FILED
UTAH APPELLATE COURTS
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**IN THE UTAH SUPREME COURT**

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

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

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## I. LIST OF PARTIES

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## IV. INTRODUCTION

By a series of unfortunate interpretations, the Utah State Tax Commission ("**Commission**") seeks here to tax the 2012 non-Utah income of non-Utahns. The stipulated facts show that in 2012 Johnathan and Brooke Buck were domiciled in Florida and had no Utah-source income. They owned a house in Utah, to which Salt Lake County applied a primary-residence property tax exemption, though the Bucks took no action to request such an exemption. The Commission concluded that merely owning property in Salt Lake constitutes "claiming" a property tax exemption, and thus the Bucks were deemed to have claimed the exemption. This purported "claim" triggered a rebuttable statutory presumption that the Bucks were domiciled in Utah. Then, based on a questionable and unconstitutional interpretation of the statute, the Commission refused to consider any evidence that the Bucks were actually domiciled in Florida. By refusing to provide the Bucks a reasonable opportunity to rebut the presumption of Utah domicile, the Commission both thwarted legislative intent and denied the Bucks due process. The Bucks convincingly demonstrated they were domiciled in Florida, and the decision should be reversed.

## V. STATEMENT OF ISSUES FOR REVIEW

1. Did the Commission err in its interpretation of Utah Code Ann. § 59-10-136(2) when it held that merely owning residential property in certain counties is sufficient to constitute an individual "claiming" a residential property tax exemption?

Taxpayer preserved this issue below during the formal hearing. Hearing Transcript ("**Tr.**") at 43-47. The Court grants no deference to the Commission's

conclusions of law, applying a correction of error standard. Utah Code Ann. § 59-1-610(1)(b); *Mandell v. Auditing Division*, 2008 UT 34, 186 P.3d 335, 339 (Utah 2008).

2. Did the Commission err in holding that the language of Utah Code Ann. § 59-10-136 bars virtually all factual evidence from the Commission's consideration when an individual is rebutting the presumption of Utah domicile created by Utah Code Ann. § 59-10-136(2)?

Taxpayer preserved this issue below during the formal hearing. Tr. at 52-61. The Court grants no deference to the Commission's conclusions of law, applying a correction of error standard. Utah Code Ann. § 59-1-610(1)(b); *Mandell*, 186 P.3d at 339.

3. Does the rebuttable presumption of Utah domicile created by Utah Code Ann. § 59-10-136(2), as interpreted and applied by the Commission, unconstitutionally deprive individuals of due process and other Constitutional rights?

Taxpayer preserved this issue below during the formal hearing. Tr. at 61-67. The Court grants no deference to the Commission's conclusions of law, applying a correction of error standard. Utah Code Ann. § 59-1-610(1)(b); *Mandell*, 186 P.3d at 339.

## VI. STATEMENT OF THE CASE

### A. Statement of Facts

The facts were largely stipulated by the parties, R. 63-74, and adopted by the Commission, R. 88-96.

#### 1. Background and Home Ownership

Johnathan R. Buck and Brooke L. Buck (individually "**John**" and "**Brooke**," collectively, the "**Bucks**") married in 1999. John was a professional baseball player. R.

89 ¶¶ 6-7. Most professional baseball teams do spring training in Arizona or Florida, so those are attractive locations for players and their families to live. Tr. 14:20-15:7; 18:20-25. In 2004, John was traded to the Kansas City Royals, which conducts spring training in Arizona. John and Brooke purchased their first home in Arizona in 2004. R. 89 ¶¶ 8-10. In 2007, the Bucks purchased a property ("**Bluffdale House**") in Bluffdale, Utah. R. 89 ¶ 11. Brooke was pregnant with twins and wanted a place near her mom, but she didn't plan on the Bluffdale House being a permanent home. Tr. at 15:8-16:5.

The Bucks took no actions to request a property tax exemption on the Bluffdale House, but the house received a residential property tax exemption in 2008 and each year thereafter. R. 89-90 ¶¶ 12-13. The Bucks were unaware the Bluffdale House received an exemption. Tr. 26:13 – 25, 79:11 – 80:14. Salt Lake County never asked the Bucks whether the Bluffdale House was their primary residence, never followed statutory procedures to request that the Bucks file a statement regarding residency, and after the Bucks moved to Florida never provided a statutory form to the Bucks on which they might have reported that the Bluffdale House was not their primary residence. Tr. 27:1-7. *See* UCA § 59-2-103.5(1)(a), (5)(a)(i).

In November 2010, John agreed to play for the Florida Marlins, and the Bucks moved to Florida in February 2011. R. 90 ¶¶ 15-16. On March 17, 2011, the Bucks made an offer on a Florida home for $657,500. The purchase fell through when the sellers refused to make repairs. The Bucks then leased a home in Davie Florida from April 2011 through March 2012. In December 2011 the Bucks executed a contract to lease a home in Plantation Florida from February 2012 through January 2013 and moved

into that home. The Bucks had an option to purchase the home for $1,550,000. R. 90 ¶¶ 17-21.

John spent approximately 11 full or partial days and Brooke spent approximately 22 full or partial days in Utah in 2012 visiting relatives. R. 90 ¶¶ 17-23. Much of this time was spent in St. George. Tr. at 28:7-19.

Property values in Salt Lake County dropped significantly from 2008 to 2012. R. 91 ¶¶ 24-28. The Bluffdale House's market value was lower in 2012 than in any prior year of the Bucks' ownership. R. 89 ¶ 12. The Bucks did not attempt to sell the Bluffdale Home in 2011 or 2012, as they found the Utah housing market unfavorable and they did not have a financial need to sell. R. 91 ¶ 29.

