IN THE UTAH SUPREME COURT

JOHNATHAN & BROOKE BUCK, Petitioners, vs. UTAH STATE TAX COMMISSION, Respondent.	**REPLY BRIEF OF PETITIONERS** **Case No. 20200531-SC**

On Petition for Review of Final Decision of the Utah State Tax Commission

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THE TAX COMMISSION'S INTERPRETATION OF THE DOMICILE STATUTE IS BOTH FLAWED AND UNCONSTITUTIONAL

A. The Court should reject the Commission's flawed interpretation, in which even passive, ignorant receipt of a property tax exemption would create a presumption of Utah domicile

Section 59-10-136(2)(a)[1] of the Utah Code ("Section 136(2)") creates a presumption of Utah domicile ("Domicile Presumption") when a property owner "claims" a property tax exemption. It makes sense to presume individuals are domiciled in a place they actively claim as their place of residence. The Commission argues, however, that with this statute the "claiming" is something done passively, even "automatically." Respondent's Brief ("Resp. Br.") at 15, 16. The Court should reject this unusual and unjustified interpretation. The interpretation of Section 136(2) proposed by Petitioners is consistent with the logic and plain meaning of Section 136(2), with related provisions in the Code, and with legislative history. Any ambiguity in the statute should be resolved in Petitioners' favor.

1. The Legislature chose the active word "claims," not the passive word "receives"

As the Commission is quick to point out, we must presume that the Legislature uses each word advisedly. Resp. Br. at 11. By employing the active verb "claims" in Section 136(2), the Legislature signaled that mere passive receipt of a property tax exemption is insufficient to trigger the Domicile Presumption.

[1] All citations are as of 2012.

The Legislature could have chosen a passive word like "receives" if it intended to create a domicile presumption that would apply to any property owner whose property merely *receives* a property tax exemption. But surely the Legislature understood that the mere passive and even unknowing receipt of a property tax exemption does not logically lead to an inference that the property owner is domiciled in Utah. Thus, the Legislature's choice to use the word "claims" instead of "receives" is both logical and consistent with the purpose of the statute. Interpreting the word "claims" to mean nothing more than "receives" would strip the statute of its logical underpinnings.

The Commission essentially concedes that its interpretation of the word "claims" goes against ordinary usage and even against the way that term is used elsewhere in the Property Tax Act. Resp. Br. at 16-17 ("This notion of 'claim' may differ somewhat from typical dictionary definitions or the term's meaning in other parts of the Tax Code . . . . But the legislature does not have to use the term consistently with other definitions or statutory usage."). The Commission seeks to excuse its unusual interpretation because the Legislature is "empowered to define [a term] in different ways in different statutory schemes." Resp. Br. at 17 (quoting *Tesla Motors UT Inc. v. Tax Comm'n*, 2017 UT 18, ¶ 23) (alteration in original). The Legislature did not, however, deem it necessary to define the term "claims" in this statute. So there is no reason to abandon its ordinary meaning for an interpretation that an individual "claims" a thing by merely failing to notice that the government provided it unrequested.

2. The language of the Property Tax Act is consistent with interpreting "claims" to require action by the property owner

The Commission argues that merely "by owning" property in Salt Lake County, the Bucks "automatically 'claim[ed]'" a property tax exemption, and that a failure to disclaim the exemption is the "claiming" intended by the Legislature. Resp. Br. at 14-16. This turns the statute's language on its head.

Petitioners' interpretation of "claims," by contrast, requires no linguistic gymnastics. The Property Tax Act provides a method for counties to require property owners to file a "statement . . . signed by all of the owners . . . certifying that the residential property is residential property." UCA § 59-2-103.5(1). If a county required such a statement, and if a property owner provided it, there would be a "claim," both in the ordinary understanding of the word and as used throughout the Property Tax Act. But there was no such requirement or statement in this case.

In Section 59-2-103.5, the Legislature provided two things to property owners: (1) a way to affirmatively claim an exemption, and (2) a way to notify a county that a property does not qualify for the exemption. The Legislature made clear that it is the *claiming* of an exemption (not merely receiving one through ignorance) that creates a domicile presumption.

The Commission's interpretation would have the Court ignore the method of claiming set forth in the statute and instead conclude that by "claims" the Legislature meant to include a person who merely does nothing, or "fails to refuse" a thing he is

unaware of. If "claims" is defined to include "doing nothing," then it has essentially been read out of the statute.

3. The legislative history is consistent with an interpretation of "claims" that requires action

The Commission cites legislative history in which legislators variously describe the presumption as taking effect when owners claim the exemption, take the exemption, or have an exemption. Resp. Br. at 17-18. The words used most – "taking" and "claims" – are active and support the idea that legislators envisioned property owners taking action to obtain an exemption. The Court should hesitate to override the ordinary meaning of "claims" actually used in the statute because once or twice a legislator who was not focused on the issue presented in this case used a slightly different word – "have" – when discussing the provision. At most, the legislative history might illustrate ambiguity as to what legislators intended. But it certainly does not unambiguously demonstrate that the Legislature intended the word "claims" to include doing nothing.

