18-793
TAX TYPE: INCOME TAX
TAX YEAR: 2014
DATE SIGNED: 2/22/2019
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2 Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 18-793 Account No. #### Tax Type: Income Tax Year: 2014 Judge: Chapman

Presiding:
Kerry R. Chapman, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-1, Taxpayer (by telephone)
For Respondent: RESPONDENT, 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 12, 2019.

TAXPAYER-1 & TAXPAYER-2 ("Petitioners" or "taxpayers") are appealing Auditing Division's (the "Division") assessment of Utah individual income taxes for the 2014 tax year. On March 20, 2018, the Division issued a Notice of Deficiency and Audit Change ("Statutory Notice"), in which it imposed additional tax and interest (calculated as of April 19, 2018),[1] as follows:

Year	Tax	Penalties	Interest	Total
2014	$$$$$	$$$$$	$$$$$	$$$$$

[1] Interest continues to accrue until any tax liability is paid. No penalties were imposed.

The taxpayers filed a 2014 federal income tax return and a 2014 Utah part-year resident return, both 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 April 30, 2014, and they allocated $$$$$ of their total 2014 federal adjusted gross income ("FAGI") of $$$$$ to Utah. The taxpayers explained that they filed their Utah part-year resident return in this manner to show that: 1) TAXPAYER-2 was a Utah resident individual from January 1, 2014 to April 30, 2014 (during the portion of 2014 that she lived in Utah); and 2) TAXPAYER-1 was a Utah resident from January 1, 2014 to April 14, 2014, and from November 3, 2014 to December 31, 2014 (during the two portions of 2014 that he lived in Utah).[2]

The taxpayers also filed a joint 2014 STATE-1 part-year resident return, on which they indicated that they were STATE-1 residents from May 1, 2014 to December 31, 2014, and on which they allocated $$$$$ of their 2014 FAGI to STATE-1.[3] The taxpayers explained that on their 2014 Utah and STATE-1 returns, they attempted to allocate the income earned in Utah to Utah and the income earned in STATE-1 to STATE-1.[4]

The Division, however, has determined that both taxpayers were domiciled in Utah for all of the 2014 tax year because one or both of them was registered to vote in Utah throughout 2014. As a result, the Division changed the taxpayers' joint 2014 Utah part-year resident return to a 2014 Utah full-year

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[2] The taxpayers explained that they reported their Utah part-year residency from January 1, 2014 to April 30, 2014 on the Form TC-40B because the form does not provide separate spaces for a married couple to show a different residency period for each spouse or for one of the individuals to show multiple periods of Utah residency.

[3] Like the Utah return, the STATE-1 return does not provide separate spaces for a married couple to show a different residency period for each spouse.

[4] The $$$$$ of income that the taxpayers allocated to Utah on their Utah return and the $$$$$ of income that they allocated to STATE-1 on their STATE-1 return total $$$$$, which is $$$$$ less than the $$$$$ of FAGI they reported on these returns. The taxpayers admit that they forgot to allocate to Utah the $$$$$ of 2014 income that TAXPAYER-2 earned in Utah, which would increase their Utah allocation to $$$$$ ($$$$$ plus $$$$$).

resident return and imposed Utah taxes on all of the taxpayers' 2014 income.[5] The Division's assessment does not reflect a credit for income taxes imposed by any other state. On the day of the hearing, the taxpayers provided a copy of their 2014 STATE-1 return, which shows that STATE-1 imposed $$$$$ of STATE-1 income taxes on the taxpayers for the 2014 tax year.[6] For these reasons, the Division asks the Commission to sustain its assessment, with the exception of allowing a credit for the $$$$$ of 2014 income taxes that STATE-1 imposed.

The taxpayers contend that they intended to remain in STATE-1 permanently when they moved to STATE-1 in the spring of 2014. As a result, they contend that Utah should not tax the income that each of them earned while they were living and working in STATE-1. For these reasons, the taxpayers ask the Commission to accept the 2014 Utah part-year resident return that they filed, with the exception of changing their 2014 FAGI to $$$$$ and allocating $$$$$ of this income to Utah.

