APPEAL # 20-929
TAX TYPE: INCOME TAX
TAX YEAR: 2016, 2017, & 2018
DATE SIGNED: 08/09/2022
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL, J. FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 (DECEASED), TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**INITIAL HEARING ORDER** Appeal No. 20-929 Account No: ##### Tax Type: Income Tax Tax Years: 2016, 2017, & 2018 Judge: Halverson

Presiding:
Shannon Halverson, Administrative Law Judge

Appearances:
For Petitioner: TAXPAYER-2
TAXPAYER'S REPRESENTATIVE-1, Taxpayer's Daughter
For Respondent: RESPONDENT'S REP.-1, Audit Manager, Auditing Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing in accordance with Utah Code Ann. §59-1-502.5 by teleconference on January 4, 2021. The Petitioners ("Taxpayers") timely appealed the Respondent's ("Division") audit of their Utah individual income tax returns for the 2016, 2017, and 2018 tax years. The Taxpayers filed 2016, 2017, and 2018 part-year resident Utah individual income tax returns on which they reported some income that was taxable to Utah and included an equitable adjustment deduction for the amounts they asserted were not taxable to Utah for each of those years. The Division issued Notices of Deficiency and Audit Change ("Statutory Notices") on April 9, 2020 for the 2016, 2017, and 2018 tax years and made the audit changes based on the Division's determination that

the Taxpayers were domiciled in Utah in accordance with §59-10-136[1] and were, therefore, Utah resident individuals for all of 2016, 2017, and 2018. The Division included all of the Taxpayers' income for the entire 2016, 2017, and 2018 tax years as taxable income in Utah and disallowed the equitable adjustment deductions claimed by the Taxpayers for each of those years. The amounts of additional tax, penalties, and interest due as of the date the Notices of Deficiency were issued are as follows:

	Tax	Interest[2]	Penalties	Total
2016	$$$$$	$$$$$	$$$$$	$$$$$
2017	$$$$$	$$$$$	$$$$$	$$$$$
2018	$$$$$	$$$$$	$$$$$	$$$$$

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Ann. §59-10-104(1)(2016)[3] as follows:

> . . . . a tax is imposed on the state taxable income of a resident individual as provided in this section . . . .

"Resident individual" is defined in Utah Code §59-10-103(1)(q) as follows:

> (q)(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.

However, the Utah Legislature amended the definition of "resident individual" in Utah Code §59-10-103(1)(q) effective for the 2018 tax year as follows:

> (q) "Resident individual" means an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state.

"State taxable income" is defined in Utah Code Ann. §59-10-103(1)(w) as follows:

> (w)"Taxable income" or "state taxable income":

[1] The Commission *sua sponte* issued a stay of this appeal on DATE pending a decision by the Utah Supreme Court in the case of *Buck v. Tax Comm'n*, Utah Supreme Court, Case No. 20200531, which provides guidance on the interpretation of Utah Code Ann. §59-10-136, Utah's domicile law. On February 24, 2022, the Utah Supreme Court issued its decision in *Buck v. Tax Comm'n,* 2022 UT 11 (Utah 2022).
[2] Pursuant to Utah Code Ann. §59-1-401, interest continues to accrue on any unpaid balance. The Statutory Notices indicated that the interest amounts included in the notices were computed to May 9, 2020.
[3] All substantive law citations are to the 2016 version of Utah law, unless otherwise indicated.

(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;

(ii) for a nonresident individual, is an amount calculated by:

(A) determining the nonresident individual's adjusted gross income for the taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A) that is derived from Utah sources in accordance with Section 59-10-117;

(iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

(iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

"Adjusted gross income" is defined in Internal Revenue Code ("IRC") §62, in pertinent part, to mean "in the case of an individual, gross income minus the following deductions[.]"

Utah Code §59-10-115 provides for an equitable adjustment to Utah taxable income, as follows in pertinent part:

> (2) The commission shall allow an adjustment to adjusted gross income of a resident or nonresident individual if the resident or nonresident individual would otherwise:
>
> (a) receive a double tax benefit under this part; or
>
> (b) suffer a double tax detriment under this part.
>
> . . .
>
> (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
>
> . . .
>
> (b) allowing for the adjustment to adjusted gross income required by Subsection (2).

Beginning with the 2012 tax year, Utah Code Ann. §59-10-136[4] was adopted regarding what constitutes domicile in the State of Utah. After the 2012 law had been in effect for a number of years, the Utah Legislature made some limited, specific revisions to the law effective beginning with tax year 2018, but the revisions were not made retrospective to two of tax years at issue in this appeal, the 2016 and 2017 tax years. Utah Code Ann. §59-10-136, as in effect for the 2016 and 2017 tax years, provides as follows:

> (1) (a) An individual is considered to have domicile in this state if:
>
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal

[4] Effective for tax year 2018, the Utah Legislature amended Utah Code Ann. §59-10-136 in Senate Bill 13, Income Tax Domicile Amendments, 2019 General Session. The version of Section 59-10-136 in effect during the 2016 and 2017 tax years is applicable to the 2016 and 2017 tax years in this appeal and the amended version of Utah Code Ann. 59-10-136 is applicable to the 2018 tax year in this appeal.