**2. Florida Driver's Licenses, Vehicle & Voter Registrations, and Mail**

Brooke and John obtained Florida driver's licenses on September 30, 2011. The vehicles used by the Bucks were registered in Florida. R. 93 ¶¶ 39-43. They registered to vote in Florida on September 30, 2011 and remained registered to vote in Florida in 2012. R. 92 ¶¶ 35-36. The Bucks received important mail in Florida. R. 93 ¶ 45.

**3. Tax Filings**

The Bucks filed a Utah Form TC-40 for 2011 and indicated that they were part-year residents of Utah in 2011. The Bucks filed 2011 tax returns in California, Missouri, Ohio, and Wisconsin and indicated on each return that Florida was their state of residence. The Bucks filed 2012 tax returns in California, Missouri, Ohio, and Wisconsin and indicated on these returns that Florida was their state of residence or domicile. R. 94

¶¶ 46-48; R. 69 ¶ 36. The Bucks' tax returns for all relevant periods were filed using their accountant's address in New Jersey. R. 94 ¶ 51.

The Bucks filed no Utah income tax return for 2012, believing that there were not sufficient ties to Utah to require a return. R. 89 ¶ 4. The Bucks had no Utah-source income in 2012. R. 94 ¶ 50.

**4. Schooling and Care of Buck Children in Florida**

The Bucks took their two 3-year-old children with them to Florida. One child had a severe developmental delay. One significant reason the Bucks decided to move to Florida was to have access to superior doctors and education programs for this child. The child was evaluated in Florida by a board-certified behavior analyst, worked with a doctor at Miami Children's Hospital, attended an Early Steps Program at the Children's Diagnostic & Treatment Center in Fort Lauderdale, Florida, and was enrolled in an early intervention preschool program in Weston, Florida. He also had an individualized education program in place in Florida. Both Buck children attended schools in Florida and participated in youth karate and soccer in Florida. R. 94-95 ¶¶ 52-64.

**5. Licenses, Memberships, and Social Participation in Florida**

The Bucks joined the YMCA in Weston Florida in June 2011 and were members of a gym in Weston Florida in 2011 and 2012. In 2011, John became involved in local organizations, including as a volunteer with Camp Shriver in Miami, a camp associated with Special Olympics Miami Dade County. In January 2012 the Bucks participated in the Dan Marino Walk About Autism event in Florida. R. 95-96 ¶¶ 65-68.

The Bucks were members of a Florida church congregation. Brooke volunteered to teach children's classes at church. Brooke was the room mom for classes at the children's schools. The Bucks became the poster family for public service messages in Florida urging pet adoption. Brooke was a leader for the Pets Trust Initiative campaign to reduce killing animals in Miami-Dade County. R. 96 ¶¶ 69-71, 75-76. The Bucks had friends they considered family members living in Florida. Tr. 17:24 – 18:6.

The Bucks received their routine medical care in Florida. They took their pets to a Florida veterinarian. R. 95-96 ¶¶ 59, 72. In 2012 John obtained a Utah nonresident hunting license. He also went hunting in Texas in 2012. R. 96 ¶¶ 69-71, 73-74.

### B. Procedural History

On April 9, 2018, the Auditing Division concluded that the Bucks were domiciled in Utah for 2012, and on April 30, 2018 the Bucks filed a Petition for Redetermination to the Commission. R. 1. Following a Formal Hearing on August 21, 2019, the Commission on June 9, 2020 issued its Findings of Fact, Conclusions of Law, and Final Decision. R. 88-127. On July 6, 2020 Taxpayer filed a Petition for Review.

### C. Order of the Tax Commission Under Review

The Commission's decision about whether Utah could tax the Bucks' non-Utah 2012 income rested on legal interpretations of Utah's domicile statute, UCA § 59-10-136.

First, the Commission concluded that "simply owning a residential property" in certain counties in Utah "generally asserts an enduring claim to the residential [property tax] exemption." R. 106. Thus, although the Bucks "took no action to request a residential property tax exemption," R. 90 ¶ 13, the Commission concluded that the

Bucks through inaction "claimed" an exemption and that the house they owned in Salt Lake County was "considered to be their 'primary residence' during the 2012 tax year regardless of whether they considered their home in Florida to be their 'primary residence' during this period," R. 107.

The Commission's conclusion that the Bucks' ownership constituted a claim for property tax exemption triggered a statutory "rebuttable presumption" (the "**Domicile Presumption**") that the Bucks were domiciled in Utah in 2012. The parties stipulated to facts showing that the Buck family resided, worked, attended school, voted, etc. in Florida in 2012. But the Commission, based on its interpretation of the statute, refused to consider the facts presented by the Bucks and concluded that the Bucks therefore had failed to rebut the presumption of Utah domicile. The fact that the Buck children attended public school in Florida was determined irrelevant because "the Legislature did not enact" a requirement for the Commission to consider that factor. R. 105. Where the Legislature did list a set of factors to consider (in UCA § 59-10-136(3)), the Commission concluded that the statute barred the Commission from considering those factors when an individual is rebutting the Domicile Presumption. The Commission felt it "would clearly frustrate the plain meaning" of the statute to allow the presumption to be rebutted by the same factors that apply in cases where there is no presumption. R. 109. Thus, concluded the Commission, an individual "might be considered to be domiciled in Utah, regardless of whether that individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test." R. 110-11.

Having concluded that the Bucks failed to rebut the Domicile Presumption, the Commission held that the Bucks' income, all earned outside Utah, was taxable in Utah.

