

APPEAL # 24-86

TAX TYPE: INDIVIDUAL INCOME TAX

TAX YEAR: 2020 - 2021

DATE SIGNED: 7/31/2026

COMMISSIONERS: J.VALENTINE, R.ROCKWELL, J.FRESQUES, J.DEEDS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYERS,	INITIAL HEARING ORDER
Petitioners,	Appeal No. 24-86
v.	Account No: #####
INCOME TAX AND EDUCATION DIVISION OF THE UTAH STATE TAX COMMISSION,	Tax Type: Audit - Individual Income Tax
Respondent.	Tax Years: 2020 - 2021
	Judge: Phan

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: TAXPAYER-1, Taxpayer

TAXPAYER-2, Taxpayer

For Respondent: RESPONDENT'S REP-1, Tax Examiner Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission from a petition for redetermination of a deficiency (“appeal”) appeal filed by Petitioners (“Taxpayers”) pursuant to Utah Code Ann. §59-1-501 to contest the Utah individual income tax audit deficiency imposed by the Respondent (“Division”) for the tax years 2020 and 2021. The Division had issued its Notice of Deficiency Audit Change on DATE (“Notice”), on the basis that both Taxpayers were domiciled in Utah for both tax years at issue. The matter came before the Commission for an Initial Hearing on DATE, in accordance with Utah Code Ann. §59-1-502.5. No penalties were assessed with the audit. The amount of the audit deficiency of tax and interest accrued as to the date of the Notice were the following for each tax year.

TABLE REDACTED

APPLICABLE LAW

Utah imposes income tax on resident individuals of the state, in Utah Code Ann. §59-10-104¹ as follows:

- (1) A tax is imposed on the state taxable income of a resident individual as provided in this section.
- (2) For purposes of Subsection (1), for a taxable year, the tax is an amount equal to the product of: (a) the resident individual's state taxable income for that taxable year; and (b) 4.95%.
- (3) This section does not apply to a resident individual exempt from taxation under Section 59-10-104.1.

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

(r) "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)(x) as follows:

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

Utah Code Ann. §59-10-136 as in effect for tax year 2020 stated as follows:²

- (1)
 - (a) An individual is considered to have domicile in this state if:
 - (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
 - (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.
 - (b) The determination of whether an individual is considered to have domicile in this state may not be determined in accordance with Subsection (1)(a)(i) if the individual:

¹ All substantive law citations are to the 2020 version of Utah law, unless otherwise indicated.

² There were some revisions to this section for tax year 2021, but they were not changes that impacted the decision in this matter. The Commission also notes that Utah’s domicile statute has been amended subsequent to the audit period at issue in this matter, but it is the domicile statute in effect for the audit period that is applicable in this appeal.

(i) is the noncustodial parent of a dependent: (A) with respect to whom the individual claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's federal individual income tax return; and (B) who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; and

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

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

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

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

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

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

(c) the individual or the individual's spouse asserts residency in this state for purposes of filing an individual income tax return under this chapter, including asserting that the individual or the individual's spouse is a part-year resident of this state for the portion of the taxable year for which the individual or the individual's spouse is a resident of this state.

(3)

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

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

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

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

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

(ii) whether a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state;

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

(iv) the presence in this state of a spouse or dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return;

- (v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;
 - (vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
 - (vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
 - (viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
 - (ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
 - (x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
 - (xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile;
 - (xii) whether the individual is an individual described in Subsection (1)(b);
 - (xiii) whether the individual: (A) maintains a place of abode in the state; and (B) spends in the aggregate 183 or more days of the taxable year in the state; or
 - (xiv) whether the individual or the individual's spouse: (A) did not vote in this state in a regular general election, municipal general election, primary election, or special election during the taxable year, but voted in the state in a general election, municipal general election, primary election, or special election during any of the three taxable years prior to that taxable year; and (B) has not registered to vote in another state during a taxable year described in Subsection (3)(b)(xiv)(A).
- (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (3)(b)(xiii), the commission may by rule define what constitutes spending a day of the taxable year in the state.
- (4)
- (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
- (i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
 - (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse: (A) return to this state for more than 30 days in a calendar year; (B) claim a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b); (C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state; (D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or (E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

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

(c) For purposes of Subsection (4)(a), an absence from the state: (i) begins on the later of the date: (A) the individual leaves this state; or (B) the individual's spouse leaves this state; and (ii) ends on the date the individual or the individual's spouse returns to this state if the individual or the individual's spouse remains in this state for more than 30 days in a calendar year.