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;

(A) 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.

The Utah Legislature made some limited, specific revisions to Utah Code Ann. §59-10-136 effective beginning with the 2018 tax year. Utah Code Ann. §59-10-136, as in effect for the 2018 tax year, provides as follows:

(1) (a) An individual is considered to have domicile in this state if:

(i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or

(ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.

(b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

(i) is the noncustodial parent of a dependent:

(C) with respect to whom the individual claims a personal exemption on the individual's federal individual income tax return; and

(D) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

(ii) is divorced from the custodial parent of the dependent described in Subsection (1)(b)(i).

(2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:

(a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;

(b) the individual or the individual's spouse:

(i) votes in this state in a regular general election, municipal general election, primary election, or special election during the taxable year; and

(ii) has not registered to vote in another state in that taxable year; or

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a

part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3) (a) Subject to Subsection (3)(b), if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if:

(i) the individual or the individual's spouse has a permanent home in this state to which the individual or the individual's spouse intends to return after being absent; and

(ii) the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) The determination of whether an individual is considered to have domicile in this state under Subsection (3)(a) shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances:

(i) whether the individual or the individual's spouse has a driver license in this state;

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

(iii) the nature and quality of the living accommodations that the individual or the individual's spouse has in this state as compared to another state;

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit 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);

(xiii) whether the individual:

(A) maintains a place of abode in the state; and

(B) spends in the aggregate 183 or more days of the taxable year in the state; or

(xiv) whether the individual or the individual's spouse:

(A) did not vote in this state in a regular general election, municipal general election, primary election, or special election during the taxable year, but voted in the state in a general election, municipal general election, primary election, or special election during any of the three taxable years prior to that taxable year; and

(B) has not registered to vote in another state during a taxable year described in Subsection (3)(b)(xiv)(A).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (3)(b)(xiii), the commission may by rule define what constitutes spending a day of the taxable year in the state

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:

(ii) 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;

(B) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or

(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.

(c) For purposes of Subsection (4)(a), an absence from the state:

(i) begins on the later of the date:

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

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:
(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and
(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.
(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:
(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and
(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) Notwithstanding Subsections (2) and (3), for individuals who are spouses for purposes of this section and one of the spouses has domicile under this section, the other spouse is not considered to have domicile in this state under Subsection (2) or (3) if one of the spouses establishes by a preponderance of the evidence that, during the taxable year and for three taxable years prior to that taxable year, that other spouse:
(a) is not an owner of property in this state;
(b) does not return to this state for more than 30 days in a calendar year;
(c) has not received earned income as defined in Section 32(c)(2), Internal Revenue Code, in this state;
(d) has not voted in this state in a regular general election, municipal general election, primary election, or special election; and
(e) does not have a driver license in this state.

(6) (a) Except as provided in Subsection (5), an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

(b) For purposes of this section, an individual is not considered to have a spouse if:

> (i) the individual is legally separated or divorced from the spouse; or
> (ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.
> (c) Except as provided in Subsection (6)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.
> (7) For purposes of this section, whether or not an individual or the individual's spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the residential property that is the primary residence of a tenant of the individual or the individual's spouse may not be considered in determining domicile in this state.

Utah provides for property tax assessment for all tangible property located within Utah, but it also allows for a residential exemption on a property that is used as an individual's primary residence at Utah Code Ann. §59-2-103 as follows:

> (1) All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.
> (2) Subject to Subsections (3) through (5) and Section 59-2-103.5, for a calendar year, the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property.
> . . .
> (1) (a) Except as provided in Subsection (5)(b)(ii), a residential exemption described in Subsection (2) is limited to one primary residence per household.
> . . . .

The Commission has been granted the discretion to waive penalties and interest. Utah Code Ann. §59-1-401(14) provides, "Upon making a record of its actions, and upon reasonable cause shown, the commission may waive, reduce, or compromise any of the penalties or interest imposed under this part."