APPLICABLE LAW

1. Utah Code Ann. §59-10-104(1)[7] (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:
> (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.

[5] The Division notes that in its assessment, it also increased the taxpayers' 2014 FAGI from $$$$$ to $$$$$ to match information it received from the Internal Revenue Service. The taxpayers admit that their 2014 FAGI is $$$$$ and explained that they inadvertently omitted the income that was reported on two Form W-2's that they never received.

[6] Utah resident individuals are entitled to claim a credit against their Utah tax liability for income taxes paid to another state, pursuant to Utah Code Ann. §59-10-1003 (2014).

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

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:
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> (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
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> (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.
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> (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:
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> (i) is the noncustodial parent of a dependent:
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> (A) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and
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> (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).
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> (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
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> (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;
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> (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
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> (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.
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> (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:
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> (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
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> (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)[8] 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.
. . . .

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

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:
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> (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:
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> (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.
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> (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.
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> (3) Each county clerk shall use substantially the following form to notify voters whose addresses have changed: "VOTER REGISTRATION NOTICE
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> 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
>
> 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 are Utah resident individuals for all of 2014 or only for a portion or portions of 2014. The Division contends that both taxpayers were Utah resident individuals for all of 2014. The taxpayers admit that TAXPAYER-2 was a Utah resident individual from January 1, 2014 to April 30, 2014, but contend that she was not a Utah resident individual from May 1, 2014 to December

31, 2014. In addition, the taxpayers admit that TAXPAYER-1 was a Utah resident individual from January 1, 2014 to April 14, 2014, and from November 3, 2014 to December 31, 2014, but contend that he was not a Utah resident individual from April 15, 2014 to November 2, 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 contend that either taxpayer was a Utah resident individual for all of 2014 under the 183 day test. Instead, the Division contends that both of the taxpayers were 2014 Utah full-year 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 both of the taxpayers are considered to be domiciled in Utah for all of 2014 (as the Division contends); or whether TAXPAYER-2 is only considered to be domiciled in Utah from January 1, 2014 to April 30, 2014, and TAXPAYER-1 is only considered to be domiciled in Utah from January 1, 2014 to April 14, 2014, and from November 3, 2014 to December 31, 2014 (as the taxpayers contend).

I. Additional Facts.

The taxpayers married in 2009, and they have not since been legally separated or divorced. Both of the taxpayers were born and raised in STATE-1. In 2007, before they married, the taxpayers moved to Utah, where they lived until they moved back to STATE-1 in 2008. In 2011, after they married, the taxpayers moved back to Utah with TAXPAYER-1's son from a prior marriage,[9] the taxpayers' oldest daughter (who was born in 2009), and TAXPAYER-1's parents. They all lived in a house located in COUNTY-1 that the taxpayers and TAXPAYER-1's parents rented (the "Utah house"). In 2012, the

[9] TAXPAYER-1 explained that he and his son's mother (his "first wife") have joint legal custody of their son and that he has primary physical custody of their son (where the son lives with TAXPAYER-1 throughout the school year and lives with TAXPAYER-1's first wife during the summer months).

taxpayers had a second daughter. The taxpayers and their family lived in the Utah house until they moved back to STATE-1 in the spring of 2014. During the 2011 to 2014 period that they lived in Utah, TAXPAYER-1 worked as a motor vehicle salesperson, and TAXPAYER-2 worked at different part-time jobs as her schedule allowed.

TAXPAYER-1 moved back to STATE-1 on April 14, 2014, where he began work as a motor vehicle salesperson at a STATE-1 dealership. In part because the lease on the Utah house did not end until April 30, 2014, TAXPAYER-2, TAXPAYER-1's son, the taxpayers' daughters, and TAXPAYER-1's parents continued to live in the Utah house until April 30, 2014, and they all moved to STATE-1 on May 1, 2014. The taxpayers explained that when they moved back to STATE-1 in the spring of 2014, they had planned on the move being permanent. In May 2014, the taxpayers and TAXPAYER-1's parents rented a house in STATE-1 (the "STATE-1 house").