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

(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual income tax return or amended individual income tax return under Subsection (4)(d) shall pay any applicable penalty imposed under Section 59-1-401.

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

(5) Notwithstanding Subsections (2) and (3), for individuals who are spouses for purposes of this section and one of the spouses has domicile under this section, the other spouse is not considered to have domicile in this state under Subsection (2) or (3) if one of the spouses establishes by a preponderance of the evidence that, during the taxable year and for three taxable years prior to that taxable year, that other spouse:

(a) is not an owner of property in this state;

(b) does not return to this state for more than 30 days in a calendar year;

(c) has not received earned income as defined in Section 32(c)(2), Internal Revenue Code, in this state;

(d) has not voted in this state in a regular general election, municipal general election, primary election, or special election; and

(e) does not have a driver license in this state.

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

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

(i) the individual is legally separated or divorced from the spouse; or

(ii) the individual and the individual's spouse claim married filing separately filing status for purposes of filing a federal individual income tax return for the taxable year.

(c) Except as provided in Subsection (6)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

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

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, which includes 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 Division issued its audit against the Taxpayers on the basis that both of the Taxpayers were Utah resident individuals for all of tax years 2020 and 2021 pursuant to Utah Code Ann. §59-10-103(1) and §59-10-136, and that was the Division’s position at the Initial Hearing. It was the Taxpayers’ position at the Initial Hearing that TAXPAYER-1 did not have domicile in Utah in tax years 2020 and 2021, and thus was not a Utah resident individual as defined in Utah Code Ann. §59-10-103 during those years. The Taxpayers agreed and conceded that TAXPAYER-2 had domicile in Utah and was thus a Utah resident individual for all of tax years 2020 and 2021.

I. Facts Presented at the Initial Hearing

The facts presented at the Initial Hearing were the following. The Taxpayers were married during all of 2020 and 2021; they were not legally separated or divorced. The Taxpayers had claimed married filing jointly filing status on their federal individual income tax returns for

tax years 2020 and 2021. The Taxpayers did not claim any dependents on their federal or state returns for the tax years at issue. The Taxpayers were not enrolled in a Utah institution of higher education during the tax years at issue.

For tax year 2020, the Taxpayers filed a Utah individual income tax return claiming nonresident status and stating that their home state was STATE-1. On that return, they claimed \$\$\$\$ as Utah sourced wage income on Schedule TC-40B and \$\$\$\$ as total wage income. The Taxpayers' Forms W-2 for 2020 showed Utah sourced wage income paid to TAXPAYER-2 in the amount of \$\$\$\$ from her employer, which was the EMPLOYER-2. A 2020 Form W-2 issued to TAXPAYER-1 indicated \$\$\$\$ in Utah sourced wage income as reported by his employer, EMPLOYER-1. The Form W-2 from EMPLOYER-1 indicated that TAXPAYER-1 had been paid \$\$\$\$ in total wages in 2020, the balance of which was not reported to any state.³

For tax year 2021, the Taxpayers filed a Utah individual income tax return, on which they claimed that TAXPAYER-2 was a full year resident of Utah and TAXPAYER-1 was not a Utah resident. On the Schedule TC-40B, they claimed \$\$\$\$ in Utah wages and \$\$\$\$ in total wages. The Utah wages were the wages reported as paid to TAXPAYER-2. TAXPAYER-1 did not have any wages sourced to Utah by his employer in 2021.

