In the Supreme Court of the State of Utah

Johnathan and Brooke Buck, *Petitioners*, v. Utah State Tax Commission, *Respondent.*	No. 20200531-SC

Brief of Respondent

On petition for review from the Utah State Tax Commission
No. 18-888

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Parties to the Tax Commission proceedings:

The Auditing Division of the Utah State Tax Commission was the respondent in the Tax Commission proceedings.

Table of Contents

Current and Former Parties i

Table of Authorities iii

Introduction 1

Statement of the Issues 3

Statement of the Case 4

Summary of the Argument 8

Argument 10

I. Section 136 Significantly Changed Utah Domicile Analysis for Income Tax Purposes 11

II. Taxpayers Triggered the Rebuttable Presumption by Claiming the Residential Exemption for their Utah Home 14

A. Taxpayers claimed the residential exemption in accordance with the Property Tax Act 15

B. The residential exemption applied to Taxpayers' primary residence 19

III. The Tax Commission Interprets Section 136(2)'s Rebuttable Presumption to Preclude a Totality-of-the-Circumstances Analysis of Domicile 20

IV. Constitutional Avoidance 24

Conclusion 26

Certificate of Compliance 27

Certificate of Service 28

Table of Authorities

Cases

Benjamin v. Utah State Tax Comm'n,
2011 UT 14, 250 P.3d 39 12

Ellis-Hall Consultants v. Pub. Serv. Comm'n,
2016 UT 34, 379 P.3d 1270 3

LPI Servs. v. McGee,
2009 UT 41, 215 P.3d 135 17

Myers v. Myers,
2011 UT 65, 266 P.3d 806 11

Nebeker v. Utah State Tax Comm'n,
2001 UT 74, 34 P.3d 180 24

Nevares v. M.L.S.,
2015 UT 34, 345 P.3d 719 25

Orlando Millenia, LC v. United Title Servs. of Utah, Inc.,
2015 UT 55, 355 P.3d 965 10

Penunuri v. Sundance Partners, Ltd.,
2013 UT 22, 301 P.3d 984 ..... 11, 21, 22

Savely v. Utah Highway Patrol,
2018 UT 44, 427 P.3d 1174 ..... 10, 23

Shea v. State Tax Comm'n,
101 Utah 209, 120 P.2d 274 (1941)..... 25

State Tax Comm'n v. Wright,
596 P.2d 634 (Utah 1979)..... 25

State v. Hatch,
342 P.2d 1103 (Utah 1959)..... 24

State v. Sanders,
2019 UT 25, 445 P.3d 453 11

State v. Wadsworth,
2017 UT 20, 393 P.3d 338 22

Summit Operating, LLC v. Utah State Tax Comm'n,
2012 UT 91, 293 P.3d 369 3

Tesla Motors UT, Inc. v. Utah Tax Comm'n,
2017 UT 18, 398 P.3d 55 17

Trapnell & Assocs., LLC v. Legacy Resorts, LLC,
2020 UT 44, 469 P.3d 989 20

Utah Dep't of Transp. v. Carlson,
2014 UT 24, 332 P.3d 900 25

Utah Power & Light Co. v. Public Serv. Comm'n,
152 P.2d 542 (Utah 1944) 23

Constitutional Provisions

Utah Const. art. XIII, § 3(2)(a)(iv) 4

Utah Const. art. XIII, § 6(3)(a) 11

Statutes

Utah Code § 59-1-210(5) 11

Utah Code § 59-1-610(1)(b) 3

Utah Code § 59-2-103(2) (2012) 4, 15

Utah Code § 59-10-103(1)(q) (2012) 5, 11

Utah Code § 59-2-103.5(1) (2012) 15

Utah Code § 59-2-103.5(5) (2012) 14, 19

Utah Code § 59-10-136(1)(a) (2012) 13

Utah Code § 59-10-136(2)(a) (2012) 15, 16, 19

Utah Code § 59-10-136(3)(a) (2012) 22

Regulations

Utah Admin. Code R865-9I-2(1)(a) (2011)..... 11, 12

Utah Admin. Code R884-24P-52 (2011) 12

Other Authorities

2011 Utah Laws 2909 ..... 12, 14, 19

S.B. 13, Income Tax Domicile Amendments,
2019 Gen. Sess. (Utah) 23

Introduction

The Utah Legislature sets the State's tax policy and income tax requirements. This includes defining who is domiciled in Utah for income tax purposes. The Utah State Tax Commission does not make tax policy; its constitutionally mandated role is to administer the tax statutes as written and enacted by the legislature.