While in STATE-1, TAXPAYER-2 again worked at different part-time jobs as her schedule allowed. TAXPAYER-1's employment in STATE-1, however, did not go as planned. As a result, TAXPAYER-1 accepted a salesperson's position at a Utah dealership and moved back to Utah on November 3, 2014. At this time, TAXPAYER-1's family did not move back to Utah, but continued to live in the STATE-1 house. In March 2015, however, TAXPAYER-2, TAXPAYER-1's son, and the taxpayers' daughters moved to Utah to join TAXPAYER-1. TAXPAYER-1's parents remained in STATE-1. During the November 3, 2014 to March 2015 period that TAXPAYER-1 lived in Utah by himself, he rented a room in a private home. Once TAXPAYER-2, TAXPAYER-1's son, and the taxpayers' daughters moved to Utah in March 2015, the taxpayers rented another house in Salt Lake County.[10] As of the date of the hearing, the taxpayers still live in Utah.

[10] Neither of the taxpayers owned any real property during the 2014 tax year at issue.

As mentioned earlier, the taxpayers filed a 2014 federal return with a status of married filing jointly. On this return, the taxpayers claimed three dependents as exemptions, one for TAXPAYER-1's son and two for the taxpayers' daughters. Neither of the taxpayers' daughters was enrolled in a Utah public kindergarten, elementary, or secondary school at any time during 2014. TAXPAYER-1's son, however, was enrolled in a Utah public elementary school from January 1, 2014 to April 30, 2014. Neither taxpayer attended a Utah institution of higher education during 2014.

In 2011, TAXPAYER-2 obtained a Utah driver's license. The Division stated that the information it has seen indicates that TAXPAYER-2 has kept her Utah driver's license ever since (which would include all of the 2014 tax year at issue). The taxpayers, who have the burden of proof in this matter, have not shown that TAXPAYER-2 obtained an STATE-1 driver's license during the May 2014 to March 2015 period that she lived in STATE-1. TAXPAYER-1 even stated that it is possible that TAXPAYER-2 did not obtain an STATE-1 driver's license during this period. Accordingly, the Commission finds that TAXPAYER-2 had a Utah driver's license throughout the 2014 tax year.

TAXPAYER-2 registered to vote in Utah in 2011 (when she first obtained a Utah driver's license), but she has never voted in Utah. The Division proffered evidence to show actions taken by the COUNTY-1 clerk's office in regards to TAXPAYER-2's Utah voter registration since she registered in 2011. On October 13, 2014 (i.e., approximately five months after the taxpayers moved to STATE-1 and after TAXPAYER-2 provided a change of address to the U.S. Postal Service), the COUNTY-1 clerk's office took an action described as "changed status from active to inactive." Subsequently, on December 13, 2016, the COUNTY-1 clerk's office took another action described as "made removable and placed in state holding area due to inactivity."

To determine what these actions meant, the Division contacted the Utah Lieutenant Governor's office, which is responsible for elections in Utah. The Division proffers that NAME-1, the Deputy

Director of Elections at the Office of the Utah Lieutenant Governor, subsequently sent the Division an email with information about these actions. The Division proffers that in this email, NAME-1 indicated: 1) that when a Utah registered voter has little voting activity or when a Utah clerk receives information that a Utah registered voter may have moved, the Utah clerk will mail the voter a confirmation card on which the clerk informs the voter that records indicate that the voter may have moved and on which the clerk asks for a new address; 2) that if the voter does not respond to the confirmation card, the voter is classified as an "inactive voter;" 3) that an "inactive voter" is still considered to be registered to vote in Utah and can vote if the voter goes to the polls (an "inactive voter," however, will not receive mailings such as voter identification cards and mail-in ballots); and 4) that if an "inactive voter" does not vote within the next four years, the clerk removes the voter from the Utah voter registration rolls (which is the action described as "made removable and placed in state holding area due to inactivity").