4. In the face of ambiguity, the Court should adopt the reasonable interpretation that favors taxpayers

The Commission suggests that "section 136(2) lacks perfect clarity" and that this case "reveal[s] potential ambiguity in the statute's text." Resp. Br. at 10. We submit that Section 136(2) is clear in that it requires an active claiming of the tax exemption. Nevertheless, to the extent there is ambiguity, it should be resolved in favor of the many taxpayers who would be ensnared in the Commission's analysis. UCA § 59-1-1417(2) ("[A] court considering a case involving [a] tax, fee, or charge shall . . . construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer."). Adopting the

reasonable interpretation put forward by Petitioners here does not prejudice the State, which still can engage in the Tier 3 analysis to conclude, where appropriate, that an individual is domiciled in Utah. But as can be seen from the facts of this case (and others discussed by the *amici curiae*), the Commission's interpretation severely prejudices individuals who are not actually domiciled in Utah but own property that happens to receive a property tax exemption.

For all of these reasons, the Court should reject the Commission's interpretation that merely owning property constitutes "claiming" an exemption for purposes of UCA § 59-2-136(2).

B. Due to a flawed interpretation of law, the Commission erred in concluding the Bucks did not rebut the Domicile Presumption

The statute creates a *rebuttable* presumption of domicile. Petitioners' opening brief (at 22) discusses this Court's explanation that a presumption ordinarily establishes the burden of proof and gives one party an opening advantage that can be lost upon a showing of contrary facts. The Commission's brief does not discuss these authorities.

Rather, the Commission defends its interpretation of the statute by reiterating the position set forth in the Commission's decision – namely, that the three-tiered structure of the statute requires the Commission to disallow consideration of virtually all evidence proffered to rebut the "rebuttable" presumption. Petitioners' opening brief (at 21-27) generally explains why the Commission's argument fails, but we will briefly revisit the issues touched on in the Commission's brief:

The Commission worries that allowing a factual rebuttal of the Domicile Presumption (1) would "ignore and negate" the Legislature's three-tiered structure (Resp. Br. at 21); (2) would read "if" out of the statute (*id*. at 22); (3) would make Subsection 136(3) "superfluous." (*id*.); (4) would frustrate the legislature's desire to make domicile decisions "clear and predictable" (*id*. at 21); and (5) would override the Legislature's supposed ratification of the Commission's position.

1. The *Commission's* statutory interpretation negates the Legislature's three-tiered structure

The three-tiered structure of Section 136 is supposed to have only one "bright line" rule – and the rebuttable presumption was not intended to be a bright line. *See* Record Tab 24 at 4 l.95-96 (Senator Niederhauser: "[T]he bill creates a 3 tiered system, one with the bright line; one with the rebuttable presumption; and then a list of other factors . . . ."). The Commission's interpretation of "rebuttable" is so narrow that it merges Tier 2 with the unrebuttable bright line in Tier 1, thus collapsing the three-tiered structure. Taxpayers facing an allegation that the Tier 1 presumption applies could submit proof that their children are not actually attending public school in Utah, and this would, in a sense, rebut the existence of a Tier 1 presumption. This type of rebuttal matches the extremely limited types of evidence the Commission accepts as rebutting Tier 2 (such as proof that a taxpayer registered to vote in another state or actually sought to revoke the residential exemption). Thus, the Commission currently treats Tier 2 essentially the same as Tier 1. Petitioners' interpretation, by contrast, preserves the three tiers by having one bright line tier, one tier of presumptions that are "rebuttable" in the

commonly accepted jurisprudential meaning of that word, and a third tier that applies the Tier 3 factors with no factual presumption in effect.

2. The *Commission's* statutory interpretation reads a word out of the statute

The Commission's interpretation of Section 136 reads "rebuttable" out of Tier 2 in an unnecessary defense of the word "if" in Tier 3. The word "if" merely instructs what to do if Tier 1 and 2 do not apply, it need not restrict what facts may be considered by the factfinder when a Tier 2 presumption is being rebutted.

The Commission claims it "cannot inject a totality-of-the-circumstances analysis from section 136(3) – or anywhere else – into the section 136(2) analysis." Resp. Br. at 21. This misses the forest for the trees. The statute itself injects factual analysis into section 136(2) by using the word "rebuttable." The Legislature presumably felt no need to pedantically define the word "rebuttable" because the default rule is set forth in the Utah Rules of Evidence, and the concept has been thoroughly explained both by this Court and the U.S. Supreme Court. Utah R. Evid. 301(a) ("[U]nless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of proving that the nonexistence of the presumed fact is more probable than its existence."); *Heiner v. Donnan*, 285 U.S. 312, 329 (1932) ("rebuttable presumption clearly is a rule of evidence which has the effect of shifting the burden of proof"); *Davis v. Provo City Corp.*, 2008 UT 59, ¶ 22 ("Most often, presumptions operate to give one party an opening advantage as to the burden of proof, an advantage that can be lost by a showing of contrary facts by the opposing side."); *Massey v. Griffiths*, 2007 UT 10 ¶

11("The main purpose of presumptions is to shift the burden either of producing evidence or of persuasion . . . .").