Commissioner Walters, who presided at the formal hearing, dissented. He rejected the majority's decision to limit the range of facts that the Commission could consider in rebuttal of the Domicile Presumption: "Rebutting presumptions created under Subsection 59-10-136(2) must involve weighing all of the evidence from factors listed in Section 59-10-136 and potentially other factors presented by taxpayers," R. 122, because to do otherwise "denies the taxpayers a fair consideration of the preponderance of the evidence," R. 121.

Rejecting the Commission's conclusion that consideration of the domicile factors in the statute "would discount or render meaningless" the Domicile Presumption, R. 121, Commissioner Walters explained, "the plain language of the statute does not preclude their inclusion in a rebuttal of any presumption," R. 124.

Commissioner Walters would have the Commission review "the totality of the evidence." R. 122. He found it relevant that the Buck children attended schools in Florida, because such attendance in Utah can conclusively determine Utah domicile: "If school enrollment absolutely establishes Utah domicile, [enrollment] in other states must be considered as evidence countering any presumption of domicile." R. 122. Similarly, as voter registration in Utah creates a presumption of Utah domicile, Commissioner Walters concluded that registering in another state "is relevant evidence that would tend to make domicile outside of Utah more probable than not, and would contribute to a rebuttal of the presumption of domicile in Utah." R. 123.

Commissioner Walters concluded that "of the five factors the Legislature judged to be either determinative or to create a presumption of domicile" three support Florida domicile while only the property tax exemption supports Utah domicile. R. 123. Further, "each of the [twelve] factors listed in [Subsection 3 of the domicile statute] either support domicile in Florida or are not relevant." R. 124. Thus, "the preponderance of the evidence . . . supports the [Bucks]' argument that they were domiciled in Florida, and the Division's audit assessment should be overturned." R. 125.

## VII. SUMMARY OF ARGUMENT

At issue here is how to interpret and apply Section 59-10-136 of the Utah Code ("**UCA**"), which creates a rebuttable presumption that an individual is domiciled in Utah (and thus subject to Utah income tax) if that individual claims a property tax exemption for residential property in Utah used as a primary residence.

The Tax Commission's interpretation of the domicile statute is flawed in two major ways. First, the Commission concluded that merely owning property in certain counties is sufficient and equivalent to claiming a property tax exemption. Second, the Commission concluded that it *may not consider* the types of factual evidence traditionally used to evaluate domicile (such as place of residence, driver's license, voter registration, place of work, location of children's school, and the like) when an individual rebuts the Domicile Presumption. Thus, as interpreted by the Commission, the Domicile Presumption is invoked by the thinnest of conditions and cannot be rebutted by the thickest sheaf of evidence.

A reasonable interpretation of the Domicile Presumption would create a presumption of Utah domicile only for individuals who actually use the process established by statute (or take some other positive action) to affirmatively *claim* a residential property tax exemption. Moreover, as the statute creates a *rebuttable* presumption of domicile, a reasonable interpretation would require (rather than forbid) the Commission's consideration of all relevant factual evidence during such a rebuttal.

Furthermore, the Commission's interpretation denies due process of law to nonresidents of Utah who happen to own residential property in Utah, because it forbids the Commission from considering evidence of actual domicile in rebuttal of the Domicile Presumption. The Commission's interpretation is incapable of distinguishing between a person actually domiciled in Utah and a person domiciled outside Utah who happens to own a residential property in Utah. As such, it is arbitrary, capricious, and unconstitutional.

The Commission's unnatural, inequitable, and unconstitutional interpretation of the domicile statute led the Commission to the counterfactual conclusion that the Bucks were domiciled in Utah in 2012. This conclusion should be reversed.

## VIII. ARGUMENT

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

### A. Introduction to Utah Income Tax and Residential Property Tax Exemption

#### 1. Generally

Utah taxes the income of Utah residents, which for 2012 includes persons domiciled in Utah and those who spend 183 or more days in Utah. UCA § 59-10-103(1)(q)(i), 104 (1)[1]. The income of nonresidents is not and may not be taxed by Utah unless the income is from a Utah source. UCA § 59-10-116, 117; *Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 280-81 (1932); *Shaffer v. Carter*, 252 U.S. 37, 52 (1920). It is undisputed that in 2012 Johnathan and Brooke Buck spent about 2-3 weeks in Utah and had no Utah source income. R. 90 ¶ 23, R. 94 ¶ 50. Their income is taxable in Utah in 2012 only if they were domiciled in Utah. A person has only one domicile. *See Martinez v. Bynum*, 461 U.S. 321, 340 (1983) (Marshall, J. dissenting); Restatement (Second) of Conflict of Laws § 11(2) (1971).

#### 2. The Domicile Statute

Section 59-10-136 was enacted in 2011 and became effective January 1, 2012. 2011 Laws of Utah Ch. 410. Subsection 1, which is not directly at issue here, provides that an individual is domiciled in Utah if a dependent attends a Utah public school. UCA

[1] All references to the Utah Code are as in effect in 2012, unless otherwise noted. The 183-day rule has been repealed and under current law only domicile makes an individual subject to Utah income tax. *See* UCA 59-10-103(q) (2020) (definition of "Resident Individual").

§ 59-10-136(1). Subsection 2 creates a presumption that an individual is domiciled in Utah (the "**Domicile Presumption**") if the individual "claims" a residential property tax exemption[2]:

> There is a rebuttable presumption that an individual is considered to have domicile in this state if . . . 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.

UCA § 59-10-136(2).

