

18-1381

TAX TYPE: INCOME TAX

TAX YEAR: 2015

DATE SIGNED: 4/11/2019

COMMISSIONERS: J. VALENTINE, M. CRAUN, R. ROCKWELL, L. WALTERS

GUIDING DECISION

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BEFORE THE UTAH STATE TAX COMMISSION

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<p>TAXPAYER-1 AND TAXPAYER-2</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;"><b>INITIAL HEARING ORDER</b></p> <p>Appeal No. 18-1381</p> <p>Account No. #####</p> <p>Tax Type: Income Tax</p> <p>Tax Year: 2015</p> <p>Judge: Marshall</p>
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**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: REPRESENTATIVE FOR TAXPAYER, CPA  
TAXPAYER-1

For Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney  
General  
RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission on January 24, 2019 for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5. Petitioners (“Taxpayers”) are appealing the Respondent’s (“Division”) audit of their individual income tax return for the 2015 tax year. The Division assessed tax of \$\$\$\$ and interest of \$\$\$\$ through August 9, 2018. Interest continues to accrue on any unpaid balance.

APPLICABLE LAW

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

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

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

(B) adjustments required by Section 59-10-115...

“Resident individual” is defined in Utah Code Ann. §59-10-103(1)(q), as follows:

- (i) “resident individual” means:
  - (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.

The factors considered for determination of domicile are addressed in Utah Code Ann. §59-10-136, as set forth below:

- (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.

Utah Code Ann. §59-2-103.5(3) sets forth the procedure to apply for the residential exemption for part-year residential property, below:

- (a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of part-year residential property, an owner of the property shall:
  - (i) file the application described in Subsection (2)(a) with the county board of equalization; and
  - (ii) include as part of the application described in Subsection (2)(a) a statement that certifies:
    - (A) the date the part-year residential property became residential property;

- (B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and
  - (C) that the owner, or a member of the owner's household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture, and equipment of the owner's tenant.
- (b) An owner may not obtain a residential exemption for part-year residential property unless the owner files an application under this Subsection (3) on or before November 30 of the calendar year for which the owner seeks to obtain the residential exemption.
  - (c) If an owner files an application under this Subsection (3) on or after May 1 of the calendar year for which the owner seeks to obtain the residential exemption, the county board of equalization may require the owner to pay an application fee of not to exceed \$50.

Relevant definitions are found in Utah Code Ann. §59-2-102, as follows, in pertinent part:

As used in this chapter and title:

- (29) "Part-year residential property" means property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year.
- (36) (a) Subject to Subsection (36)(b), "residential property," for purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence.
- (b) Subject to Subsection (36)(c), "residential property":
  - (i) except as provided in Subsection (36)(b)(ii), includes household furnishings, furniture, and equipment if the household furnishings, furniture, and equipment are:
    - (A) used exclusively within a dwelling unit that is the primary residence of a tenant; and
    - (B) owned by the owner of the dwelling unit that is the primary residence of a tenant; and
  - (ii) does not include property used for transient residential use.
- (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "dwelling unit" for purposes of Subsection (33) and this Subsection (36).

Administrative Rule R884-24P-52 provides additional guidance on determining a primary residence, below:

- (1) "Household" is as defined in Section 59-2-102.
- (2) "Primary residence" means the location where domicile has been established.
- (3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2-103 is limited to one primary residence per household.

- (4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.
- (5) Factors or objective evidence determinative of domicile include:
  - (a) whether or not the individual voted in the place he claims to be domiciled;
  - (b) the length of any continuous residency in the location claimed as domicile;
  - (c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;
  - (d) the presence of family members in a given location;
  - (e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;
  - (f) the physical location of the individual's place of business or sources of income;
  - (g) the use of local bank facilities or foreign bank institutions;
  - (h) the location of registration of vehicles, boats, and RVs;
  - (i) membership in clubs, churches, and other social organizations;
  - (j) the addresses used by the individual on such things as:
    - (i) telephone listings;
    - (ii) mail;
    - (iii) state and federal tax returns;
    - (iv) listings in official government publications or other correspondence;
    - (v) driver's license;
    - (vi) voter registration; and
    - (vii) tax rolls;
  - (k) location of public schools attended by the individual or the individual's dependents;
  - (l) the nature and payment of taxes in other states;
  - (m) declarations of the individual:
    - (i) communicated to third parties;
    - (ii) contained in deeds;
    - (iii) contained in insurance policies;
    - (iv) contained in wills;
    - (v) contained in letters;
    - (vi) contained in registers;
    - (vii) contained in mortgages; and
    - (viii) contained in leases.
  - (n) the exercise of civil or political rights in a given location;
  - (o) any failure to obtain permits and licenses normally required of a resident;
  - (p) the purchase of a burial plot in a particular location;
  - (q) the acquisition of a new residence in a different location.
- (6) Administration of the Residential Exemption.
  - (a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.
  - (b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