Johnathan and Brooke Buck (Taxpayers) assert they were domiciled in Florida during 2012 based on traditional or common law notions of domicile that focus on intent and the totality of the circumstances. But the legislature changed the domicile analysis in enacting section 59-10-136 effective for the 2012 tax year. That statute set up a multi-tiered domicile inquiry that emphasizes certain traditional factors over others and requires differing analyses depending on the domicile factors at issue.

This case focuses on section 136(2)(a), which created a rebuttable presumption that individuals are domiciled in Utah if they "claim[ed]" a residential property tax exemption "in accordance with" the Property Tax Act for their primary residence. Here, it is undisputed that Taxpayers received the residential exemption on their Utah home in 2012 and did not take the actions described in statute to declare that their Utah home no longer qualified as a primary residence to receive the exemption. Receipt of the exemption therefore constituted a claim under the Property Tax Act for their primary residence.

The Commission then determined that Taxpayers could not use a totality of the circumstances analysis to rebut the presumption of domicile. Allowing that would defy section 136's text, structure, and purpose as interpreted by the Commission. Read as a whole, the statute limited Taxpayers' evidence to showing their actions or inactions relating to the residential exemption. Taking only that type of evidence into consideration, the Commission held that Taxpayers had not rebutted the presumption of domicile.

Taxpayers argue that the Commission misinterpreted section 136(2)(a). The statute is not easy to apply in this case. So the Commission will not try to prove that it's right and Taxpayers are wrong or respond to all their and amici's arguments. Instead, the Commission will explain why it ruled the way it did. If the Commission got it wrong, it welcomes the Court's correction and guidance.

Statement of the Issues

1. Did the Commission properly conclude that Taxpayers claimed a residential property exemption on their primary residence under section 59-10-136(2)(a) for 2012?

2. Did the Commission properly conclude that section 59-10-136(2)(a)'s presumption of domicile arising from the residential property tax exemption can be rebutted only by facts directly related to the exemption?

Preservation: The Taxpayers raised, and the Commission addressed, these issues. R. 37-41, 104-16.

Standard of review: The Court reviews for correctness the Commission's statutory interpretations. Utah Code § 59-1-610(1)(b); *Summit Operating, LLC v. Utah State Tax Comm'n*, 2012 UT 91, ¶ 7, 293 P.3d 369; *see also Ellis-Hall Consultants v. Pub. Serv. Comm'n*, 2016 UT 34, ¶ 27, 379 P.3d 1270 (stating that "agency decisions premised on pure questions of law are subject to non-deferential review for correctness").

Statement of the Case

The parties stipulated to the facts, R. 63-74, and the Commission recited them along with other fact findings in its decision. R. 88-96. Taxpayers' brief also rehearses many stipulated facts and some hearing testimony that the Commission does not dispute to the extent those facts are consistent with the stipulation and the Commission's factual findings. Rather than rehearse everything again, the Commission instead provides some brief context while focusing on the relatively few facts that matter under the Commission's interpretation of the relevant laws.

Relevant background

John Buck started playing professional baseball in 1998 and married Brooke a year later. R. 89. His job kept him traveling at least half the year and required substantial time at the ballpark even when he was at home. Tr. 15. Taxpayers bought a home in Bluffdale, Utah in 2007 so Mrs. Buck could be closer to her mom to help while the Bucks' children were young. R. 89; Tr. 15-16.

With limited exceptions, Utah law grants residential property owners a 45% reduction of their property's fair market value for property tax purposes. Utah Const. art. XIII, § 3(2)(a)(iv); Utah Code § 59-2-103(2) (2012). The Taxpayers did not affirmatively request or disclaim this residential property tax exemption for their Bluffdale home but received one in 2008 through at least 2013. R. 89-90. Their property tax notices for these years expressly showed that Salt Lake

County applied the residential exemption to the Bluffdale property, which reduced the amount of property tax the Taxpayers owed. *See, e.g.,* R. Tab 65 (Pet'rs Exh. 40); *see also* R. 64, 89.

In late 2010, Mr. Buck signed a contract to play for the Florida Marlins and the Taxpayers moved to Florida in early 2011 and lived there in 2012. R. 90. Taxpayers kept their Bluffdale home while living in Florida and used it as place to stay when visiting Utah in 2011 and 2012. R. 91. Mr. Buck spent around 11 full or part days, and Mrs. Buck spent around 22 full or part days, in Utah during 2012. R. 90. And when they returned to Utah in 2013, Taxpayers moved into their Bluffdale home. R. 92.

Each year, individuals domiciled in the state must pay a tax on their taxable income. Utah Code §§ 59-10-103(1)(q), -104(1) (2012). Individuals who claim a residential property tax exemption are presumed, subject to rebuttal, to be domiciled in Utah. *Id.* § 59-10-136(2)(a) (2012).