Subsection 3 provides that "if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state," then the person is considered domiciled in Utah if they have fixed their habitation in Utah and intend to make it their permanent home. UCA §59-10-136(3)(a). This determination "shall be based on the preponderance of the evidence, taking into consideration the totality of the following facts and circumstances." UCA § 59-10-136(3)(b). What follows is a list of twelve domicile factors traditionally used in all variety of cases in which a person's domicile and/or residency is in question, including: driver's license; whether a dependent is enrolled in a Utah public college as a resident; nature and quality of living accommodations in Utah verses elsewhere; presence of dependents in Utah; location where income is earned; state of vehicle registrations; state of membership in churches, clubs, and organizations; use of address for mail, official publications, and tax returns; and asserted residency in official filings and licenses. *Id.*; *see also, e.g., Frame v. Residency Appeals Committee*, 675 P.2d 1157, 1161-62 & n.4 (Utah 1983) ("The

[2] A similar presumption, not at issue here, applies to those registered to vote in Utah.

evidence of permanent domicile may include evidence of any of the several factors . . . which are typically utilized in determining domiciliary status" including "the purchase of property; acceptance of non-temporary employment; establishment of banking relationships; qualification for Utah driver's license; registration of a motor vehicle; registration to vote; membership and participation in off-campus political, social, religious, fraternal and civic associations . . . ."); Utah Admin. Code R884-24P-52(5) (2011) (listing domicile factors used prior to 2012).

### 3. The Residential Property Tax Exemption

For property tax purposes the value of property used as a primary residence in Utah "shall be reduced by 45%." UCA § 59-2-103(2). A section of the Code entitled "Procedures to obtain an exemption for residential property" provides that a county may require an owner to file a form certifying that property is a primary residence. UCA § 59-2-103.5(1). Otherwise, the county "shall allow a residential exemption for residential property." UCA § 59-2-103.5(3).

A provision that came into effect on January 1, 2012, after the Bucks had already moved to Florida, provides that an individual should, "on a form provided by the county," [3] notify the county if a property no longer qualifies for an exemption and should declare the same on their Utah income tax return. UCA § 59-2-103.5(5). Unlike other property tax provisions, e.g., UCA § 59-2-307 (setting forth monetary penalty for failure

[3] As explained in Part 1 of the Statement of Facts, no such form was provided to the Bucks. *See* Tr. 27:1-7.

to make statement requested by a county assessor), Section 59-2-103.5(5) sets forth no clear consequence for a failure to take these steps.

#### 4. The Tax Exemption and Domicile Presumption in Combination

The legislature crafted the Domicile Presumption and the residential property tax exemption to work in tandem in a way that can be equitable, reasonable, and constitutional. If individuals for their personal benefit formally claim that they live in Utah (e.g., avow Utah residence to claim a property tax exemption, register to vote, or pay in-state tuition), it is reasonable to create a legal presumption for income tax purposes that the individuals are domiciled in Utah. But personal circumstances change and general rules don't fit every situation. So even where it may be reasonable to make a presumption, that presumption may turn out to be wrong in a particular case. Thus, the legislature provided that the Domicile Presumption is rebuttable. An individual is given due process – a chance to demonstrate that the presumed fact is not true. Unfortunately, the Commission rejected a reasonable statutory interpretation and frustrated the Legislature's intent – by making it easier to invoke the presumption than the Legislature intended and more difficult to rebut the presumption than the Legislature intended.

### B. Due to a Flawed Interpretation of Law, the Commission Erred In Concluding the Bucks "Claimed" a Property Tax Exemption

The Commission erred in interpreting the statute in a way that would treat the Bucks as having claimed a property tax exemption. The Domicile Presumption is applicable only where an individual "claims a residential exemption in accordance with Chapter 2, Property Tax Act." UCA § 59-10-136(2)(a). The Bucks did not claim Utah as

their state of residence or domicile for 2012, nor did they ever take any step to seek or claim a residential property tax exemption. Accordingly, they are not among the class of individuals for whom the legislature created the Domicile Presumption.

### 1. The Statute Requires an Act: "Claiming" an Exemption

The Property Tax Act, in 2012 and to this day, has generally provided that to "claim" something under the statute, a statement, form, or application must be filed. *See, e.g.*, UCA § 59-2-1202(1)(a) ("'Claimant' means a homeowner or renter who: (i) has filed a claim . . ."); UCA § 59-2-402(5) ("If a claim for rebate or adjustments is filed with the county auditor . . ."); UCA § 59-2-1904(3) (2020) ("a veteran claimant shall . . . file an application for an exemption"); Utah Admin. Code R. 884-24P-35(1) ("The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption.")

Against this backdrop of statutory usage of the word "claim," the Legislature created the Domicile Presumption, which applies when an owner "claims" an exemption – not merely when a property "receives" an exemption. The Domicile Presumption makes sense only in the context of a property owner filing a claim, because in filing a claim, the owners are making an affirmative statement about their primary residence. It is reasonable to presume individuals are domiciled in a place they have *claimed* as their primary residence. The same presumption is not reasonable where a county has merely assumed a property is someone's primary residence.

The Legislature chose the word "claims" knowing that the statute provides a way for an individual to make such a claim. Section 103.5 of the Property Tax Act sets forth

"procedures to obtain an exemption for residential property." UCA § 59-2-103.5 (heading). The statute allows counties to require owners to "file with the county board of equalization a statement . . . on a form prescribed" by the Commission in order to obtain a residential property tax exemption. *Id*. § 59-2-103.5(1). Filing such a form is what can reasonably be interpreted as making a "claim" for a residential exemption.