- (c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.
- (d) A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.
- (e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.
- (f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.
- (g) (i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:
  - (A) the owner of record of the property;
  - (B) the property parcel number;
  - (C) the location of the property;
  - (D) the basis of the owner's knowledge of the use of the property;
  - (E) a description of the use of the property;
  - (F) evidence of the domicile of the inhabitants of the property; and
  - (G) the signature of all owners of the property certifying that the property is residential property.
- (ii) The application under Subsection (6)(g)(i) shall be:
  - (A) on a form provided by the county; or
  - (B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

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

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

#### DISCUSSION

The Division issued a Notice of Deficiency and Audit Change to Taxpayers on July 10, 2018 for the 2015 tax year. The Division changed the return type from non/part-year resident to full-year resident. The Division changed the Utah adjusted gross income from -\$\$\$\$\$ to \$\$\$\$, calculated tax based on total adjusted gross income of \$\$\$\$, and allowed a credit for taxes paid to another state of \$\$\$\$. It is the Division's position that the Taxpayers were domiciled in Utah for all of 2015, and thus all of their income was taxable to Utah. It is the Taxpayers' position that they were part-year residents of Utah, having moved to Utah on September 1, 2015.

TAXPAYER-1 stated that he was told by the auditor that he was considered domiciled in Utah because he had claimed the primary residential exemption on a home in CITY-1, Utah. Prior to the tax year in question, the Taxpayers were living and working in STATE-1. In February 2014, they purchased a home in CITY-1, Utah, with the intention of moving into the home when they retired. TAXPAYER-1 stated that the CITY-1 home sat vacant until May of 2015. He explained that they sold their primary residence in STATE-1 in May 2015, and their household goods were relocated to Utah at that time. However, TAXPAYER-1 stated that after their primary residence in STATE-1 was sold, he moved into the second home they owned in STATE-1 until it sold in August 2015. He stated that he continued working in STATE-1 until he retired from his practice on August 31, 2015. It is not clear from the information presented at the hearing whether TAXPAYER-2 remained in Utah after the household goods were relocated to the CITY-1 home, or if she returned to STATE-1 with TAXPAYER-1. The Taxpayers registered their vehicles in Utah in July 2015. The Taxpayers obtained Utah driver licenses and registered to vote in Utah in September 2015.

TAXPAYER-1 argued that he did not know about the primary residential exemption, despite having completed several real estate transactions. He stated that he has been a party to multiple real estate transactions in Utah over the years, and was never told about the primary residential exemption by any realtor, title company person, or loan officer. TAXPAYER-1 argued that the property tax notice should include a statement or caution about the primary residential exemption. He noted that his property tax notice identified the property as "primary residential," but argued that "residence" and "residential" are not the same. TAXPAYER-1 noted that S.B. 13, which was pending in the legislature at the time of the hearing, would help to clarify the current laws.

TAXPAYER-1 argued that he did not "claim" the primary residential exemption. He provided a letter from NAME-1, the Appraisal Auditor for the Utah County Assessor's Office. NAME-1's letter indicated that the property was classified as a primary residential home and received the primary residential exemption before the Taxpayers purchased the property. NAME-

1' letter explained that the practice of the Assessor's Office is to continue the primary residential classification of homes in areas that do not have a high occurrence of secondary homes. The letter also noted that the Assessor's Office did not have any communication with the Taxpayers regarding the classification before continuing to classify the home as a primary residence. TAXPAYER-1 argued that the County's ability to domicile someone in Utah by the stroke of a computer key is an egregious infringement on an individual's rights. He also questioned why the Division did not domicile him and his wife in Utah for the 2014 tax year, as the property was classified in the same way for the 2014 tax year.<sup>1</sup>

TAXPAYER-1 stated that under Utah Code Ann. §59-2-103.5(3)(a) the primary residential exemption may be applied to the value of part-year residential property. He stated that there is a procedure to qualify, and that he did not follow that procedure. The procedure requires an application to the Board of Equalization certifying the date the property became residential property, that the property would be used as residential property for more than 183 consecutive calendar days, and that the owner, or a member of the owner's household, may not claim the exemption for another property, other than for a property occupied by a tenant. TAXPAYER-1 stated that a footnote in the decision for Appeal No. 15-1857<sup>2</sup> indicated that the factors identified in Administrative Rule R884-24P-52 were still used for property tax purposes. He argued that was not done in his case, and that the factors were indicative of a domicile in STATE-1 until September 2015.