Taxpayers filed a Utah income tax return for 2011 stating that they were part-year residents. R. 94. But the return did not state where else they resided, R. Tab 38 (Pet'rs Exh. 13), and was filed using a New Jersey address that belonged to Taxpayers' accountant. R. 94.[1] Taxpayers did not file a Utah income tax return for 2012 because they thought they lacked the necessary connections to, and had not earned any income in, the state during the year. R. 89, 94. But Taxpayers did

[1] Taxpayers filed 2011 and 2012 income tax returns in four other states and indicated on those returns that they resided in Florida. R. 94.

pay their 2012 property taxes—reduced by the residential exemption—on the Bluffdale home. R. Tab 65 (Pet'rs. Exh. 40); Tr. 26 (Taxpayer stating that "[w]e had a mortgage and they just paid" the property tax).

Audit and Commission proceedings

A few years later, the Tax Commission's Auditing Division sent Taxpayers notice that they owed income tax, penalties, and interest for 2012. R. 11-17, 88. The Auditing Division found that Taxpayers owed state income tax because they were presumed under section 59-10-136(2) to be domiciled in Utah during 2012 based on their Bluffdale home's residential exemption for that year. *See, e.g.,* R. 7-8.

Taxpayers requested Commission redetermination of the Auditing Division's decision. R. 1-2. Taxpayers argued they (1) had never affirmatively claimed a residential property tax exemption for their Bluffdale home to trigger the domicile presumption, and (2) lived in Florida in 2012 and could rebut the presumption of Utah domicile based on the totality of relevant evidence. R. 37-39, 96-98.

The Commission conducted a formal hearing. R. 88. Based on the controlling law and evidence presented, the Commission rejected Taxpayers' two arguments and concluded in a 3-1 decision that Taxpayers were domiciled in Utah in 2012 and owed income tax for that year plus interest. R. 104-18 (the Commission waived penalties).

On the first issue—whether Taxpayers claimed the residential property tax exemption on their primary residence—the Commission held that "Taxpayers are considered to have claimed the residential

exemption on their Utah home for 2012 because they received the exemption for this period" on property located in a county that does not require affirmative requests for the exemption. R. 106-07. And Taxpayers received the exemption as a matter of state law and county ordinance. R. 106-07. The Commission read sections 59-2-103(2) (2012) and -103.5(1) (2012) as automatically adding a claim for the residential "exemption to the bundle of rights [Taxpayers'] acquired with the purchase of residential property" because Salt Lake County—where Taxpayers' home is located—did not require any affirmative request for the exemption. R. 106-07. By contrast, the Commission noted, "receiving the residential exemption without" requesting it "*does not* constitute a claim to the exemption" for property located in a county that requires a property owner to file an application for the exemption. R. 106-07 n.5 (emphasis added).

The Commission then held that the Taxpayers' Bluffdale home was considered their primary residence under sections 136 and 59-2-103.5(5) (2012) because they never notified Salt Lake County, and declared on their state income tax return, that the property no longer qualified for the exemption. R. 107.

On the second issue—whether Taxpayers rebutted the section 136(2)(a) presumption of Utah domicile arising from their residential exemption—the Commission concluded that Taxpayers failed to present relevant evidence rebutting the presumption. R. 108-15. As explained more fully below, the Commission interpreted section

136(2)'s rebuttable presumption as just one part of section 136's overall multi-tiered approach to determining domicile. And the Commission read section 136 as a whole to permit the Taxpayers' totality-of-the-circumstances evidence only in determining domicile under a separate tier—section 136(3)—but not section 136(2). R. 108-12.

Taxpayers timely filed a petition for review in this Court.

Summary of the Argument

The Commission's interpretation of section 59-10-136(2)(a) relies on section 136's text, structure and history.

Section 136 became effective for the 2012 tax year. Before that, the Commission determined an individual's domicile for income tax purposes by examining the totality of the relevant circumstances as outlined in the administrative code. The analysis allowed lots of facts but offered little predictability. So interested persons and legislators worked together on creating a new framework that provided more clarity on an individual's domicile. Section 136 pursued this goal by prioritizing domicile-related facts into three tiers: (1) section 136(1) created per se or categorical domicile factors, (2) section 136(2) created a rebuttable presumption for three different factors, and (3) section 136(3) created a totality-of-the-circumstances approach using other enumerated factors "if" domicile is not established under the first two tiers.

In relevant part, section 136(2)(a) established a rebuttable presumption that an individual is domiciled in Utah if the individual

"claims" the residential property tax exemption "in accordance with" the Property Tax Act for the individual's primary residence. First, the Commission concluded the Taxpayers had "claimed" the residential exemption because the Property Tax Act (and Salt Lake County ordinances) automatically gave Taxpayers' property the exemption without their having to affirmatively request it. This constituted an enduring claim to the exemption until either the Taxpayers or the county relinquished it. Second, the Commission reasoned that the Taxpayers' property was their primary residence because the property had received the residential exemption and Taxpayers had not notified the county, and declared on their state income tax return, that the property no longer qualified for the exemption as a primary residence.