**2. The Bucks Made No Claim**

The Bucks took no action to claim a property tax exemption. R. 90 ¶13. Salt Lake County never asked the Bucks whether the Bluffdale House was their primary residence (or anyone else's) and never requested that the Bucks file a statement to that effect. Tr. 27:1-7. Property tax on the Bluffdale House was paid by the Bucks' mortgage lender, and the Bucks were unaware the Bluffdale House received an exemption. Tr. 26:13 – 25, 79:11 – 80:14.

**3. The Commission Unreasonably Interpreted the Statute to Equate Mere Property Ownership with "Claiming" an Exemption**

The Commission, however, conjured a new property right out of thin air and concluded that merely owning property in Utah is sufficient to constitute a claim for exemption: "[W]hen the residential exemption was created by the Utah Legislature, the enactment generally added a claim for the exemption to the bundle of rights acquired with the purchase of residential property . . . ." R. 106. The Commission further held that the claim "persists until the property is relinquished through sale" or otherwise removed by action of the county or property owner. *Id*. Thus, per the Commission "simply owning a residential property [in Utah] generally asserts an enduring claim to the

residential exemption." *Id*. The Commission, however, applied a different rule where counties have chosen to require an application for the residential exemption. In such counties, "receiving the residential exemption without filing an application does not constitute a claim to the exemption." R. 106 n.5.

The end result of this interpretation is that any person who owned a house in Salt Lake County before 2012 automatically and without their knowledge was deemed to have filed a claim that the house is their primary residence. They are thus presumed domiciled in Utah based solely on owning a house in a certain county before 2012.

#### 4. The Commission Unreasonably Transformed "Claim" Into "Failure to Dis-claim"

The Commission attempted to shore up its interpretation by pointing out that the Bucks neither notified Salt Lake County nor declared on a 2012 Utah income tax return that the Bluffdale House no longer qualified for an exemption. R. 107.

But this turns the statute on its head. Rather than requiring the Bucks to make a claim, as dictated by the plain language of the statute, the Commission would require the Bucks to file something to *dis*-claim an exemption they never claimed in the first place.

There are other problems with the Commission's conclusion that requires owners to dis-claim the property tax exemption. The dis-claiming is to be done "on a form provided by the county board of equalization." UCA § 59-2-103.5(5)(a)(i). No such form was ever provided to the Bucks, so they could not have complied with this directive. Tr. at 27:1-7. We can't even be sure that such a form existed at the time. The Court can take judicial notice that even in 2020 no form is readily available on the Salt Lake County

Assessor's website to notify the County that a property no longer qualifies for an exemption. The website requires a pin number to obtain a form and indicates that people in the Bucks' position (where the County made no request) need not take any action: "If you did not recieve [sic] a notification letter, *you do not need to verify your Residential Exemption*."[4]

Further, it is questionable to conclude that the Bucks "claimed" an exemption by not following a statutory directive that came into effect after they left the state. And the statute prescribes no clear consequence when an owner does not notify the county that a residence is not a primary residence. It is unreasonable and unfair to make the consequence of not asking the County to take away a tax exemption which was never requested that the state may tax the property owner's worldwide income.

It is also circular to conclude that the Bucks, who neither lived in Utah nor had any Utah source income, and thus had no Utah filing requirement, were required to file a Utah income tax return merely to un-claim a property tax exemption that they never requested. It is backwards to conclude they were domiciled in Utah on the basis that they *didn't* file a Utah income tax return. Implicit in the tax return requirement is the understanding that it can only apply to individuals who otherwise have a Utah tax return filing requirement.

**5. The Commission's Interpretation Invites Absurdity**

According to the Commission's interpretation, the following persons would have "claimed" a property tax exemption and would be presumed domiciled in Utah in 2012:

[4] https://slco.org/assessor/new/resexemption/ (as of November 2020) (emphasis added).

- An individual who has never been to Utah, but through a broker purchased a residential property in Salt Lake County as an investment
- An individual who has been living in another state for 40 years and inherited a residential property in Salt Lake County in 2011
- A foreigner who owns a property in Salt Lake County and incorrectly believes a tenant is using the property as a primary residence
- An individual who has represented another state in the United States Senate for 20 years, but purchased a vacation property in Salt Lake County in 1984
- The Queen of England, if on December 25, 2011 someone gifted her a small, dilapidated, unoccupied home in Magna
- An individual who never requested or knew about the property tax exemption, moved from Utah in 2011 due to a change in employment, registered to drive and vote in the new state, moved into a nicer home in the new state, enrolled their children in school in the new state, got involved in civic affairs, clubs, and a church in the new state, and considered the new state their home, but decided not to sell their house in Salt Lake County because the real estate market was unfavorable.

As illustrated here, the Commission's conclusion that mere ownership of a property constitutes a claim that the property is the owner's primary residence results in numerous absurdities.

To add to the injustice of this interpretation, all of these presumptions would reverse if only the individual owned property in Summit County instead of Salt Lake County, because Summit County asked owners to verify residency. The Commission's interpretation creates an unnecessary, unfair, and unequal treatment between individuals who own houses in different counties. Individuals are inexplicably taxed in Utah on their worldwide income solely because they own property in a county that decided not to be proactive about confirming residency.

### 6. The Court Should Adopt an Interpretation of "Claim" that Requires Action by the Claimant

It is illogical to conclude that an individual has "claimed" a place as their primary residence merely by owning it (in certain counties). This illogic is made extremely prejudicial by the Commission's interpretation, discussed hereafter, that effectively makes the Domicile Presumption irrebuttable.