The Taxpayers explained at the hearing that TAXPAYER-1 was employed by EMPLOYER-1, that he had moved to STATE-1 in 2012 and his employment required that he fly in and out of the CITY-1 airport. They explained that he became a resident of STATE-1 in 2012 and had remained a resident of STATE-1 throughout the audit years. The Taxpayers had purchased a residence in STATE-1 in 2012, which they owned jointly, and that was where TAXPAYER-1 maintained his residence. This was a one bedroom, one bathroom condo in CITY-2, STATE-1 ("CITY-2 Condominium"). TAXPAYER-1 had obtained a STATE-1 driver license in 2012 and has had it since that time. He registered to vote in STATE-1 and has actually voted in STATE-1. Additionally, TAXPAYER-1 has served twice on jury duty in COUNTY-1, STATE-1, once in DATE and again in DATE. The Taxpayers stated that this meant that STATE-1 considered him to be a resident of that state. TAXPAYER-1 stated he has been registering his vehicles in STATE-1 since 2012. TAXPAYER-1 noted that he received a concealed firearms permit with the CITY-1 Metropolitan Police as a STATE-1 resident and he pointed out that the Utah Department of Public Safety had cancelled his Utah concealed carry permit because they had determined he was not a Utah resident for that purpose.

³ The Commission notes that STATE-1, which is where the Taxpayers argued TAXPAYER-1 had domicile during tax years 2020 and 2021, does not impose an individual income tax.

At the Initial Hearing, the parties explained that TAXPAYER-1's wage income was always from flying out of the CITY-1 airport, but that in 2020 he had changed his mailing address with his employer for a brief period of time due to issues in getting his mail. He stated that this was just a clerical mistake and he did not understand that it would cause his employer to source some of his income to Utah during that year. For 2021, his address had been changed back to STATE-1 and his employer sourced all of his income to STATE-1. TAXPAYER-1 explained that they had used TAXPAYER-2's Utah address on their tax returns because she was at home more to get the mail and as an airline pilot, TAXPAYER-1 was away from home a lot.

The Taxpayers stated at the Initial Hearing that during the audit period TAXPAYER-1 visited Utah more often than TAXPAYER-2 traveled to STATE-1. In fact, they acknowledged that TAXPAYER-1 was in Utah more than thirty days in both 2020 and 2021. The Taxpayers also explained that they jointly owned several properties in Utah. They jointly owned a one bedroom one bathroom condominium in CITY-3, located at ADDRESS-1 ("First Condominium"), which TAXPAYER-2 used as her primary residence. They also owned a second condominium in CITY-3, located at ADDRESS-2 ("Second Condominium"), a condominium in CITY-4 ("CITY-4 Condominium") and a residential property in CITY-5, Utah. Additionally, they owned a property in CITY-6, STATE-2. The Division provided as an exhibit the tax notice for the CITY-4 condominium for tax year 2021, which showed that it was jointly owned by TAXPAYERS, and received the primary residential exemption for that year. At the Initial Hearing, the Taxpayers stated that the CITY-4 condominium was a long term rental for a tenant, and thus this property qualified for the primary residential exemption. The Taxpayers stated that they had never filed an application to claim the primary residential exemption for their other Utah properties.⁴ They explained that other than the condominiums each Taxpayer used as their primary residence, the other properties were investments or to use as rentals. All properties were jointly owned by both Taxpayers. The Taxpayers stated that at some point, which they thought had occurred in 2021, they put all of the properties into a trust. They did not provide copies of the trust documents to show when this occurred.

At the Initial Hearing, the Taxpayers explained that TAXPAYER-2 remained in Utah and did not move to STATE-1 in 2012 because she was employed with the EMPLOYER-2 as a geologist and she enjoyed her work. When she retired in 2023, after the audit period, she moved

⁴ The First Condominium received the primary residential exemption for tax years 2020 and 2021. See LINK REDACTED The Second Condominium also received the primary residential exemption for tax years 2020 and 2021. See LINK REDACTED

to STATE-1 at that time. Thus, prior to and during the audit period, TAXPAYER-2 resided in Utah at the First Condominium, which was her primary residence, and spent most of her time in Utah. She worked in Utah, receiving income for services performed in Utah. She had a Utah driver license, was registered to vote and actually voted in Utah during the audit period. She registered her vehicle in Utah. She used her Utah address for mailings. She claimed to be a Utah resident individual on the Taxpayers' 2021 Utah return. At the Initial Hearing, the Taxpayers acknowledged that TAXPAYER-2 had claimed Utah residency on documents other than Utah tax returns filed with or provided to a court or other governmental entity.