The Commission has promulgated Administrative Rule R861-1A-42(2) to provide additional guidance on the waiver of interest, as follows in pertinent part:

> (1) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

Utah Code Ann. §59-1-1417 provides, "[i]n a proceeding before the commission, the burden of proof is on the petitioner…"

DISCUSSION

The Taxpayers filed part-year resident Utah Individual Income Tax Returns for the 2016, 2017, and 2018 tax years and asserted they were part-year residents of Utah from DATE through DATE, from DATE through DATE, and from DATE through DATE. The Taxpayers stated that they resided with their daughter in CITY-1, STATE-1 beginning in MONTH of 2016 through MONTH of 2017. In 2018, the Taxpayers indicated that they divided their time between STATE-1 and Utah, residing with family in STATE-1 for a portion of 2018. The Taxpayers asserted that the income they received while they were residing in CITY-1, STATE-1 was not taxable in Utah. The Taxpayers filed 2016, 2017, and 2018 federal income tax returns and Utah individual income tax returns with a status of married filing jointly and did not claim any dependent exemptions on each of their income tax returns. The Taxpayers claimed an equitable adjustment on each of their Utah Individual Income Tax Returns for the 2016, 2017, and 2018 tax years for the amounts of income they asserted were not taxable in Utah. The Taxpayers claimed equitable adjustments in the amount of $$$$$ for the 2016 tax year, $$$$$ for the 2017 tax year, and $$$$$ for the 2018 tax year. The Division issued Notices of Deficiency and Audit Change on April 9, 2020 for the 2016, 2017, and 2018 tax years and made the audit changes based on the Division's determination that the Taxpayers were domiciled in Utah in accordance with §59-10-136 and were, therefore, Utah resident individuals for all of 2016, 2017, and 2018. The Division changed the 2016, 2017, and 2018 tax year Utah income tax return types from non/part-year resident to full-year resident returns including all of the Taxpayers' joint income for the entire 2016, 2017, and 2018 tax years and disallowed the equitable adjustment deductions claimed by the Taxpayers for each of those years. The Division's assessments did not reflect credits for income taxes imposed by another state because STATE-1 does not impose an individual income tax, and the Taxpayers, who have the burden of proof in this matter, did not assert that they paid individual income taxes to a state other than Utah.[5] The Taxpayers timely appealed the Notices of Deficiency on DATE. It is the Division's position that the Taxpayers were domiciled in Utah for the 2016, 2017, and 2018 tax years, and thus all of their 2016, 2017, and 2018 income is taxable in Utah, and the equitable adjustments claimed should be disallowed because the amounts claimed were not taxed twice by the State of Utah. It is the Taxpayers' position that they were part-year residents of Utah in 2016, 2017, and 2018, and the income they received while residing in STATE-1 was not taxable in Utah.

[5] Utah resident individuals are entitled to claim a credit against their Utah tax liability for income taxes imposed by another state, pursuant to Utah Code Ann. §59-10-1003.

In MONTH of 2016, the Taxpayers moved to STATE-1 and resided in an apartment with their daughter located at ADDRESS-1 in CITY-1, STATE-1. The Taxpayers indicated that they resided there until the lease expired in MONTH of 2017. The Taxpayers indicated that they divided their time between STATE-1 and Utah in 2018 and resided with family in STATE-1 for a portion of 2018. Prior to their move to STATE-1 in May of 2016, the Taxpayers had been residing in a home that they owned located at ADDRESS-2 in CITY-2, Utah. At the Initial Hearing, TAXPAYER-2 indicated that the Taxpayers moved to STATE-1 because they needed additional assistance from family due to a sharp decline in TAXPAYER-1's health[6]. She stated that TAXPAYER-1 suffers from Parkinson's disease, he has suffered a series of strokes, and his cognitive abilities have gone downhill. She stated that her husband cannot be alone. TAXPAYER-2 indicated that their granddaughter, NAME-1, lived in the CITY-2, Utah residence that the Taxpayers owned and took care of it while the Taxpayers were out of state. She indicated that their granddaughter moved into the CITY-2, Utah residence in MONTH 2015 and continued to reside there on and off until MONTH of 2019. The Taxpayers stated that their granddaughter did not pay rent but was taking care of the home and making sure it was safe and protected. The Taxpayers indicated that they were helping to support her. TAXPAYER-2 stated that their granddaughter was working and attending school while residing in the Taxpayers' home, and she used the whole house and yard and had access to the vehicles on site while living there.

The Taxpayers stated that they returned to Utah at the end of MONTH in 2016 and stayed a week or two in CITY-2, Utah to make sure the home was okay and to determine whether any repairs needed to be made. They stated that they spent Christmas in STATE-2. The Taxpayers stated they returned to CITY-2, Utah in MONTH of 2017 and stayed there through the summer. They subsequently split their time between staying at their home in CITY-2, Utah and staying with family in STATE-1 and STATE-2. TAXPAYER-2 indicated that she found it was just too hard to be the sole caretaker for TAXPAYER-1, so they decided to sell the home in CITY-2, Utah. They indicated that the house was on the market from the end of 2019 until it sold in MONTH and closed in MONTH of 2020.

The home the Taxpayers owned in CITY-2, Utah received the primary residential exemption for the 2016, 2017, and 2018 tax years.[7] The Taxpayers were married in 2016, 2017,

[6] The Commission notes that TAXPAYER-2 indicated at a telephone status conference held on May 11, 2022 that TAXPAYER-1 passed away.