Having claimed the residential exemption, the question became what evidence Taxpayers could offer to rebut the presumption of domicile under section 136(2)(a). Taxpayers argue the Commission can consider any relevant fact. But the Commission concluded that it could consider only the Taxpayers' actions or inactions related to the residential property tax exemption.

This narrower approach preserves section 136's three-tiered structure and legislative intent to move away from constantly using the totality-of-the-circumstances test to determine domicile. Otherwise, all but section 136(1)'s categorical domicile determination would be analyzed using a totality framework.

Section 136(3) also limits the totality-of-evidence test for use "if" the requirements for domicile in section 136(1) and (2) are not met. The Commission understands that to mean that it must first determine that Taxpayers are not domiciled under subsection (1) and (2) before using the totality factors enumerated in subsection (3).

This approach also keeps section 136(3) from becoming superfluous. If the Commission used the subsection (3) factors to rebut a subsection (2) presumption, there would rarely, if ever, be a reason to then do a totality analysis under subsection (3). The inquiry would either be unnecessary or predetermined and redundant.

Finally, the Commission has consistently applied its section 136(2)(a) interpretation since 2012. And the legislature has amended section 136 since then without contravening the Commission's construction. To be sure, the legislature's presumed endorsement of the Commission's position does not bind the Court. But it does help explain why the Commission has taken and maintained its position.

Argument

The Commission recognizes section 136(2) lacks perfect clarity. That's not to criticize the legislature. "'[L]awmaking,'" after all, "'is complex and cumbersome.'" *Savely v. Utah Highway Patrol*, 2018 UT 44, ¶ 27, 427 P.3d 1174 (quoting *Orlando Millenia, LC v. United Title Servs. of Utah, Inc.*, 2015 UT 55, ¶ 56, 355 P.3d 965). Even statutes that start out seemingly clear can become less so over time as they get applied in different and sometimes unforeseen situations. That may be

especially true in complex and fact-specific areas like tax and domicile law.

The Commission takes seriously its charge to administer and supervise state tax law. Utah Const. art. XIII, § 6(3)(a); Utah Code § 59-1-210(5). So when interpreting statutes, the Commission follows the Court's well-marked path to determine the legislature's intent: focusing on the statutory text's ordinary meaning; presuming the legislature used each word advisedly and all omissions are intentional; construing the text in connection with, instead of isolated from, other sections and related statutes to produce a harmonious whole; and giving meaning to all the statute's parts to avoid making any portion superfluous. *State v. Sanders*, 2019 UT 25, ¶¶ 17-18, 445 P.3d 453; *Penunuri v. Sundance Partners, Ltd.*, 2013 UT 22, ¶ 15, 301 P.3d 984. If those textual guidelines lead to a fork in the road, legislative history may offer interpretive guidance. *Myers v. Myers*, 2011 UT 65, ¶ 28, 266 P.3d 806.

As explained below, the Commission's construction relies on section 136's text, structure, and history.

I. Section 136 Significantly Changed Utah Domicile Analysis for Income Tax Purposes

Utah taxes the income of individuals domiciled within its boundaries. Utah Code §§ 59-10-103(1)(q), -104(1) (2012). Historically, the Commission determined an individual's domicile for income tax purposes under an administrative code provision that defined domicile, in part, as one's "permanent home" and the "place to which [one] intends to return after being absent." Utah Admin. Code R865-9I-

2(1)(a) (2011) (Rule 2). This rule emphasized that the domicile inquiry looked at the totality of relevant circumstances rather than any single fact or occurrence. *Id.* R865-9I-2(1)(b). And the rule referred to a non-exhaustive list of factors in another administrative code provision used to determine primary residence for property tax purposes, R884-24P-52, as "determinative of domicile." Utah Admin. Code R865-9I-2(b)(i) (2011); *see also Benjamin v. Utah State Tax Comm'n*, 2011 UT 14, ¶ 22, 250 P.3d 39 (describing domicile test under Rule 2 and referencing Rule 52's "nonexhaustive list of objective factors helpful in determining domicile"). Those factors included a wide variety of domicile-related considerations and allowed the Commission to conduct an open-ended analysis of an individual's specific circumstances. Utah Admin. Code R884-24P-52 (2011) (Rule 52); *see also Benjamin*, 2011 UT 14, ¶¶ 23-24 & n.4 (discussing domicile factors not included on Rule 52's list).