II. Taxpayers' Position

At the Initial Hearing, the Taxpayers stated that they had worked hard and had always tried to be good citizens. They stated that they were not trying to avoid paying taxes, but they felt that TAXPAYER-1 was truly a resident of STATE-1 during the audit years. They asserted that STATE-1 considered him to be a resident of that state and that his Utah concealed carry permit had been canceled due to him not being a resident of Utah. They also pointed out that he met many requirements of Utah Code Ann. §59-10-136(5) to not be domiciled in Utah, but acknowledged that he did not meet all of those requirements. They also argued that the facts in this appeal were similar to the facts in the Utah Supreme Court's decision in *Buck v. Tax Commission*, 2022 UT 11 and that the facts were distinguishable from the Utah Supreme Court's decision in *Tishmak v. Tax Commission*, 2025 UT 24.

III. Division's Position

It was the Division's position that both Taxpayers were domiciled in Utah for tax years 2020 and 2021. The Division argued that the Taxpayers were domiciled in Utah under Utah Code Ann. §59-10-136(2)(a), (2)(b), and (3). The Division asserted that the Taxpayers did not meet the requirements to not be considered to be domiciled in Utah under Utah Code Ann. §59-10-136(4) or (5). The Division's representative argued that the facts in this case are distinguishable from the facts in *Buck* but are very similar to the facts in *Tishmak*. The Division's representative stated that he did not think the Taxpayers had acted with intent to evade the law, and the Division had not imposed any audit penalties. He also acknowledged the domicile statutes are complicated.

IV. Commission Conclusions

The Taxpayers have the burden of proof in this matter under Utah Code Ann. §59-1-1417. For the 2020 and 2021 tax years, Utah Code Ann. §59-10-103(1)(r) provides that an individual is a Utah resident individual for income tax purposes if the individual is domiciled in Utah. The Division contends that both Taxpayers were domiciled in Utah for the tax years at

issue. The Taxpayers did not contest that TAXPAYER-2 was domiciled in Utah during all of 2020 and 2021, but argued that TAXPAYER-1 should not be considered domiciled in Utah.

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 (6)) and two subsections addressing when a taxpayer is not considered to have domicile in Utah (Subsections (4) and (5)).

The Commission first considers whether the Taxpayers meet any of the exceptions to not be considered to have domicile in Utah. Utah Code Ann. §59-10-136(4) provides that an individual is not considered to have domicile in Utah under Subsection §59-10-136(1), (2), or (3) if “the individual *and* the individual’s spouse are absent from the state for at least 761 consecutive days (emphasis added)” and a number of other qualifications are met. TAXPAYER-2 was not absent from the state for at least 761 consecutive days at any point during the audit period. Thus, the Taxpayers do not qualify for this exception.

The Taxpayers acknowledged at the Initial Hearing that they did not meet all of the requirements of Utah Code Ann. §59-10-136(5) to not be considered to have domicile in Utah, but argued that they met some of the requirements. Utah Code Ann. §59-10-136(5) provides:

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.

First, when considering this exception, the Commission notes that the Taxpayers are considered to be “spouses for purposes of this section.” The Taxpayers did not argue to the contrary and Subsection (6)(b) of Utah Code Ann. §59-10-136 provides that an individual is not considered to have a spouse if “the individual is legally separated or divorced from the spouse,” or the individual and individual’s spouse claim married filing separate filing status for purposes of filing their federal individual income tax return for the tax years in question. In this case, the Taxpayers were married for the tax years at issue, had filed their federal returns with a married filing jointly filing status and did not assert that they were legally separated or divorced.