TAXPAYER-1 stated that the presumption of domicile in Utah Code Ann. §59-10-136(2)(a) is rebuttable. He stated there must be circumstances that the presumption could and should be rebutted, but argued the Commission's interpretation of the statute has made it so that the presumption is not rebuttable.

TAXPAYER-1 argued that Utah Code Ann. §59-10-136(3)(a)(i) does not apply because there was not a "permanent home" established to which someone was to "return after being absent." He stated that Subsection (3)(b) is applicable, and that the preponderance of the evidence shows that he was not domiciled in Utah until September 2015. TAXPAYER-1 specifically noted that he was registered to vote in STATE-1, had an STATE-1 driver license, and was living and working in STATE-1.

The Division's representative stated that the rebuttable presumption of domicile based on the primary residential exemption is the only issue in this appeal. The Division provided a copy

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<sup>1</sup> It appears the 2014 tax year would have been beyond the statute of limitations at the time the Division issued the Notice of Deficiency for the 2015 tax year.

<sup>2</sup> Prior Commission decisions are available online at [tax.utah.gov/commission-office/decisions](http://tax.utah.gov/commission-office/decisions).

of the Utah County Property Tax Notice for the 2015 tax year. The Division's representative noted the difference in the taxable value and market value for the subject property, indicating that the primary residential exemption was in place for the CITY-1 home.

The Division's representative stated that prior Commission decisions<sup>3</sup> have found that being unaware of the primary residential exemption is not sufficient to rebut the presumption of domicile, and that it takes something more than a preponderance of the domicile factors in Subsection (3)(b) to rebut the presumption of domicile. He stated that the Commission has found that a home being vacant and listed for sale is sufficient to rebut the presumption. The Division's representative stated that in Appeal No. 14-30, the Commission found that a taxpayer has an affirmative duty to notify the County that a property does not qualify for the primary residential exemption and to declare that the property does not qualify on their individual income tax return.

The Division's representative stated that S.B. 13 does not change the law that was in place for the 2015 tax year. He argued that the 2015 version of Utah Code Ann. §59-10-136 should be applied in this case.

In rebuttal, TAXPAYER-1 argued that in light of S.B. 13 (2019 General Session), the Commission should be lenient in what is sufficient to rebut the presumption of domicile. He noted that the CITY-1 home was vacant from the time it was purchased until their furniture was relocated in May of 2015. TAXPAYER-1 stated that the property tax notice should explain why there is a difference between the taxable value and the market value, and what the implications of that difference are. Finally, he noted that he would not have checked the box on the individual income tax return because it is a declaration that the property "no longer qualifies," and in his mind, he never qualified for the exemption.

The Legislature enacted domicile legislation that became effective beginning with the 2012 tax year, and which continued through the tax year at issue. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. Subsection (4) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have domicile in the State of Utah if certain qualifications are met. The Taxpayers do not meet the requirements of Subsection (4) because they spent more than thirty days in a calendar year in Utah during the 2015 tax year, and because the primary residential exemption was in place for the CITY-1 home.

As noted by the Taxpayer, at the time of the hearing, there was proposed legislation regarding domicile. The provisions of S.B. 13 (2019 General Session)<sup>4</sup> changed Utah Code Ann. §59-1-103.5 by adding both a notification requirement by the county assessor and a written

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<sup>3</sup> See Appeal Nos. 16-117 and 16-792.

<sup>4</sup> Signed by the Governor on March 26, 2019.

declaration requirement by the property owner of the receipt of a “primary residential exemption under section 59-2-103.” The Bill will become effective on the constitutional effective date of May 14, 2019. However, the legislation is quite clear as to the years for which it is to be applicable: “taxable years beginning on or after January 1, 2018.” It is therefore evident from the text of S.B. 13 that the Legislature advisedly chose to change some of the effects on the presumption of domicile due to the receipt of the primary residential exemption, but to make that change starting with the 2018 tax year.