While potentially comprehensive, the totality-of-the-circumstances approach was inherently amorphous and unpredictable. Various interested parties wanted more clarity about who had domicile in the state for income tax purposes. *See, e.g.,* R. Tab 24 (Resp. Exh. 3A) at 1, lines 11-12 (statement during Senate floor debate); R. Tab 25 (Resp. Exh. 3B) at 2, lines 32-33 (statement to Senate Revenue and Taxation Standing Committee); *id.* at 7, lines 206-08.

Section 59-10-136, enacted in 2011 and effective as of January 1, 2012, *see* 2011 Utah Laws 2909, 2913-14, tackled that problem. Backed by the Commission and the Utah Taxpayers Association, among others,

the statute was meant to clarify the domicile analysis by creating some bright-line rules that lead to more predictable determinations. *See, e.g.*, R. Tab 25 at 6-7, 9 (Resp. Exh. 3B) (statements to Senate Revenue and Taxation Standing Committee). Section 136 did so by listing and prioritizing the domicile factors the Commission could consider.

Section 136(1) stated that an individual is domiciled in Utah if the individual or individual's spouse either attends a state institution of higher education as a resident student or has a dependent who attends a public kindergarten, elementary, or secondary school in the state. Utah Code § 59-10-136(1)(a) (2012). Non-custodial parents who are divorced from custodial parents are exempted from this categorical domicile determination. *Id.* § 59-10-136(1)(b) (2012).

Section 136(2) created a rebuttable presumption that an individual is domiciled in the state if the individual or spouse "claims the residential exemption in accordance with" the Property Tax Act for their primary residence, registers to vote in Utah, or asserts residency in Utah on a state income tax return. *Id.* § 59-10-136(2) (2012).

And even if the foregoing tests "are not met for an individual to be considered to have domicile in this state," section 136(3) provides that an individual may still be domiciled in Utah "if" the individual or spouse has a permanent home in the state to which the individual intends to return after an absence and the individual or spouse "has voluntarily fixed" their "habitation in this state . . . with the intent of making a permanent home." *Id.* § 59-10-136(3)(a) (2012). In making

that determination, the Commission must consider the totality of certain "facts and circumstances," some of which are borrowed from, or similar to, Rule 52's list. *Id.*§ 59-10-136(3)(b) (2012).[2]

Overall, section 136 gave certain domicile factors—attending public schools, registering to vote, claiming a residential property tax exemption, or asserting residency for state income tax purposes—much more weight. And it changed and limited the types of facts that could be considered in a totality-of-the-circumstances test.

Notably, in the same bill in which the legislature elevated the residential property tax exemption's importance as a domicile factor, the legislature put the onus on property owners to disclaim the exemption by filing a written statement with the county, and declaring on their income tax return, that the property no longer qualifies for the exemption as a primary residence. *See, e.g.,* Utah Code § 59-2-103.5(5) (2012); 2011 Utah Laws 2909, 2912.

For the most part, section 136 has achieved its purpose to provide more clarity and predictability in domicile determinations. But then there are more difficult cases like the instant one that reveal potential ambiguity in the statute's text.

II. Taxpayers Triggered the Rebuttable Presumption by Claiming the Residential Exemption for their Utah Home

Section 136(2)(a)'s rebuttable presumption is triggered when an individual "claims a residential exemption in accordance with Chapter

[2] Section 136 included other provisions that are not relevant to this case.

2, Property Tax Act, for" the individual's "primary residence." Utah Code § 59-10-136(2)(a) (2012). That raises two issues: (1) did Taxpayers claim the exemption and, if so, (2) was it for their primary residence? Here's why the Commission answered both questions in the affirmative.

A. Taxpayers claimed the residential exemption in accordance with the Property Tax Act

Taxpayers argue they never affirmatively claimed the residential exemption for their Bluffdale home. But that misses part of the analysis. The question is not whether an individual "claims," in some abstract, dictionary sense, a residential exemption. The precise textual issue is whether an individual "claims" the exemption "*in accordance with*" the Property Tax Act. Utah Code § 59-10-136(2)(a) (2012). (emphasis added). And in 2012, the Property Tax Act automatically granted the exemption to "residential property within the state." *Id.* § 59-2-103(2) (2012) (stating that subject to certain limits, as of January 1, 1995, "the fair market value of residential property located within the state shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2"); *see also id.* § 59-2-103(3) – (4) (2012) (stating limits on the residential exemption).

The very next section of the Property Tax Act then delegates authority to the counties, if they choose, to enact ordinances requiring residential property owners to file statements with the county board of equalization to receive the residential exemption. Utah Code § 59-2-103.5(1) (2012). But the counties can only require those statements in

certain situations: (1) the residential property was ineligible for the exemption the year prior; (2) the residential property's ownership changes, or (3) the county determines the property may no longer qualify for the exemption. *Id.* § 59-2-103.5(2)(b) (2012).