[7] Utah Code Ann. § 59-2-103(2) (2017) provides that ". . . the fair market value of residential property located within the state is allowed a residential exemption equal to a 45% reduction in the value of the property [,]" while Utah Code Ann. § 59-2-102(36)(a) (2017) defines "residential property" to mean, in part, "any property used for residential purposes as a primary residence." As a result, for property tax purposes, a home that is used as a person's primary residence is only taxed on 55% of its fair market value,

and 2018 and were not divorced or legally separated. The Taxpayers did not claim any dependents on their 2016, 2017, or 2018 income tax returns, and neither Taxpayer was enrolled in an institution of higher education in Utah in 2016, 2017, or 2018.

TAXPAYER-2 provided testimony at the Initial Hearing that she and TAXPAYER-1 were both registered to vote in Utah throughout 2016, 2017, and 2018, they did not ask to have their names removed from the Utah registry, and they did not register to vote in STATE-1. A review of TAXPAYER-1 and TAXPAYER-2's voter registration histories provided by the Division confirms that TAXPAYER-1 and TAXPAYER-2 were both registered to vote in Utah in 2016, 2017, and 2018. A review of the Taxpayers' voting histories provided by the Division indicates that TAXPAYER-1 voted in Utah in the primary election by absentee ballot in 2016, in the primary election in person in 2018, in the general election by mail in 2018, and in the presidential primary election in 2020, and TAXPAYER-2 voted in Utah in the primary election in 2016 by absentee ballot, in the regular general election in 2016 by provisional ballot, in the primary election in person in 2018, in the regular general election by mail in 2018, and in the presidential primary election in 2020.

The Taxpayers provided testimony at the Initial hearing that they both held Utah driver licenses in 2016, 2017, and 2018, they both owned vehicles registered in Utah in 2016, 2017, and 2018, and they used ADDRESS-2 in CITY-2, Utah as their mailing address in 2016, 2017, and 2018. The Taxpayers also indicated they were members of a religious organization and attended their religious organization's local unit services in both Utah and STATE-1 at the times they were residing in those locations in 2016, 2017, and 2018.

For the 2016 and 2017 tax years, Utah Code Ann. §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"). For the 2018 tax year, Utah Code Ann. §59-10-103(1)(q) provides that a person is a Utah resident individual if an individual is domiciled in this state.

The Division contends that the Taxpayers are Utah full-year resident individuals for the 2016, 2017, and 2018 tax years under the domicile test. Accordingly, the Commission must apply the facts to the Utah income tax domicile law that is applicable for the 2016, 2017, and 2018 tax years to determine whether the taxpayers are considered to be domiciled in Utah for all of those years. The Legislature enacted domicile legislation that became effective beginning with the 2012

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while a home that is not a person's primary residence (such as a vacation home) is taxed on 100% of its fair market value.

tax year, and was in effect for the 2016 and 2017 audit years at issue in this appeal. The Utah Legislature made some limited, specific revisions to Utah Code Ann. §59-10-136 that were effective beginning with the 2018 tax year and were in effect for the 2018 tax year at issue. Utah Code Ann. §59-10-136 addresses when an individual is considered to have domicile in Utah. It 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)).

The Taxpayers are each other's spouse for the years at issue. Utah Code Ann. §59-10-136(5)(a) provides that if an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is also considered to have domicile in this state. Subsection (5)(b) provides that an individual is not considered to have a spouse if the individual is legally separated or divorced from the spouse, or the individual and individual's spouse claim married filing separate filing status for purposes of filing a federal individual income tax return for the year in question. The Taxpayers filed 2016, 2017, and 2018 federal and state income tax returns with a married filing jointly filing status. The Taxpayers provided testimony at the Initial Hearing that they were not legally separated or divorced during the 2016, 2017, or 2018 audit periods. Thus, the Commission finds that the Taxpayers are each other's spouse for the years at issue in this appeal.

The Commission must first determine whether one or both of the taxpayers is considered to be domiciled in Utah "in accordance with this section," specifically in accordance with Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3). In instances where the actions of only one spouse meet the circumstances described in Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), and/or (3), the Commission has generally found that both spouses are considered to be domiciled in Utah under the applicable subsection, and that such a conclusion is supported by Subsection 59-10-136(5)(a). As a result, the Commission must analyze whether the taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), or (3).