However, this exception requires that a spouse who asserts that they do not have domicile in Utah, in this case TAXPAYER-1, meet all of the requirements of Utah Code Ann. §59-10-136(5)(a) through (e), because the list of requirements in this subsection is separated by an “and.” While TAXPAYER-1 did not have a Utah driver license, was not registered to vote in Utah, and did not vote in Utah, he did not meet all of the requirements of Utah Code Ann. §59-10-136(5)(a) through (e). Specifically, for tax years 2020 and 2021, he did not meet Utah Code Ann. §59-10-136(5)(a) or (b), and for tax year 2020, he did not meet Utah Code Ann. §59-10-136(5)(c). For tax year 2020, he owned property in Utah, returned to Utah for more than 30 days and had earned income sourced to Utah as reported on his Form W-2 by his employer. For tax year 2021, he owned property in Utah and returned to Utah more than 30 days, but did not have earned income in Utah. Thus, the Taxpayers do not meet the requirements of Utah Code Ann. §59-10-136(5) for TAXPAYER-1 to not be considered to have domicile in Utah.

At this Initial Hearing, the Taxpayers conceded that TAXPAYER-2 was domiciled in Utah. Utah Code Ann. §59-10-136(6)(a) provides that 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.” In prior decisions, the Commission had decided not to rely on Subsection (6)(a) of Utah Code Ann. §59-10-136 alone to find that an individual is domiciled in Utah. Accordingly, 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 found that both spouses are considered to be domiciled in Utah under the applicable subsection, and that such a conclusion is supported by Subsection 59-10-136(6)(a). *See Appeal Nos. 22-771 and 23-1121*. As a result, the Commission analyzes whether the Taxpayers are considered to be domiciled in Utah under Subsection 59-10-136(1), (2)(a), (2)(b), (2)(c), or (3).

It was the Division’s position that the Taxpayers were domiciled in Utah for all of 2020 and 2021 under Subsections (2) and (3). The Division did not argue that Subsection (1) was applicable and the Tax Commission agrees with that determination. Utah Code Ann. §59-10-136(1) provides that an individual has domicile in Utah in certain circumstances pertaining to dependents or attendance as a resident student enrolled at a Utah institution of higher education. The Taxpayers did not claim dependents on their individual income tax returns for tax year 2020 or 2021 and neither Taxpayer was a resident student enrolled in an institution of

higher education in Utah. Thus, neither of the Taxpayers were domiciled in Utah under Subsection (1).

Subsection (2) of Utah Code Ann. §59-10-136 sets forth three circumstances that create a rebuttable presumption of domicile in Utah. 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 Taxpayers are presumed to be domiciled in Utah for the entire audit period because they jointly owned property in Utah that received the primary residential exemption. Utah Code Ann. §59-10-136(2)(a) provides, as follows:

- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if:
 - (a) the individual or the individual's spouse claims a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence;
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For the presumption to arise, an individual, or the individual's spouse, must have claimed the exemption on a Utah home, and the home on which the exemption is claimed must be considered the "primary residence" of the individual or the individual's spouse in accordance with the guidance provided in Utah Code Ann. §59-2-103.5(4).

Although the Taxpayers may not have actually filed an application for the primary residential exemption on this COUNTY-3 property, they are considered to have claimed the residential exemption for the entire audit period, satisfying the first element for the presumption to arise. Utah Code Ann. §59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Utah Code Ann. §59-2-103.5(1) provides that a county may, at its option, require a property owner to file an application before the property receives the exemption. As a result, when the residential exemption was created by the Utah Legislature, this enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property, unless the relevant county adds the second step of requiring a formal application in order to receive the benefit of the 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). Therefore, simply owning a residential property in a COUNTY-2 that does not require an application (which includes COUNTY-3 and most Utah counties), generally asserts an enduring claim to the residential exemption.