The taxpayers have not refuted any of the information that the Division obtained from NAME-1.[11] As a result, it appears that TAXPAYER-2 was registered to vote in Utah from 2011 until December 12, 2016 (including all of the 2014 tax year during which she was in an "active" status from January 1, 2014 to October 12, 2014, and in an "inactive" status from October 13, 2014 to December 31, 2014). For these reasons, the Commission finds that TAXPAYER-2 was registered to vote in Utah during all of the 2014 tax year at issue. In addition, the taxpayers provided no information to show that TAXPAYER-2 was registered to vote in STATE-1 for any portion of the 2014 tax year.[12] As a result, the taxpayers have

[11] Furthermore, it appears that NAME-1's explanation reflects, at least in substantial part, Subsection 20A-2-305(2)(c), which 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.

[12] TAXPAYER-1 stated that TAXPAYER-2 voted in STATE-1 in 2008. However, he did not

not met their burden of proof to show that TAXPAYER-2 was registered to vote in STATE-1 during 2014. In conclusion as to TAXPAYER-2, the Commission finds that TAXPAYER-2 was registered to vote in Utah for all of the 2014 tax year and that she was not registered to vote in STATE-1 for any portion of 2014.

As to TAXPAYER-1, he first obtained a Utah driver's license in 2007 or 2008. During the 2008 to 2011 period that TAXPAYER-1 lived in STATE-1, he obtained an STATE-1 driver's license, which he kept until June 2015, when he again obtained a Utah driver's license. As a result, during the 2014 tax year at issue, the Commission finds that TAXPAYER-1 had an STATE-1 driver's license.

TAXPAYER-1 first registered to vote in STATE-1 in 2001 (when he was 18 years of age). On September 18, 2008, TAXPAYER-1 registered to vote in Utah. No evidence was proffered to show that TAXPAYER-1 has ever voted in STATE-1, while the Division proffered evidence to show that the only times that TAXPAYER-1 has voted in Utah were during 2016. The Division also proffered evidence to show actions taken by the COUNTY-1 clerk's office in regards to TAXPAYER-1's Utah voter registration since he registered in 2008. On July 27, 2012, the COUNTY-1 clerk's office took the action described as "changed status from active to inactive." Subsequently, on December 5, 2014, the COUNTY-1 clerk's office took the action described as "made removable and placed in state holding area due to inactivity." Accordingly, TAXPAYER-1 was registered to vote in Utah from September 18, 2008 to December 4, 2014 (including the January 1, 2014 to December 4, 2014 portion of 2014 that his status was "inactive"). TAXPAYER-1, however, was not registered to vote in Utah from December 5, 2014 to December 31, 2014.

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provide any voter information, such as information from an STATE-1 government office, to show that TAXPAYER-2 was still registered to vote in STATE-1 during 2014.

It is unclear whether TAXPAYER-1 was also registered to vote in STATE-1 during 2014. The taxpayers proffered evidence from the COUNTY-2 Recorder's Office in STATE-1 about TAXPAYER-1's STATE-1 voter registration, which shows that two changes were made to his STATE-1 voter registration in September 2014. These changes are described as "mod res" and "cor noncritical." TAXPAYER-1 believes that the "mod res" change means that his address was changed for purposes of his STATE-1 voter registration, but he had no idea what the "cor noncritical" change means. Given that these changes were made to his STATE-1 voter registration during 2014, TAXPAYER-1 contends that he was registered to vote in STATE-1 throughout the 2014 tax year.

However, after the September 2014 changes were made to TAXPAYER-1's STATE-1 voter registration, the next change to occur happened in October 2016 and is described as "restored to active." The evidence from the COUNTY-2 Recorder's Office, however, does not show when, prior to October 2016, that TAXPAYER-1's STATE-1 voter registration was placed in a status other than "active." As a result, even though some actions were taken in regards to TAXPAYER-1's STATE-1 voter registration in 2014, it is unclear whether TAXPAYER-1 was in an "active" voting status in STATE-1 during the 2014 tax year. Furthermore, no information was provided to show if an STATE-1 voter who is in an "inactive" status can still vote in STATE-1 (i.e., no information was provided to show that an "inactive" voting status in STATE-1 has the same effect as an "inactive" voting status in Utah). For these reasons, the taxpayers have also not met their burden of proof to show that TAXPAYER-1 was registered to vote in STATE-1 during the 2014 tax year. In conclusion, the Commission finds that TAXPAYER-1 was registered to vote in Utah from January 1, 2014 to December 4, 2014 of the 2014 tax year and that he was not registered to vote in STATE-1 during any portion of 2014.