Utah Code Ann. §59-10-136(4) provides that an individual is not considered to have domicile in the State of Utah under Subsection §59-10-136(1), (2), or (3) if the Taxpayers were absent from the state for at least 761 consecutive days and certain other qualifications are met. The Taxpayers do not meet the qualifications of Subsection (4) for reasons including that the Taxpayers returned to Utah and resided there from MONTH of 2017 through DATE, 2017 after they moved to STATE-1 and because the Taxpayers split their time between residing in Utah and STATE-1 during the 2018 calendar year. The Taxpayers indicated that they left the state when they moved to STATE-1 in MONTH of 2016. Subsection (4)(c) provides that an absence from the

state begins on the later of the date the individual leaves the State of Utah, or the individual's spouse leaves the State of Utah. The Taxpayers indicated that they moved back to Utah in MONTH of 2017, thus they were gone for less than 761 days, and Utah Code Ann. §59-10-136(4) does not apply. The Taxpayers were not absent from Utah for 761 consecutive days and were in Utah for more than 30 calendar days for the 2016, 2017, and 2018 tax years. Thus, they do not qualify under Subsection §59-10-136(4) as being considered not domiciled in the State of Utah.

The Taxpayers are not domiciled in Utah under the provisions of Utah Code Ann. §59-10-136(1). If a dependent claimed on the individual's or individual's spouse's federal income tax return is enrolled in a Utah public kindergarten, elementary, or secondary school, the individual is considered domiciled in Utah. The Taxpayers did not claim a dependent on their 2016, 2017, or 2018 federal or state income tax returns. Additionally, if an individual or individual's spouse is a resident student enrolled in an institution of higher education in Utah, the individual is considered domiciled in Utah. Neither Taxpayer was enrolled as a resident student in a Utah institution of higher education during the 2016, 2017, or 2018 tax years.

The Taxpayers are presumed domiciled in Utah because the home they owned in CITY-2, Utah received the primary residential property tax exemption for the 2016, 2017, and 2018 tax years. 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…

Utah Code Ann. §59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Utah Code Ann. §59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county added the second step of requiring formal application in order to receive the benefit of the exemption. COUNTY-1 is a county that requires a formal application to receive the benefit of the residential exemption. The claim persists until the property is relinquished through the sale of the property or until the residential exemption is removed from the property (either by action of the county or the property owner). The Taxpayers did not provide evidence to show that they received the residential exemption without having filed an application. Because the burden of proof is on the Taxpayers,

the Commission finds for purposes of this Initial Hearing Order that the Taxpayers claimed the residential exemption after filing an application to receive the benefit of the residential exemption. Thus, the presumption of domicile under Utah Code Ann. §59-10-136(2)(a) arises for the Taxpayers as the home they owned in CITY-2, Utah received the primary residential exemption for the 2016, 2017, and 2018 tax years.

Utah Code Ann. §59-10-136(6)[8] provides that "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." The Taxpayers indicated that the home they owned in CITY-2 was the primary residence of their granddaughter, who they stated resided in the home while they were residing in CITY-1, STATE-1. The Commission has considered what is meant by "tenant" for this subsection in *Appeal No. 15-1063*[9]. However, the facts in *Appeal No. 15-1063* are different from those in the subject case. In *Appeal No. 15-1063* the property owners were away from their Utah property for a period of about three years, did not return to Utah or stay in their Utah property during that entire period and relinquished their rights to possess their Utah property to another family for that period of time in exchange for the other family paying the utilities, maintaining the property, and protecting the property from theft or vandalism. The Commission concluded in *Appeal No. 15-1063* that the family residing in the property and maintaining it while the property owners were away were considered tenants. However, in this appeal, the Commission finds that the Taxpayers' granddaughter is not considered a tenant as the Taxpayers themselves still had the right to use and reside at the property whenever they wanted, and they did so periodically. Thus, Subsection 59-10-136(6)[10] does not preclude the rebuttable presumption under Subsection 59-10-136(2)(a) from arising because the Taxpayers have not demonstrated that the property in CITY-2, Utah was the primary residence of a tenant.

The Taxpayers are also presumed to be domiciled in Utah for the 2016 and 2017 tax years because TAXPAYER-1 and TAXPAYER-2 were both registered to vote in Utah in 2016 and 2017.

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[8] The Commission notes that Utah Code Ann. §59-10-136(6) was renumbered to Subsection 59-10-136(7) for the 2018 tax year. Although the numbering may have shifted between the audit years, the provisions cited did not change substantively during the audit period.

[9] *See Initial Hearing Order, Appeal No. 15-1063, Utah State Tax Commission* (August 26, 2016). Redacted copies of this and other decisions can be viewed on the Commission's website at http://www.tax.utah.gov/commission-office/decisions.

[10] As noted above, Utah Code Ann. §59-10-136(6) was renumbered to Subsection 59-10-136(7) for the 2018 tax year, but the provisions cited did not change substantively during the audit period.