Salt Lake County, where Taxpayers' Utah home is located, enacted an exemption application requirement under section 103.5. *See generally* Salt Lake Cty. Ord., Ch. 3.69. But the ordinance requires property owners to request the exemption "only if" the property was ineligible for the exemption the immediately preceding year or the county determines there may be reasons the property no longer qualifies for the exemption. *Id.* § 3.69.020(C); *see also id.* § 3.69.040 ("Owner occupied residential property . . . being used as the primary residence of the occupants where the property is subsequently listed by the county assessor as having a residential exemption constructed after the effective date of this ordinance, shall not be required to file the application required by Section 3.69.020(A)."). Neither of those conditions applied to Taxpayers in 2012, so they did not have to file an application for the residential exemption under Salt Lake County ordinances.

In other words, by owning their qualifying residential property in Salt Lake County, the Taxpayers automatically "claim[ed]" the residential exemption "in accordance with" the Property Tax Act. Utah Code § 59-10-136(2)(a) (2012).[3] This notion of "claim" may differ

[3] Consistent with this position, the Commission has concluded that in a county that requires an exemption application: (1) "receiving the

somewhat from typical dictionary definitions or the term's meaning in other parts of the Tax Code that connote some affirmative action directly requesting a benefit or right. *See, e.g.,* Taxpayers' Br. at 15. But the legislature does not have to use the term consistently with other definitions or statutory usage. *Tesla Motors UT, Inc. v. Utah Tax Comm'n*, 2017 UT 18, ¶ 23, 398 P.3d 55 ("The legislature is undoubtedly empowered to define [a term] in different ways in different statutory schemes."). Here, the legislature tied "claims" to the Property Tax Act's residential exemption scheme, so the Tax Commission was bound to apply that statutory usage regardless of any "preference for linguistic consistency." *Id.*

If the meaning of "claims" seems ambiguous, the Court may look to section 136's legislative history for help. *LPI Servs. v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135. To be sure, no legislator discussed what "claims" specifically means. But some brief comments about the rebuttable presumption suggest that legislators were not fixated on the notion that an individual had to affirmatively make a written request to obtain the residential exemption and trigger the presumption. Instead, legislators said "taking" or "hav[ing]" the residential exemption activated the rebuttable presumption for Utah domicile. *See* R. Tab 24 (Resp. Exh. 3A) at 1, lines 20-22 (Sen. Niederhauser

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residential exemption *after* filing the application also constitutes a claim to the exemption," R. 106 (emphasis added), and (2) "receiving the residential exemption *without* filing an application does not constitute a claim to the exemption," R. 106 n.5 (emphasis added), for section 136(2)(a) purposes.

explaining during Senate floor debate that "the second tier [i.e., section 136(2)] determines if you are taking the primary residence exemption on some property here, [it's] a rebuttable presumption that you are domiciled here. . . ."); R. Tab 24 (Resp. Exh. 3A) at 7, line 171) (Rep. Harper stating in House floor debate that ". . . they have a primary residential exemption . . ."); R. Tab 25 (Resp. Exh. 3B) at 6, lines 195-96 (Sen. Niederhauser explaining to Senate Revenue and Taxation Standing Committee that with the "second tier, there is a rebuttable presumption that an individual is considered to have domicile in this state if they have a residential exemption, on their primary residence"); R. Tab 25 (Resp. Exh. 3B) at 21, lines 644-47 (Sen. Niederhauser stating to the House Revenue and Taxation Standing Committee that the "second tier . . . it's a rebuttable presumption. . . . if you're taking the primary residence exemption on your property tax, meaning that's your primary residence. That . . . is pretty much prim[a] [facie] evidence that you intend to be domiciled in the state of Utah"); *cf.* R. Tab 25 (Resp. Exh. 3B) at 13, lines 388-90 (Sen. Niederhauser stating in Senate Revenue and Taxation Standing Committee that "there is a rebuttable presumption that an individual is considered to have domicile in this state, if that individual or individual's spouse claims a residential exemption . . . for property taxes").

In sum, the Commission reasonably concluded that Taxpayers claimed the residential exemption as provided in the Property Tax Act.