Throughout 2014, the taxpayers owned a VEHICLE that was registered in Utah as of January 1, 2014. The taxpayers took this vehicle with them to STATE-1 in the spring of 2014, but did not register it

anywhere when the Utah registration subsequently expired. The taxpayers explained that they then drove the vehicle on expired plates until TAXPAYER-2 returned to Utah in March 2015, because they could not afford to register it while TAXPAYER-2 was living in STATE-1. In addition, from January 1, 2014 to sometime in June 2014, the taxpayers owned a VEHICLE-2 that was registered in Utah. In June 2014, the taxpayers traded the VEHICLE-2 in for a VEHICLE-3, which was registered in STATE-1 for the remainder of 2014.

The taxpayers were not members of a church, a club, or other similar organization during 2014. During 2014, both taxpayers received their mail in Utah from January 1, 2014 to April 30, 2014 (while TAXPAYER-2 lived in Utah). In addition, both taxpayers received their mail in STATE-1 from May 1, 2014 to December 31, 2014 (while TAXPAYER-2 lived in STATE-1).[13] In early 2014 (when the taxpayers were living in Utah), they used a Utah address to file their 2013 federal and Utah tax returns. In early 2015 (after both taxpayers had moved back to Utah), they also used a Utah address to file their 2014 federal, Utah, and STATE-1 tax returns.

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)).[14]

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[13] TAXPAYER-1 explained that he was not comfortable receiving mail at the Utah home where he rented a room for the November 3, 2014 to December 31, 2014 period he was living in Utah.

[14] 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

A. Section 59-10-136(5)(b). For a married individual, it is often necessary (as in this case) to determine whether that individual is considered to have a "spouse" for purposes of Section 59-10-136. Subsection 59-10-136(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 2014 and because they filed a joint 2014 federal return. Accordingly, for all of 2014, 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, one of which is that the individual and the individual's spouse must both be absent from Utah for at least 761 consecutive days. Neither taxpayer was absent from Utah for a period of 761 or more days that included 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 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

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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.

the criteria found in any of the other subsections. The Division contends that the only subsection of Section 59-10-136 under which the taxpayers would be considered to be domiciled in Utah for all of 2014 is Subsection 59-10-136(2)(b), which concerns Utah voter registration. As a result, the Commission will begin its analysis with this subsection.

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-2 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.[15]

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.[16] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient

[15] Admittedly, TAXPAYER-1 was not registered to vote in Utah for all of 2014 (specifically he was not registered to vote in Utah from December 5, 2014 to December 31, 2014). Nevertheless, TAXPAYER-2 was registered to vote in Utah for all of 2014. Because 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, this presumption arises for *both* taxpayers for all of 2014 because of TAXPAYER-2 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.

[16] 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).

to rebut the Subsection 59-10-136(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 has not rebutted a Subsection 59-10-136(2) presumption because 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" law little or no effect, which the Commission declines to do.[17]

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).[18]

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.[19] The Commission has also

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[17] 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.

[18] 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.

[19] *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-

found that an individual can rebut the Subsection 59-10-136(2)(b) presumption by showing that they were registered to vote in Utah only because a Utah county clerk failed to remove their name from the official voter register as required by law.[20] The taxpayers, however, have not shown that the COUNTY-1 clerk was required to remove either of the taxpayers' names from the Utah official voter register prior to the December 5, 2014 date that TAXPAYER-1's name was removed or the December 13, 2016 date that TAXPAYER-2's name was removed.