The version of Utah Code Ann. §59-10-136(2)(b) that was in effect for the 2016 and 2017 tax year provides as follows:

> (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
> …
> (b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration…

The Taxpayers were both registered to vote in Utah for all of 2016 and 2017. Their voter registration in Utah creates a rebuttable presumption of domicile. Utah Code Ann. §59-10-136(2)(b) provides that there is a presumption of domicile in Utah if the individual, or the individual's spouse, is registered to vote in Utah. Both TAXPAYER-1 and TAXPAYER-2 are presumed domiciled in Utah for all of 2016 and 2017 because they were registered to vote in Utah in 2016 and 2017.

The Taxpayers are presumed to be domiciled in Utah for the 2018 tax year because TAXPAYER-1 and TAXPAYER-2 both voted in the primary election and the regular general election in Utah in 2018. The version of Utah Code Ann. §59-10-136(2)(b) that was in effect for the 2018 tax year 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:
> (i) votes in this state in a regular general election, municipal general election, primary election, or special election during the taxable year; and
> (ii) has not registered to vote in another state in that taxable year . . .

The Taxpayers both voted in the primary election and the regular general election in Utah in 2018. The Taxpayers provided testimony at the Initial Hearing that they did not register to vote in another state in 2018 and did not provide any evidence to indicate that they had registered to vote in another state in 2018.

The Taxpayers are also presumed domiciled in Utah from DATE through DATE, from DATE through December 31, 2017, and from DATE through DATE under Subsection 59-10-136(2)(c) because they filed part-year resident Utah individual income tax returns for the

2016, 2017, and 2018 tax years, declaring they were residents of Utah for those periods[11]. Utah Code Ann. §59-10-136(2)(c) provides as follows:

> (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
>
> . . .
>
> (c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

The Legislature did not provide what circumstances are sufficient or are not sufficient to rebut the presumptions in Utah Code Ann. §59-10-136(2), leaving it to the Courts and the Commission to determine which circumstances are sufficient or not sufficient to rebut the presumptions of domicile found in Subsection §59-10-136(2). The Utah Supreme Court held in *Buck v. Tax Comm'n*, 2022 UT 11 (February 24, 2022) that ". . . the presumption of domicile that results from claiming a primary residential property tax exemption is rebuttable. And . . taxpayers are not statutorily barred from having a meaningful opportunity to rebut the presumption." Furthermore, the Supreme Court noted that "in applying these rather orthodox principles of domicile, courts look to a multiplicity of factors including, but most certainly not limited to 'the places were the [individual] exercises civil and political rights, pays taxes, owns real and personal property, has driver's and other licenses, maintains bank accounts, belongs to clubs and churches, has places of business or employment, and maintains a home for his [or her] family,'" (citing *Coury v. Prot*, 85 F.3d 244, 251 (5th Cir. 1996)) and noted "[n]o single factor is determinative." (Internal citations omitted).

In this appeal, the Taxpayers indicated that they resided with family in STATE-1 from MONTH of 2016 through MONTH of 2017 and for portion of 2018 and asserted that they were not residents for the period of MONTH of 2016 through MONTH of 2017 when they were residing in STATE-1 and while residing with family for a portion of 2018. The Taxpayers provided no other evidence or information to rebut the presumptions of domicile in Utah.

The Taxpayers owned a home located at ADDRESS-2, CITY-2, Utah, throughout the audit period, which received the residential exemption for all three years at issue in this appeal. The Taxpayers indicated that, while they were residing with their daughter in STATE-1, their

[11] The Commission notes that the Taxpayers indicated at the Initial Hearing that they moved to STATE-1 in MONTH of 2016 and resided there through DATE, 2017 but indicated that they were part-year Utah residents from DATE, 2016 through DATE, 2016 and from DATE, 2017 through DATE, 2017 on their filed part-year resident 2016 and 2017 Utah Individual income tax returns. However, the Taxpayers did not argue at the Initial Hearing that their asserted dates of Utah residency were incorrect on their filed 2016 and 2017 Utah individual income tax returns.

granddaughter resided in their home located in CITY-2, Utah. However, they indicated that their granddaughter did not pay rent or utilities, and, when they would return to Utah to visit, they would stay in their home in CITY-2, Utah. The Taxpayers indicated that they did return to Utah to visit during the period that they asserted they were residents of STATE-1. The Commission finds that the Taxpayers did not relinquish their right to possess their Utah property during the audit period.

Additionally, the Taxpayers were both registered to vote in Utah throughout 2016, 2017, and 2018, and they voted in Utah in 2016 and 2018. The Taxpayers' submitted information also indicated they both held Utah driver licenses in 2016, 2017, and 2018, they both owned vehicles that were registered in Utah throughout 2016, 2017, and 2018, and indicated that they used the ADDRESS-2, CITY-2, Utah address as their mailing address throughout 2016, 2017, and 2018. The Taxpayers indicated they were members of a religious organization and attended their religious organization's local unit services in both Utah and STATE-1 at the times they were residing in those locations in 2016, 2017, and 2018. The Taxpayers filed their 2016 federal and state tax returns using the ADDRESS-1, CITY-1, STATE-1, address. The Taxpayers filed their 2017 and 2018 federal and state tax returns using the ADDRESS-2, CITY-2, Utah, address. The Taxpayers provided no other evidence or documentation to support their assertion that they were domiciled in another state and were not domiciled in Utah.