The Court should reject the Commission's interpretation of the statute that mere ownership of a property (in certain counties) constitutes "claiming" a property tax exemption. The Court should adopt an interpretation of "claim" that is consistent with the Property Tax Act generally and with UCA § 59-10-136(2) specifically. The Court should determine that a claim requires some action by the property owner to seek the tax exemption, such as filing the form described in UCA § 59-2-103.5(1). The Statute includes a process by which an individual can file a form and claim an exemption, but the Court need not decide here whether there are other affirmative acts which would also be sufficient to constitute a claim.

The Bucks took no action to request a property tax exemption. R. 90 ¶ 13. They did not claim the exemption, and the Domicile Presumption should not have applied in their case. The Subsection 3(b) domicile factors (driver's license; whether a dependent is enrolled in a Utah public college as a resident; nature and quality of living accommodations in Utah verses elsewhere; presence of dependents in Utah; location where income is earned; state of vehicle registrations; state of membership in churches, clubs, and organizations; use of address for mail, official publications, and tax returns; and asserted residency in official filings and licenses) thus control. No reasonable factfinder could have then weighed these factors and concluded the Bucks had Utah domicile in 2012 or that the Bluffdale House was their primary residence in 2012. See R. 123-25 (factors overwhelmingly support Florida domicile) (Walters dissenting).

### C. Due to a Flawed Interpretation of Law, the Commission Erred In Concluding the Bucks Did Not Rebut the Domicile Presumption

Assuming, *arguendo*, that a presumption arose, the Commission's interpretation here unreasonably blocked consideration of virtually all relevant evidence and thus deprived the Bucks of a fair opportunity to rebut the Domicile Presumption. The Domicile Presumption is by its own terms a "rebuttable" presumption. Thus, the Legislature plainly intended for the Commission to evaluate the facts and, in appropriate cases, to determine that individuals subject to the Domicile Presumption are not domiciled in Utah. The Commission's interpretation eviscerates this legislative intent.

### 1. A Rebuttable Presumption Does Not Create Facts That Override Reality - It Assigns the Burden of Proof

A "rebuttable presumption clearly is a rule of evidence which has the effect of shifting the burden of proof ," and it should not be "an attempt, by legislative fiat, to enact into existence a fact which . . . does not, and cannot be made to, exist in actuality." *Heiner v. Donnan*, 285 U.S. 312, 329 (1932). This straightforward understanding of rebuttable presumptions has been oft explained by this Court and is incorporated into the Utah Rules of Evidence. *E.g., 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 and thereby make sure that the evidence showing the basic facts will be held sufficient to support a finding for the favored party if the disfavored party fails to satisfy his burden. This does not mean that the fact finder may consider or weigh the presumption as evidence.") (citation and quotation marks omitted); 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.").

### 2. The Commission's Interpretation Creates an Unrebuttable Conclusion, Rather Than a Rebuttable Presumption - By Barring Consideration of Virtually All Relevant Evidence

The Commission rejected the plain and generally accepted meaning of a "rebuttable" presumption. Instead, the Commission noted that "the Legislature has not

provided in statute what circumstances will be or will not be sufficient to rebut" the Domicile Presumption, and concluded by various devices that in order to make the presumption meaningful, the Commission should not consider evidence that an individual is actually domiciled elsewhere. R. 108.

First, the Commission majority "decline[d] to consider" it "relevant as evidence" that the Buck children attended school in Florida. The Commission's reasoning was that "[h]ad the Utah Legislature intended for" this to be a domicile factor "it could have enacted such a requirement" in the statute," but "the Legislature did not enact such a requirement."[5] R. 104-05.

Next, the Commission declined to consider as relevant any of the evidence the Legislature *did* include as factors in the domicile statute. The Commission worried that weighing the traditional domicile factors set forth in Subsection 3(b) "would be giving the Legislature's 'new' law little or no effect" because it would be like "determining domicile as though the [Domicile Presumption] did not exist" and would "frustrate the plain meaning of Section 59-10-136." R. 109.

But it is not surprising to think that an individual would look to the domicile factors set forth in Subsection 3(b) as relevant when rebutting the Domicile Presumption. In most cases these are the most germane facts. That is precisely why the legislature listed these factors in the statute. That a presentation of facts would look similar (or even in some cases identical) whether an individual is rebutting the Domicile Presumption or

[5] While a tribunal is generally given wide latitude on determining relevancy of evidence, note that the Commission's determination here was based on an interpretation of the statute, rather than an analysis of relevancy.

meeting the burden of proof with respect to the domicile factors under Subsection 3 should be both unsurprising and unalarming – the same ultimate fact is at issue.

Misled by its concerns, the Commission majority treated the statute not as creating a *presumption* to be rebutted by the facts, but as a *conclusion* to be dethroned only in the most limited set of circumstances: "it is clear that the Legislature intended . . . that an individual meeting one of the factors described and set forth as a rebuttable presumption in Subsection 59-10-136(2) might be considered to be domiciled in Utah, regardless of whether that individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test . . . ." R. 110-11.

The Commission attempted to paint a picture that there remain ways to rebut the Domicile Presumption – for example, where an owner "asked the county to remove the exemption" or "disclosed on their Utah income tax return that the home no longer qualified." R. 113. But these situations do not involve a rebuttal of the fact presumed (Utah domicile), but involve a rebuttal of the factual premise that gives rise to the presumption ("claiming" the residential exemption). The Commission also indicated it has accepted rebuttal where a home was "listed for sale" or "listed for rent" and vacant, or under "initial construction," R. 113-14, but it provided no principled reason why these sets of facts were considered sufficient. These very limited exceptions do not cure the Commission's misinterpretation of the statute.