The taxpayers suggest that they should be able to rebut the Subsection 59-10-136(2)(b) presumption for that period that their Utah voter registration was changed to an "inactive" status. As explained earlier, where the presumption has arisen for both taxpayers, the presumption cannot be rebutted for each taxpayer individually. As a result, where TAXPAYER-2's Utah voter registration was still "active" from January 1, 2012 to October 12, 2014, the taxpayers cannot rebut the Subsection 59-10-136(2)(b) presumption for this portion of 2014 by showing that TAXPAYER-1's Utah voter registration was "inactive."

For the remainder of 2014 (i.e., from October 13, 2014 to December 31, 2014), TAXPAYER-2's Utah voter registration was "inactive;" while TAXPAYER-1's Utah voter registration was "inactive" from October 13, 2014 to December 4, 2014, and his name was no longer on the Utah official voter register from December 5, 2014 to December 31, 2014. First, the Commission will address the October 13, 2014 to December 4, 2014 period where both of the taxpayers' Utah voter registrations were in an "inactive" status. 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, from October 13, 2014 to December 4, 2014, both taxpayers were still allowed to vote, sign petitions, and have all other privileges of a Utah registered voter. For these reasons, the

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office/decisions.

[20] *See USTC Appeal No. 17-1307* (Initial Hearing Order Apr. 30, 2018).

Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption for the October 13, 2014 to December 4, 2014 period that both of their Utah voter registrations were in an "inactive" status.

Similarly, for the December 5, 2014 to December 31, 2014 period that TAXPAYER-2's Utah voter registration was in an "inactive" status, she was still allowed to vote, sign petitions, and have all other privileges of a Utah registered voter. Even though TAXPAYER-1 was not registered to vote in Utah for this portion of 2014, the Subsection 59-10-136(2)(b) presumption has arisen for both taxpayers and must be rebutted for both taxpayers. As a result, the Commission finds that the taxpayers have not rebutted the presumption for the December 5, 2014 to December 31, 2014 portion of 2014 where TAXPAYER-2's Utah voter registration was in an "inactive" status and where TAXPAYER-1 was not registered to vote in Utah.

Lastly, the taxpayers contend they should be able to rebut the Subsection 59-10-136(2)(b) presumption by showing that one or both of them was registered to vote in STATE-1 during 2014. However, for reasons explained earlier, the Commission has found that the taxpayers have not submitted sufficient evidence to show that either of them, much less both of them, was registered to vote in STATE-1 during any portion of 2014. In addition, TAXPAYER-1 did not vote in STATE-1 during the April 14, 2014 to November 2, 2014 period that he lived there, and TAXPAYER-2 did not vote in STATE-1 during the May 1, 2014 to March 2015 period that she lived there. Based on the evidence proffered at the Initial Hearing, the Commission finds that the taxpayers have not rebutted the Subsection 59-10-136(2)(b) presumption for any portion of the 2014 tax year for which the presumption has arisen for both of them. Accordingly, the Commission finds that both taxpayers are considered to be domiciled in Utah for the entirety of the 2014 tax year at issue.

D. Other Subsections of Section 59-10-136. Because both taxpayers are considered to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), the Commission need not discuss the remaining subsections of Section 59-10-136 to resolve this appeal. However, it may be helpful to make some cursory comments about the remaining subsections. Subsections 59-10-136(1)(a)(ii) and 59-10-136(2)(a) are not applicable because during 2014, neither taxpayer attended a Utah institution of higher education, and neither taxpayer owned any real property.

Subsection 59-10-136(1)(a)(i) 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 on their federal return is enrolled in a Utah public kindergarten, elementary, or secondary school. Because the taxpayers claimed TAXPAYER-1's son as a dependent on their joint 2014 federal return and because TAXPAYER-1's son attended a Utah public elementary school from January 1, 2014 to April 30, 2014, both taxpayers would be considered to be domiciled in Utah for this portion of 2014.[21]

Subsection 59-10-136(2)(c) 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 April 30, 2014. As a result, the taxpayers would also be considered to be domiciled in Utah from January 1, 2014 to April 30, 2014 under Subsection 59-10-136(2)(c), unless they were able to rebut this presumption.