Thus, the Commission's proposed interpretation of Section 136(2) erases the word "rebuttable" from the statute, unnecessarily transforming a rebuttable presumption into a *fait accompli*.

3. Tier 3 will not become superfluous

In many cases where the Tier 2 Domicile Presumption has been persuasively rebutted, it may be that a Tier 3 analysis will seem like a mere formality. But not every case involves a Tier 2 issue. In such cases Tier 3 applies, so Tier 3 is in no danger of becoming superfluous.

4. The Legislature would not (and indeed cannot) favor predictable results over accurate results

It would be a disservice to the Legislature to suggest it was more concerned with predictability and brevity than accuracy in determining a person's domicile. The Legislature surely foresaw that a "rebuttable" presumption would lead to a presentation of facts in cases where an individual believed the presumption to be incorrect. Moreover, as we observed in our opening brief (at 28):

> [T]he Constitution recognizes higher values than speed and efficiency. The State's interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts on which the State's objective is premised.

Vlandis v. Kline, 412 U.S. 441, 451 (1973) (citation and quotation marks omitted). We should assume the Legislature intended for the statute to be Constitutional and did not

"attempt, by legislative fiat, to enact into existence a fact which . . . does not, and cannot be made to, exist in actuality." *Heiner*, 285 U.S. at 329. By using the word "rebuttable," the Legislature intended to allow for a factual rebuttal of the Domicile Presumption.

5. The Legislature has not ratified the Commission's interpretation

The Commission suggests that "the legislature condoned the Commission's section 136(2)(a) interpretation" when it made minor changes to section 136 without contravening the Commission's interpretation. Resp. Br. at 23.

As noted in the Brief of *Amici Curiae* Wayne L. Niederhauser and M. Keith Prescott (at 8), the Commission's first case involving the provision at issue was decided in late 2015. The Bucks filed their petition for redetermination in April 2018, less than 3 years later. R.1. No Utah court has passed upon the issue. This case is not similar to the situation described in *Savely* where the statute had "already received authoritative construction by the jurisdiction's court of last resort." *Savely v. Utah Highway Patrol*, 2018 UT 44 ¶ 48 n.7.

Nor has the statute in question been around long enough to have been uniformly interpreted to the degree that the Legislature (by making relatively minor intervening legislative changes) could be said to have ratified the Commission's construction. In *Utah Power & Light Co. V. Public Service Commission*, this Court considered the possibility of uniform interpretation by the Public Utility Commission from 1917 through 1944, a span of 27 years. 152 P.2d 542, 557 (Utah 1944). In *State v. Hatch*, this Court examined a State Land Board interpretation that had been in practice "since statehood." 342 P.2d 1103, 1105 (Utah 1959).

Bestowing deference on a three-year-old Commission interpretation that has never been reviewed by a Utah court is unwarranted. Such deference would create an alarming precedent of virtually wiping from existence UCA § 59-1-610(1)(b), which instructs the reviewing court to "grant the commission *no* deference concerning its conclusions of law." (emphasis added).

6. Conclusion regarding the rebuttable presumption

For the reasons set forth above, the Commission's interpretation does not preserve the statute's structure, language, and intent. To the contrary, the Commission's interpretation throws out the three-tiered statutory structure, erases "rebuttable" from the statute, and assumes the Legislature is uninterested in the truth. The Commission's interpretation twists the statute into something that few, if any, outside the walls of the Tax Commission would recognize as a "rebuttable" presumption.

Further, for the reasons set forth in Part A.4, to the extent there is any ambiguity in what the Legislature intended with respect to the rebuttable presumption, such ambiguity should be interpreted in favor of taxpayers generally and Petitioners specifically. It does not prejudice the State to allow individuals to prove by a preponderance of the evidence that they are domiciled outside Utah.

C. The Domicile Presumption, as interpreted and applied by the Commission, is unconstitutional

Petitioners' opening brief (at 27-30) explains why the Commission's interpretation violates well-established constitutional principles. Similar arguments were presented by the *amici curiae*. A reply to these constitutional concerns is conspicuously absent from

the Commission's brief. Indeed, the Commission's brief fails to even assert that the Commission's interpretation is constitutional.

IV. CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the Commission.

V. CERTIFICATE OF COMPLIANCE

1) I hereby certify that this brief complies with the word limit prescribed by Utah R. App. P. 24(g), in that it contains 3,344 words, excluding the parts of the brief exempted by Rule 24(g)(2). In addition, pursuant to Rule 24(a)(11)(A), the word processing system used to prepare the brief (Microsoft Word) has been relied upon to determine the word count.

2) I hereby certify that this brief complies with Utah R. App. P. 21(h) governing public and private records.

DATED this 11th day of May, 2021.

RAY QUINNEY & NEBEKER P.C.

/s/ Samuel A. Lambert

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2021, a true and correct copy of this **REPLY BRIEF OF PETITIONERS JOHNATHAN & BROOKE BUCK** was delivered via email to:

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