The Commission finds that, given the weight of the evidence, the Taxpayers have not rebutted the presumptions of domicile under Subsections 59-10-136(2)(a), (2)(b), and (2)(c) for any portion of the 2016, 2017, or 2018 tax years. Of the factors presented by both parties in determining the Taxpayers' domicile, the only factors supporting the Taxpayers being domiciled in STATE-1 were that they resided with family in STATE-1 and filed their 2016 federal and state individual income tax returns with a STATE-1 address. However, the Taxpayers' owned real property in Utah, maintained that property for family members, and retained the right to use and possess that property during the audit period. They held Utah driver licenses throughout the audit period, their vehicles were registered in Utah, they were registered to vote in Utah throughout the audit period and voted in Utah in 2016 and 2018, and they used the CITY-2, Utah address as their mailing address. The Commission notes that the Taxpayers indicated that they were members of a church during the audit period and attended the church's local unit services in Utah while residing in Utah and in STATE-1 while residing in STATE-1. The Commission finds that the Taxpayers' church membership and attendance is a neutral factor in determining whether they are domiciled in Utah because they attended services in both Utah and STATE-1 during the audit period. The

Commission finds that the factors presented weigh in favor of the Taxpayers being domiciled in Utah during the audit period.

The Commission notes that the factors found in Utah Code Ann. §59-10-136(3) are not applicable in this matter. Subsection (3) sets forth a number of facts and circumstances that, when considered in totality, may support a finding that an individual is domiciled in Utah. Subsection (3)(a) specifically provides, "[i]f the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state, the individual is considered to have domicile in this state if…" certain requirements are met. In this case, the presumptions of domicile in Subsections (2)(a) and (b) have been met for the entire 2016, 2017, and 2018 tax years, and the presumption of domicile in Subsection (2)(c) has been met for the periods from DATE, 2016 through DATE, 2016, from DATE, 2017 through DATE, 2017, and from DATE, 2018 through DATE, 2018. The Commission finds that the Taxpayers have not submitted sufficient evidence to rebut those presumptions. Thus, pursuant to Utah Code Ann. §59-10-136, the Commission finds that the Taxpayers are domiciled in Utah for the 2016, 2017, and 2018 tax years and, therefore, meet the definition of full-year "resident individuals" whose income is subject to tax in Utah under Utah Code Ann. §59-10-104(1) for the 2016, 2017, and 2018 tax years.

Utah imposes a tax on the state taxable income of a resident individual in Utah Code Ann. §59-10-104(1) and the state taxable income of a nonresident individual in Utah Code Ann. §59-10-116(1). However, "state taxable income" is defined differently for a resident individual and a nonresident individual. Utah Code Ann. §59-10-103(1)(x)(i) provides that "state taxable income" for a resident individual is federal adjusted gross income subject to additions and subtractions made under Section 59-10-114 and adjustments made under Section 59-10-115, while "state taxable income" for a nonresident individual is calculated by determining federal adjusted gross income subject to additions and subtractions made under Section 59-10-114 and adjustments made under Section 59-10-115 and calculating the portion of that income that is derived from Utah sources in accordance with Section 59-10-117. There is no limitation in the definition of "state taxable income" for a resident individual that the state taxable income be calculated by determining the amount that is derived from Utah sources. Therefore, all income included in the federal adjusted gross income of a resident individual is state taxable income regardless of whether it is derived from Utah sources or is earned in another state unless it qualifies for subtraction under Utah Code Ann. §59-10-114 or adjustment under Utah Code Ann. §59-10-115. The Taxpayers are domiciled in Utah and, therefore, meet the definition of resident individuals in Utah Code Ann. §59-10-104. Thus, the income received by the Taxpayers while

residing in STATE-1 is included in the Taxpayers' federal adjusted gross income and meets the definition of state taxable income as there is no requirement that state taxable income for a resident individual be derived from Utah sources. The Taxpayers have not provided evidence that any portion of their federal adjusted gross income qualifies for subtraction under Utah Code Ann. §59-10-114, thus their entire federal adjusted gross income is included in state taxable income that is subject to tax in Utah for the 2016, 2017, and 2018 tax years. The Taxpayers claimed an equitable adjustment under Utah Code Ann. §59-10-115, and whether they properly claimed that adjustment is discussed below.