For purposes of determining the second element, whether the residence is the individual's or the individual's spouse's primary residence, Utah Code Ann. §59-10-136 and §59-2-103.5(4) are read in concert. A Utah property on which an individual or an individual's spouse claims the residential exemption is considered their "primary residence" unless one or both of the property owners take affirmative steps to: 1) file a written statement to notify the county in which the property is located that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence; and 2) declare on the property owner's Utah individual income tax return for the taxable year that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence. The Taxpayers did not take either of these steps during the period in question. Therefore, both Taxpayers are presumed domiciled in Utah for all of the 2020 and 2021 tax years pursuant to Utah Code Ann. §59-10-136(2)(a) because they claimed a primary residential exemption for their First Condominium.⁵

For tax years 2020 and 2021, the Taxpayers are also presumed to be domiciled in Utah for the entire audit period under Subsection 59-10-136(2)(b), because the Taxpayers acknowledged that TAXPAYER-2 voted in the EMPLOYER-2 during the audit period and was not registered to vote in another state.

Utah Code Ann. §59-10-136(2)(b) provides as follows:

- (2) There is a rebuttable presumption that an individual is considered to have domicile in this state if: . . .
 - (b) the individual or the individual's spouse:
 - (i) votes in this state in a regular general election, municipal general election, primary election, or special election during the taxable year; and
 - (ii) has not registered to vote in another state in that taxable year;

For tax year 2021, the Taxpayers are also presumed domiciled in Utah under Subsection 59-10-136(2)(c) because TAXPAYER-2 had indicated that she was a Utah resident on their jointly filed Utah individual income tax return filed for that year. Utah Code Ann. §59-10-136(2)(c) provides as follows:

⁵ The Commission notes that a primary residential exemption was applied to additional residential property jointly owned by the Taxpayers. Utah Code Ann. §59-10-136(7) 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." Because the Commission finds that the Taxpayers claimed a primary residential exemption on their First Condominium, the extent to which they claimed a primary residential exemption on additional residential property is not relevant to the outcome of this decision, regardless of whether or not the additional residential property was the primary residence of a tenant, and the Commission declines to address the ownership of this additional residential property further in this Initial Hearing Decision.

- (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 Taxpayers argued at the hearing that they have rebutted the presumption of domicile for TAXPAYER-1, pointing to the Utah Supreme Court's decision in the *Buck* case. Although the Commission agrees with the Division that the facts in *Buck* are distinguishable from the facts in the subject appeal, the Utah Supreme Court provided guidance in *Buck* that the Commission considers applicable in this matter. In *Buck*, the Court found that taxpayers need to be given a meaningful opportunity to rebut the presumption of domicile found under Subsection (2)(a). Although *Buck* did not involve the rebuttable presumptions found in Subsection 59-10-136(2)(b) or (2)(c), the Commission has concluded that this principle should apply to all of the rebuttable presumptions that have arisen in this case, which are (2)(a), (2)(b), and for the 2021 tax year, (2)(c). In *Buck*, the Court considered the ties that Mr. and Mrs. Buck had with Florida compared to the ties they had with Utah to determine whether the presumption found in Subsection (2)(a) was rebutted. In that case, both Mr. and Mrs. Buck moved from Utah to Florida. Their employment was in Florida and both Mr. and Mrs. Buck, along with their children, lived in Florida, the children attended school in Florida, and both Mr. and Mrs. Buck had many ties to Florida, with very few in Utah.

In *Tishmak v. Tax Commission* 2025 UT 24, the Utah Supreme Court reviewed the situation where one spouse was domiciled in Utah under Utah Code Ann. §59-10-136 and the other spouse asserted they were domiciled in a different state, but that case involved one of the "bright line" domicile provisions in Subsection 59-10-136(1), and not a rebuttable presumption in Subsection 59-10-136(2). The Court ruled that both spouses were domiciled in Utah under Subsection 59-10-136(1). The Court noted that the Tischmaks could have filed their federal individual income tax return as married filing separately, which would have changed the analysis, but they did not. 2025 UT 24, ¶28. Accordingly, the Court rejected the argument that it was unconstitutional for the actions of one spouse to determine the domicile of the other spouse. *Id.*

The Commission has previously determined that "[t]axpayers cannot rebut the presumptions for only one of the Taxpayers. Either the presumptions are rebutted for both [t]axpayers, or the presumptions are not rebutted for both [t]axpayers." *Initial Hearing Order Appeal No. 22-771* (5/4/2023); see also *Findings of Fact, Conclusions of Law, and Final Decision*

Appeal No. 23-1121 (May 15, 2025). Consequently, TAXPAYER-1 is unable to rebut the presumption separately from his wife. Given that the Taxpayers acknowledge that TAXPAYER-2 was domiciled in Utah, prior Commission precedent and Subsection 59-10-136(2) determine that TAXPAYER-1 is also domiciled in Utah.