It is the Division’s position that the Taxpayers were domiciled in Utah for the 2015 tax year because the primary residential exemption was in place for the 2015 tax year on the Taxpayers’ home in CITY-1. Utah Code Ann. §59-10-136(2)(a) provides as follows:

- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
  - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence...

At issue is whether the Taxpayers have rebutted the presumption of domicile that arises because of the primary residential exemption on the CITY-1 home. Because Subsection (2)(a) involves a rebuttable presumption, it is clear the Legislature intended for there to be circumstances where individuals who claim the residential exemption are considered to have domicile in Utah, but also for there to be circumstances where individuals who claim the residential exemption are not considered to have domicile in Utah. The Legislature did not provide what circumstances are sufficient to rebut the presumption in Subsection (2)(a), leaving it to the Commission to determine which circumstances are sufficient to rebut the presumption.

The Taxpayers purchased the home in 2014 with the intention of making it their primary residence when they retired. The Utah County Assessor’s Office classified the property as “primary residential” at that time. Information from an Assessor’s Office employee indicates that the Assessor’s Office continued the “primary residential” classification when the Taxpayers purchased the property because it is located in an area that does not have a high occurrence of secondary homes. TAXPAYER-1 argued that they did not take any action to “claim” the primary residential exemption. He also stated that they were unaware that they were receiving the exemption, as the County had made the classification without their input. The Commission has held in prior cases that the presumption is not rebutted because an individual was unaware that they were receiving the primary residential exemption.<sup>5</sup>

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<sup>5</sup> See Appeal nos. 14-30 and 15-720.

TAXPAYER-1 pointed out that there is a procedure to claim the residential exemption on a part-year residential property, but noted that he did not follow that procedure. Utah Code Ann. §59-2-103.5(3) provides for the exemption on part-year residential property, as follows, in part:

- (a) Regardless of whether a county legislative body adopts an ordinance described in Subsection (1), before a residential exemption may be applied to the value of part-year residential property, an owner of the property shall:
  - (i) file the application described in Subsection (2)(a) with the county board of equalization; and
  - (ii) include as part of the application described in Subsection (2)(a) a statement that certifies:
    - (A) the date the part-year residential property became residential property;
    - (B) that the part-year residential property will be used as residential property for 183 or more consecutive calendar days during the calendar year for which the owner seeks to obtain the residential exemption; and
    - (C) that the owner, or a member of the owner's household, may not claim a residential exemption for any property for the calendar year for which the owner seeks to obtain the residential exemption, other than the part-year residential property, or as allowed under Section 59-2-103 with respect to the primary residence or household furnishings, furniture, and equipment of the owner's tenant...

“Part-year residential property” is defined in Utah Code Ann. §59-2-102(29) as “property that is not residential property on January 1 of a calendar year but becomes residential property after January 1 of the calendar year.” Subsection (36) of Utah Code Ann. §59-2-102 defines “residential property” to mean “any property used for residential purposes as a primary residence.” “Primary residence” for property tax purposes is defined in Administrative Rule R884-24P-52(2) as “the location where domicile has been established.” There are a number of factors then identified that are evidence of domicile for purposes of determining whether a property is a “primary residence.” TAXPAYER-1 argued that the County did not apply the factors in Rule 52 in determining whether the CITY-1 home was a primary residence.

Administrative Rule R884-24P-52 provides, “[i]f the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.” It appears the County was unaware that the CITY-1 property was vacant. However, in light of Subsection (f) of Rule 52, the County's determination that the property would qualify as a primary residence was appropriate.

The Commission has previously determined that property that is vacant and listed for sale is sufficient to rebut the presumption of domicile when an individual has moved out of the State of Utah. In this case, the Taxpayers were moving into the State of Utah. TAXPAYER-1 has proffered that the house was vacant from the time of purchase until the Taxpayers home

furnishings were relocated in May 2015. However, the Commission has previously held that vacancy alone is not sufficient to rebut the presumption of domicile.<sup>6</sup> The Taxpayers have not provided information to rebut the presumption of domicile and show that they were part-year residents for the 2015 tax year.

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division's assessment of tax and interest. 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 of Payment Requirement: Any balance due as a result of this order must be paid within thirty (30) days of the date of this order, or a late payment penalty could be applied.**

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<sup>6</sup> See Appeal Nos. 17-824 and 17-992.