B. The residential exemption applied to Taxpayers' primary residence

To trigger the rebuttable presumption, the Taxpayers have to claim the residential exemption for their "primary residence." Utah Code § 59-10-136(2)(a) (2012). The Commission concluded this second element had been met. R. 107. Reading sections 59-10-136 (2012) and 59-2-103.5(5) (2012) together, the Commission reasoned, showed that a property receiving the residential exemption is automatically considered the primary residence unless the owner notifies the county where the property is located, and declares on the owner's Utah income tax return, that the property no longer qualifies for the exemption.[4] R. 107; *see also* Utah Code § 59-2-103.5(5) (2012) (requiring property owners whose property no longer qualifies for the residential exemption to (1) file a written statement with the county board of equalizations stating the property owner no longer qualifies to receive the exemption for the owner's primary residence, and (2) declare on the property owner's income tax return that the owner no longer qualifies to receive the exemption for the owner's primary residence).[5]

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[4] If an individual takes both steps of notifying the county and declaring on the income tax return that the property does not qualify to receive the residential exemption for a primary residence, the presumption of domicile does not arise under section 136(2)(a) in the first place. And while the presumption arises if the individual does not take both steps required by statute, the presumption may be rebutted by taking one of the two steps as discussed in the next section.

[5] The legislature enacted sections 136 and 103.5(5) as part of the same bill thereby allowing individuals a way to avoid the presumption of domicile altogether by disclaiming the residential exemption. 2011 Utah Laws 2909, 2912-14.

While Taxpayers contest whether they had to disclaim the residential exemption, Taxpayers' Br. at 17-18, they never specifically challenge the Commission's determination that the Bluffdale home was their primary residence for purposes of claiming the exemption and triggering the rebuttable presumption under section 136(2)(a). *See, e.g.,* Taxpayers' Br. at 11-18 (arguing in various ways that they never claimed the exemption). So the Commission will not further address this point. *See, e.g., Trapnell & Assocs., LLC v. Legacy Resorts, LLC,* 2020 UT 44, ¶ 30, 469 P.3d 989 (the Court will "normally consider an issue waived if not raised").

III. The Tax Commission Interprets Section 136(2)'s Rebuttable Presumption to Preclude a Totality-of-the-Circumstances Analysis of Domicile

Having triggered the presumption of domicile, the question becomes whether Taxpayers rebutted it. Section 136(2) does not say what factors may be considered in this analysis. Taxpayers argue the statute permits a totality-of-the-circumstances evidentiary presentation to rebut the domicile presumption. Taxpayers' Br. at 21-26. The Commission reads the rebuttable presumption more narrowly as allowing only evidence about an individual's "actions or inactions related to the" residential property tax exemption. R. 112-13. For example, the Commission has found the presumption rebutted where (1) individuals had received the exemption after asking the county to remove it or disclosed on their income tax return that their property no longer qualified, (2) the home was vacant and listed for sale or rent,

and (3) the home was under initial construction up to the time it received a certificate of occupancy. R. 113-14 (citing Commission orders). And the Commission has left open the possibility in future cases that other "circumstances would be sufficient to rebut" section 136(2)(a)'s presumption. R. 114-15.

The Commission believes its more limited interpretation of section 136(2)(a) better comports with section 136's overall text, structure, and history to produce "a harmonious whole," *Penunuri*, 2013 UT 22, ¶ 15 (emphasis and internal quotation marks omitted), that respects legislative policy choices.

As discussed, section 136 created a three-tiered domicile analysis for different facts—categorical, a rebuttable presumption, and a totality-of-the-circumstances approach limited to certain factors. Utah Code § 59-10-136(1) – (3) (2012). The Commission presumes that the legislature did so advisedly and the omissions were purposeful. *Penunuri*, 2013 UT 22, ¶ 15. That means the Commission cannot inject a totality-of-the-circumstances analysis from section 136(3)—or anywhere else—into the section 136(2) analysis. That would ignore and negate the legislature's presumably intentional omission of all those considerations under section 136(2).

Using a totality-of-the-circumstances analysis to rebut a section 136(2) presumption defies the statute's overall structure and purpose in another way. The legislature designed section 136 to be clear and predictable rather than having to constantly conduct a total-evidence

review for every domicile determination. But that's what would happen under Taxpayers' interpretation. All but the school-attendance based domicile determinations in section 136(1) would be subject to the type of pre-2012 domicile analyses that section 136 was meant to largely avoid.

To ensure the totality analysis remained limited to section 136(3), the legislature placed a condition on its use. The enumerated factors in subsection (3) can be considered "*if* the requirements of Subsection (1) or (2) are not met." Utah Code § 59-10-136(3)(a) (2012) (emphasis added). An "*if* clause expresses a condition." *State v. Wadsworth*, 2017 UT 20, ¶ 5 & n.4, 393 P.3d 338 (citing cases). And that condition in this statute means the Commission must first determine whether Taxpayers are domiciled in Utah under sections 136(1) or (2) before considering any domicile factors listed in section 136(3). In short, the Commission reads section 136(3)'s "if" clause to "mean[] what it says." *Wadsworth*, 2017 UT 20, ¶ 6. Otherwise, "the condition would be eviscerated," *id.* ¶ 7, if the Commission used section 136(3) factors before determining that "the requirements of Subsection (1) or (2) are not met." Utah Code § 59-10-136(3)(a) (2012).