However, acknowledging that the Courts have not reviewed the Commission's determination that a taxpayer cannot rebut the presumptions for only one of the taxpayers and further acknowledging that the rulings in *Buck* and *Tischmack* are not directly on point in this appeal, the Commission provides further analysis if TAXPAYER-1 were able to rebut the presumptions separately from his spouse and if in fact he did rebut those presumptions. Utah's domicile statute would then require an analysis of Subsection 59-10-136(3). Subsection (3) does not provide a rebuttable presumption; rather it states, "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," and then provides the following two scenarios that both must be met in order for an individual to be domiciled in Utah. Utah Code Ann. § 59-10-136(3)(a). The first is if "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 the second is if "the individual or the individual's spouse has voluntarily fixed the individual's or the individual's spouse's habitation in this state . . . with the intent of making a permanent home." *Id.* at § 59-10-136(3)(a)(i) and (ii). The analysis of both of these two scenarios is determined by a "preponderance of the evidence, taking into consideration the totality of [an enumerated list of] facts and circumstances." That list includes circumstances including whether an individual or the individual's spouse has a driver license in the state, the living accommodations in Utah compared to elsewhere, the place in which income is earned, the state in which vehicles are registered, the location of memberships such as church and similar organizations, and what they list as their address. *Id.* at § 59-10-136(3)(b).

As explained previously in this Order, during the years at issue, TAXPAYER-2 did have a permanent home in Utah which she intended to return to after being absent. Additionally, TAXPAYER-2 likely has fixed her habitation in Utah for the audit period with the intent of making a permanent home in Utah. She was employed in Utah, had her primary residence in Utah, spent most of her time in Utah, had a Utah driver license, registered her vehicles in Utah, was registered to vote in Utah, used her Utah address for mailings, claimed Utah residency on documents provided to the courts or other governmental entities and conceded that she did not move to STATE-1 until 2023 after she had retired. Also both TAXPAYERS jointly own a number

of Utah properties. For 2020, both TAXPAYERS had Utah source income. TAXPAYER-1 spent more than 30 days in each of the tax years in Utah. They used a Utah address on their tax returns.

Consequently, the Commission concludes that the Taxpayers are domiciled in Utah under Subsections 59-10-136(2)(a) and (2)(b) for tax year 2020 and under (2)(a), (2)(b) and (2)(c) for tax year 2021 because TAXPAYER-1 cannot separately rebut the presumption of domicile accordingly to previous Commission rulings and even if he could he would be domiciled in Utah under Subsection 59-10-136(3) as it is not a rebuttable presumption and TAXPAYER-2 had a permanent home in Utah and had fixed her habitation in Utah and TAXPAYERS meet a number of the other circumstances described in Subsection 59-10-136(3) to be considered to have domicile in Utah.

No penalties were assessed with the audit, but interest had accrued on the deficiency when the audit was imposed pursuant to Utah Code Ann. §59-1-402. Utah Code Subsection 59-1-401(14) provides that the Commission may waive, reduce or compromise penalties and interest upon a showing of reasonable cause. Under Utah Admin. Rule R861-1A-42(2), reasonable cause for waiver of interest is limited to instances where the taxpayer can prove “that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.” The Taxpayers did not assert a basis for waiver of interest.

After review of the evidence submitted by the parties at the Initial Hearing and the applicable law, the Taxpayers were domiciled in Utah for all of tax years 2020 and 2021, and the Utah individual income audit tax and interest should be sustained for the audit period.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission sustains the Division’s Utah individual income tax audit deficiency as to the tax and interest for tax years 2020 and 2021. The Taxpayers’ appeal in this matter is hereby denied. 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 _____, 2026.

John L. Valentine
Commission Chair

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

John T. Deeds
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.