah law provides for military retirement income to be taxed, but contend that Utah is one of only five states that does not provide a full or partial exemption for such income. The Commission, however, is tasked with implementing the laws that the Legislature enacts. It is not authorized to amend these laws to achieve what the taxpayers may consider to be a better tax policy. That is the role of the Legislature.

IV. Conclusion.

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Based on the evidence and arguments provided at the Initial Hearing, the taxpayers are domiciled in Utah and are Utah resident individuals for the January 1, 2014 to November 4, 2014 portion of 2014, but not for the November 5, 2014 to December 31, 2014 portion of 2014. The Commission should order the Division to revise its assessment to reflect this decision.

Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds that the taxpayers are Utah resident individuals for the January 1, 2014 to November 4, 2014 portion of 2014, and that they are not Utah resident individuals for the November 5, 2014 to December 31, 2014 portion of 2014. The Division is ordered to revise its assessment accordingly. 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 _____, 2019.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Lawrence C. Walters
Commissioner

Notice: If a Formal Hearing is not requested as discussed above, failure to pay the balance resulting from this order within thirty (30) days from the date of this order may result in a late payment penalty.