Conducting section 136's three-tiered analysis in the right order—subsections (1) and (2) before (3)—using the right factors also keeps subsection (3) from becoming superfluous. *Penunuri*, 2013 UT 22, ¶ 15. If the Commission used the subsection (3) totality factors for a subsection (2) rebuttable presumption determination, there would

rarely, if ever, be a reason to then conduct an actual subsection (3) analysis. A subsection (3) analysis would be either improper (if the factors failed to rebut the presumption under subsection (2) there would be no need for a subsection (3) inquiry) or redundant (if the factors did rebut the subsection (2) presumption, they'd necessarily weigh against finding domicile under subsection (3)).

Finally, the Commission has consistently applied its interpretation of section 136(2)(a)'s rebuttable presumption since 2012. R. 113-14 (discussing prior Commission decisions applying section 136(2)(a)). And the legislature has subsequently amended section 136 without contravening the Commission's interpretation of section 136(2)(a). *See, e.g.,* S.B. 13, Income Tax Domicile Amendments, lines 384-551, 2019 Gen. Sess. (Utah). Under these circumstances, the Commission assumed that the legislature condoned the Commission's section 136(2)(a) interpretation. *See, e.g., Savely*, 2018 UT 44, ¶ 48 n.7 (stating prior construction canon applies only to statutes that "'have already received authoritative construction by the jurisdiction's court of last resort, or even uniform construction by inferior courts or a *responsible administrative agency*'" (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322 (2012) (emphasis added))); *Utah Power & Light Co. v. Public Serv. Comm'n*, 152 P.2d 542, 557 (Utah 1944) (recognizing principle "that when the legislature re-adopts a statute or act without change after uniform and notorious construction by officers required to administer it the

presumption is that the legislature knew of such construction and adopted it in re-enacting the statute"); *see also State v. Hatch*, 342 P.2d 1103, 1105 (Utah 1959) (noting the legislature is presumed to know "the construction placed upon the language of the act by the Land Board and the State Auditor" and there was never any legislative indication during subsequent "minor alterations" to the statute that the Land Board's interpretation was wrong (internal quotation marks omitted)).

* * *

Taxpayers presented evidence about residing in Florida in 2012. But they did not present adequate evidence about their actions or inactions regarding their residential exemption that rebutted the presumption of domicile under section 136(2)(a). R. 115, 118. Based on its interpretation of that statute, the Commission found that Taxpayers were domiciled in Utah for the 2012 tax year and sustained the Auditing Division's audit determinations. R. 115, 118.

IV. Constitutional Avoidance

Taxpayers have raised constitutional concerns with the Commission's application of section 136(2)'s rebuttable presumption. The Commission believes it has correctly applied the statute as drafted. Generally, the Commission does not consider whether statutes or their particular interpretations are constitutional. *See, e.g., Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶ 15, 34 P.3d 180 (""[I]t is not for the Tax Commission to determine questions of legality or constitutionality

of legislative enactments."'" (quoting *State Tax Comm'n v. Wright*, 596 P.2d 634, 636 (Utah 1979) (quoting *Shea v. State Tax Comm'n,* 101 Utah 209, 120 P.2d 274, 275 (1941))).

The Commission recognizes the Court's authority to adjudicate constitutional questions. If the Court were to determine section 136(2)(a) is ambiguous and Taxpayers' constitutional arguments are serious enough to invoke the constitutional avoidance doctrine, the Commission recognizes that the Court could consider the viability of the Bucks' interpretation or adopt its own interpretation of section 136(2) concerning what evidence may be used to rebut the presumption of domicile. *Nevares v. M.L.S.*, 2015 UT 34, ¶ 38, 345 P.3d 719 ("if there are grave *doubts* about" the constitutionality of one interpretation, "we may reject that construction in favor of a plausible alternative that avoids such doubts" (emphasis added)); *Utah Dep't of Transp. v. Carlson*, 2014 UT 24, ¶ 23, 332 P.3d 900 ("when a court rejects one of two plausible constructions of a statute on the ground that it would *raise* grave doubts as to its constitutionality, it shows proper respect for the legislature, which is assumed to legislate[ ] in the light of constitutional limitations" (emphasis added) (internal quotation marks omitted)).

Conclusion

Over the years, the Commission has in good faith interpreted section 59-10-136(2)(a) based on the Commission's understanding of the statute's text, structure, and history. If the Commission has erred, it welcomes the Court's correction.

Respectfully submitted,

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s/ Stanford Purser

Certificate of Service

I hereby certify that on 12 March 2021 a true, correct and complete copy of the foregoing Brief of Respondent was filed with the Court and served via United States mail or electronic mail as follows:

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