### 3. The Commission's Misinterpretation of the Word "If" Effectively Makes the Domicile Presumption Unrebuttable

The Commission's statutory basis for barring consideration of relevant evidence embodied in the statutory domicile factors hangs on a single word. The statute provides that "*if* the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state," then the individual is "considered to have domicile in this state if: (i) the individual . . . has a permanent home in this state . . . to which the individual . . . intends to return . . . and (ii) the individual . . . has voluntarily fixed [their] habitation in this state . . . with the intent of making a permanent home." UCA § 59-10-136(3)(a) (emphasis added). This determination "shall be based on the preponderance of the evidence, taking into consideration" the domicile factors in Subsection 3(b). UCA § 59-10-136(3)(b).

The Commission concluded that the "if" in Subsection 3(a) "creates a condition precedent that must be satisfied before the twelve facts and circumstances [*i.e.*, domicile factors in Subsection 3(b)] apply." "Thus," reasoned the Commission, "to use facts and conditions from [the domicile factors] without satisfying the condition precedent created by the word 'if' effectively eliminates the word 'if' from" the statute. R. 112.

This convoluted effort not to read the word "if" out of the statute is both counterproductive and unnecessary. It is counterproductive because it winds up striking the word "rebuttable" from the statute. It is unnecessary because allowing consideration of the domicile factors to rebut the Domicile Presumption is consistent with the "if."

### 4. The Court Should Interpret the Statute to Allow Consideration of All Relevant Evidence in Rebuttal of a Presumption

A reasonable interpretation of the statute, as championed by Commissioner Walters' dissent, is consistent with this Court's precedent on presumptions, preserves both the word "if" and the word "rebuttable" in the statute, and remains consistent with jurisprudential norms by allowing the factfinder to consider all relevant evidence.

The "if" in Subsection 3 merely means that "if" Subsections 1 or 2 are not controlling, then the Commission must apply the statutory factors to determine domicile. The statute does not command the Commission to allow consideration of the domicile factors "only if" Subsections 1 or 2 are inapplicable. There is no reason to conclude that the Legislature intended the domicile factors to become out-of-bounds when an individual is rebutting the Domicile Presumption. Commissioner Walters recognized this in his dissent, observing that "the plain language of the statute does not preclude" an analysis of the statutory domicile factors "in a rebuttal of any presumption." R. 124. Rather, "[r]ebutting presumptions created under Subsection 59-10-136(2) must involve weighing all of the evidence from factors listed in Section 59-10-136 and potentially other factors presented by taxpayers." R. 122.

The Commission's interpretation puts individuals in a Catch-22 where every factor, whether listed in the statute or not, is barred from consideration by circuitous legislative intent. This goes against the very idea that the Commission sits as a factfinder and is contrary to general rules regarding the admissibility of probative evidence. "Evidence is relevant if it possesses 'any tendency to make the existence of any fact that

is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' Utah R. Evid. 401. In other words, even evidence that is only slightly probative in value is relevant." *State v. Martin*, 2002 UT 34 ¶ 31. A tribunal should *seek* relevant evidence to make a *correct* determination of the facts, not blind itself to relevant information. This Court should be reluctant to adopt a view that allows a tribunal to bar consideration of manifestly relevant evidence based on a theory of legislative intent that is not readily apparent from the statute.

The Court should adopt an interpretation of the domicile statute which both allows and *requires* the Commission to consider all relevant evidence presented by an individual who is rebutting the Domicile Presumption. Moreover, because the evidence of Florida domicile in this case is overwhelming, the Court should reverse the decision of the Commission and conclude that the presumption is rebutted and that the domicile factors weigh against Utah domicile. See R. 123-25 (factors overwhelmingly support Florida domicile) (Walters dissenting).

### D. The Domicile Presumption, as Interpreted and Applied by the Commission, Is Unconstitutional

Not only is the Commission's interpretation of the law inconsistent with Legislative intent, it also violates well-established Constitutional principles.

#### 1. The Commission's Interpretation of the Domicile Presumption Denies Due Process

The Commission's application of the Domicile Presumption denies due process, because it doesn't permit a fair opportunity to rebut a presumption of Utah domicile even when that presumption is factually incorrect.

"[A] statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Vlandis v. Kline*, 412 U.S. 441, 446 (1973); *Heiner*, 285 U.S. at 329. The U.S. Supreme Court has applied this reasoning to reject an irrebuttable presumption in the context of determining residency:

> [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. In the situation before us, reasonable alternative means for determining bona fide residence are available.

*Vlandis*, 412 U.S. at 451 (citation and quotation marks omitted).

The U.S. Supreme Court has also applied this reasoning to invalidate a presumption giving rise to a tax: "[A] statute which imposes a tax upon an assumption of fact which the taxpayer is forbidden to controvert is so arbitrary and unreasonable that it cannot stand under the Fourteenth Amendment." *Heiner*, 285 U.S. at 325.

In order to afford a litigant due process of law, a presumption, whether in a civil or criminal context, "must not, under the guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense" to the presumed fact, and must not "shut out from the party affected a reasonable opportunity to submit to the [factfinder] in his defense all of the facts bearing upon the issue." *Bailey v. Alabama*, 219 U.S. 219, 239 (1911).

The Domicile Presumption here, as interpreted by the Commission, forbids consideration of the traditionally-used domicile factors set forth in Subsection 3(b), such

as physical presence, driver's license, voting, location of work, mailing address, location of children's school, etc. This is the very evidence most germane to the issue of domicile. Indeed, these factors are so material that when no rebuttable presumption is in effect the Commission is *required* to consider them. UCA § 59-10-136(3)(b). Historically, these and similar factors have been considered material to a domicile determination in Utah and elsewhere. *See, e.g.*, Utah Admin. Code R. 865-9I-2(A)(2)(a), R. 884-24P-52(5) (2011) , *Frame*, 675 P.2d at 1161-62 & n.4; *Vlandis*, 412 U.S. at 448, 454.