The Taxpayers claimed equitable adjustments under Utah Code Ann. §59-10-115 in each of the tax years in the amount of $$$$$ for the 2016 tax year, $$$$$ for the 2017 tax year, and $$$$$ for the 2018 tax year. Subsection 59-10-115(1) provides an adjustment to the federal adjusted gross income "of a resident or nonresident individual if the resident or nonresident individual would otherwise: . . . (b) suffer a double tax detriment under this part." For purposes of Subsection 59-10-115(1), "this part" is Part 1 of the Utah Individual Income Tax Act. Utah Code Ann. § 59-10-115, the "equitable adjustment" provision of law, has been interpreted to be limited to situations where the individual would be taxed twice by the State of Utah under Part 1 of the Utah Individual Income Tax Act, and the adjustment has generally not been allowed in situations where the individual was taxed only once by the State of Utah, but also taxed by a foreign jurisdiction or by another state on the same income. In *Steiner v. Utah State Tax Comm'n*, 2019 UT 47 (Utah 2019), the Utah Supreme Court ruled that the Subsection 59-10-115(1)(b) equitable adjustment is "available only if the Utah tax code itself imposes double taxation."[12] In that case, the Steiners claimed an equitable adjustment to exclude foreign income from their Utah taxable income, and the Court ruled against the Steiners' equitable adjustment claim.[13] The Commission has also issued several decisions where the Commission has denied an equitable adjustment where an individual would be taxed once by Utah and a second time by another taxing jurisdiction.[14] The Taxpayers have not provided any evidence to demonstrate that the amounts claimed by the Taxpayers as equitable adjustments for the 2016, 2017, and 2018 tax years would

[12] Subsection 59-10-115(1) (2012-2014) was renumbered as Subsection 59-10-115(2) in 2016. In *Steiner*, the Court referred to Subsection 59-10-115(2) (even though that case involved the 2011, 2012, and 2013 tax years). Regardless, the Court's ruling in *Steiner* is applicable to Subsection 59-10-115(1) as it was numbered during the 2012, 2013, and 2014 tax years at issue in the instant case.

[13] *Steiner v. Utah State Tax Comm'n*, 2019 UT 47, at ¶60.

[14] *See Findings of Fact, Conclusions of Law and Final Decision, Appeal No. 08-0590, Utah State Tax Commission* (August 5, 2010); *Initial Hearing Order, Appeal No. 05-1787, Utah State Tax Commission* (September 5, 2006); *Initial Hearing Order, Appeal No. 12-915, Utah State Tax Commission* (April 15, 2014); *Findings of Fact, Conclusions of Law, and Final Decision, Appeal No. 14-374, Utah State Tax Commission* (November 11, 2015); and *Initial Hearing Order Appeal No. 15-1332, Utah State Tax Commission* (June 27, 2016).

be taxed twice by the State of Utah, and the Taxpayers' Utah Individual Income Tax Returns indicate that the equitable adjustments were taken because the Taxpayers were asserting the income was not taxable in Utah. The Commission finds that the amounts claimed by the Taxpayers as equitable adjustments in the 2016, 2017, and 2018 tax years are not being taxed twice by the State of Utah, and thus are not eligible for deduction as equitable adjustments. Thus, the Division's disallowance of the equitable adjustments for the 2016, 2017, and 2018 tax years was proper and should be sustained.

The Taxpayers have also requested a waiver of interest. With regard to the waiver of interest, Rule R861-1A-42 specifically provides, "[g]rounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, you must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error." Interest is not assessed to punish taxpayers. Instead, interest is assessed to compensate the state for the time value of money. The State of Utah was denied the use of the funds from the time the taxes were originally due, until they were actually paid by the Taxpayers. In this appeal, the Taxpayers have the burden of proof and have not provided any information to show that the Commission gave them erroneous information or took inappropriate action that contributed to the error. Thus, the Taxpayers have not demonstrated sufficient grounds for the waiver of interest in this appeal for the period prior to DATE. The Commission notes that this appeal was stayed *sua sponte* by the Commission, pending the outcome of *Buck v. Tax Comm'n*, 2022 UT 11 (Utah 2022). The Commission waives the interest assessed for the period from DATE, which is the date the Order Granting Stay was issued by the Commission, through 30 days following the date of the issuance of this Initial Hearing Order.

Based on the foregoing, the Commission finds that the Division's audit properly includes the Taxpayer's joint income for the 2016, 2017, and 2018 tax years and the Division's disallowance of the Taxpayers' claimed equitable adjustments was proper. The Division's audit assessments of tax and interest assessed through DATE should be sustained.

Shannon Halverson
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the Taxpayers were domiciled in Utah for the 2016, 2017, and 2018 tax years and were therefore full-year residents of Utah for tax purposes for those years. The Commission sustains the Division's audits for income taxes assessed for the 2016, 2017, and 2018 tax years and the interest assessed through DATE but waives the interest assessed from DATE through 30 days following the date of the issuance of this Initial Hearing Order. 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 _____, 2022.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

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