[21] If certain criteria are met, Subsection 59-10-136(1)(b) provides an exception to finding an individual to be domiciled in Utah under Subsection 59-10-136(1)(a)(i). Neither taxpayer, however, meets the criteria to qualify for the Subsection 59-10-136(1)(b) exception. TAXPAYER-1 does not meet the criteria because it does not appear that he was the "noncustodial parent" of his son during the January 1, 2014 to April 30, 2014 period that the son attended school in Utah. TAXPAYER-2 does not meet the criteria because the taxpayers have not shown that TAXPAYER-2 should be considered to be a "parent," much less a "noncustodial parent," of TAXPAYER-1's son for purposes of the Subsection 59-10-136(1)(b) exception.

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 facts and circumstances listed in Subsection 59-10-136(3)(b). Neither party specifically addressed these 12 factors. However, the 12 factors clearly indicate that the taxpayers' joint and/or separate actions meet a preponderance of the relevant factors for the January 1, 2014 to April 30, 2014 period before TAXPAYER-2 moved to STATE-1. Less clear, however, is whether the taxpayers' joint and/or separate actions meet a preponderance of the relevant factors for the remainder of 2014. A cursory review of the relevant factors suggest that during the May 1, 2014 to December 31, 2014 portion of 2014, some of the factors suggest a Utah domicile at various times and some of them suggest an STATE-1 domicile at various times.[22]

E. Domicile – Summary. Under Subsection 59-10-136(2)(b), both taxpayers are considered to be domiciled in Utah for the entirety of 2014. As a result, both of the taxpayers are considered to be Utah resident individuals for the entirety of 2014, pursuant to Subsection 59-10-103(1)(q)(i)(A).

III. Taxpayers' Other Arguments.

The taxpayers contend that Utah should not tax the income that either of them earned in STATE-1. Pursuant to Subsection 59-10-104(1) and Subsection 59-10-103(1)(w), however, all of a Utah resident individual's federal adjusted gross income is subject to Utah income taxation, subject to certain subtractions and additions not applicable to this case. The Commission acknowledges that Utah Code Ann. §59-10-117(2)(c) provides that "a salary, wage, commission, or compensation for personal services rendered outside this state may not be considered to be derived from Utah sources[.]" In accordance with

[22] The Subsection 59-10-136(3)(b) factors were not discussed in much, if any, detail at the Initial Hearing, in part, because the Division stated that Subsection 59-10-136(3) is not relevant where both taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), or (2)(c). For this reason and because the Commission has found both taxpayers to be domiciled in Utah for all of 2014 under Subsection 59-10-136(2)(b), the Commission will not discuss Subsection 59-10-136(3) any further in this decision.

Subsection 59-10-117(1) and Utah Code Ann. §59-10-116, however, Subsection 59-10-117(2)(c) only applies to a Utah nonresident individual. Because both taxpayers have been found to be Utah resident individuals for all of 2014, Subsection 59-10-117(2)(c) does not apply to either of them for the 2014 tax year. Accordingly, all of the taxpayers' 2014 income is subject to Utah taxation (subject to a credit for income taxes imposed by another state).

The taxpayers also contend that it is unfair to find that they were domiciled in Utah after they moved to STATE-1 in the spring of 2014 because they intended the move to STATE-1 to be permanent until unforeseen circumstances subsequently arose. The taxpayers may be suggesting that Section 59-10-136, as currently written, results in bad tax policy in certain situations such as their own. 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.

The Division properly determined that both taxpayers were domiciled in Utah and were Utah resident individuals for all of the 2014 tax year. Accordingly, the Commission should sustain the Division's assessment, with the exception of allowing a credit to reflect the $$$$$ of income taxes that STATE-1 imposed on the taxpayers for the 2014 tax year.

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Kerry R. Chapman
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment of the taxpayers as Utah resident individuals for the entirety of the 2014 tax year. However, the Division is ordered to revise its

assessment to reflect a $$$$$ credit for income taxes that STATE-1 imposed on the taxpayers for the 2014 tax year. 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.