Applying the decisions of the U.S. Supreme Court, these very facts that are decisive in the absence of a presumption cannot be barred from consideration when individuals attempt to rebut a presumption. Otherwise, calling the presumption "rebuttable" is a farce.

Here, the Commission essentially acknowledged that its interpretation of the Domicile Presumption elevates fiction over fact:

> [I]t is clear that the Legislature intended . . . that an individual meeting one of the factors described and set forth as a rebuttable presumption in Subsection 59-10-136(2) might be considered to be domiciled in Utah, *regardless of whether that individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test . . . .*

R. 110-11 (emphasis added). Thus, the Domicile Presumption, as applied, is unconstitutional because it is "an 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.

The Commission's application of the Domicile Presumption is so arbitrary and capricious that it denies the Bucks due process of law. The Commission's interpretation

of the Domicile Presumption cannot distinguish between a person actually domiciled in Utah and a person domiciled outside Utah who happens to own a house in Salt Lake County, because it willfully blinds the Commission to the most relevant facts. It elevates a legal fiction to a place higher than actual (and in this case – stipulated) facts. Giving fiction a higher place than reality is antithetical to a justice system based on a due process that cherishes unbiased factfinding.

The largely stipulated facts in this case overwhelmingly demonstrate that the Bucks were in fact domiciled in Florida. The Auditing Division made no serious attempt to contest that the facts demonstrate the Bucks were actually domiciled in Florida. *See* Tr. at 39:17 ("As far as the weighing factors go, there are not many of those in this – in this particular case here as you'll see as you read through the stipulation."); *see also* R. 123-25 (factors support only Florida domicile) (Walters dissenting).

This statute "imposes a tax upon an assumption of fact which the taxpayer is forbidden to controvert" and is thus "so arbitrary and unreasonable that it cannot stand under the Fourteenth Amendment." *Heiner*, 285 U.S. at 325.

### 2. The Domicile Presumption Violates Other Constitutional Principles

The Domicile Presumption as applied discriminates against persons who reside and/or are domiciled outside Utah. People who physically reside in Utah are unaffected by the Domicile Presumption because they are subject to Utah income tax by application

of UCA § 59-10-103(1)(q)(i)(B)(II)[6] (defining "resident" to include a person physically present in Utah for 183 or more days in a year). Only individuals residing outside Utah who happen to own property in Utah are affected by this presumption. This discrimination against nonresidents violates the Privileges and Immunities Clause. *See Austin v. New Hampshire*, 420 U.S. 656, 664-66 (1975) (invalidating tax that in practical effect and operation was more onerous to nonresidents).

The Domicile Presumption creates an unreasonable burden on interstate commerce by imposing Utah income tax on the non-Utah source income of a person who does nothing more than purchase a house in Utah. If every state applied such a standard it would disadvantage interstate commerce because buying property in other states would create a significant and unreasonable income tax burden in those states. See *Comptroller of the Treasury v. Wynne,* 575 U.S. 542, 135 S.Ct. 1787, 1802 (2015) ("tax schemes that inherently discriminate against interstate commerce without regard to the tax policies of other States" are typically unconstitutional).

### 3. Constitutional Avoidance

For the reasons set forth above, the Domicile Presumption, as interpreted and applied by the Commission, is unconstitutional. However, "constitutional issues should be avoided if the case can be properly decided on non-constitutional grounds." *Bailey v. Bayles*, 52 P.3d 1158, 1166; 2002 UT 58 ¶ 26 (citation and quotation marks omitted). The preceding arguments provide a statutory interpretation that is both reasonable and

[6] This statutory provision was repealed and no longer in effect as of May 2019. See UCA § 59-10-103(q) (5/14/2019).

constitutional, and which would allow the Court to rule in the Bucks' favor without resorting to Constitutional questions. First, the Court may rule that the Bucks never even "claimed" a residential property tax exemption within the meaning of the statute, and should never have been subject to the Domicile Presumption. Second, the Court may rule that the Commission was in error when it concluded that Subsection 3 forbids consideration of the traditional domicile factors set forth therein when an individual seeks to rebut the Domicile Presumption.

If the Court adopts either (or both) of these interpretations, then this case would be decided by evaluation of the evidence. We respectfully submit that no reasonable factfinder could find that the Bucks were domiciled in Utah in 2012 based on the stipulated facts. Accordingly, the Court should reverse the decision of the Commission.

## IX. CONCLUSION

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

The Court should conclude that claiming a property tax exemption within the meaning of UCA § 59-10-136(2) requires an affirmative act by the claimant, such as filing the form described in UCA § 59-2-103.5(1). Further, and in the alternative, the Court should conclude that nothing in the statute bars the Commission from considering any relevant evidence in rebuttal of the Domicile Presumption. In the alternative, the Court should conclude that UCA § 59-10-136 as interpreted by the Tax Commission is unconstitutional.

The Court should hold that given the overwhelming nature of the stipulated facts in this case, the Domicile Presumption (if applicable) is rebutted and the statutory domicile factors weigh against Utah domicile for the Bucks in 2012. As the Bucks were not domiciled in Utah in 2012, their 2012 income is not subject to Utah income tax.

## X. 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 8,372 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 3rd day of December, 2020.

RAY QUINNEY & NEBEKER P.C.

/s/ Samuel A. Lambert

Samuel A. Lambert

*Attorneys for Johnathan and Brooke Buck*

## XI. ADDENDUM

### Statutes of Central Importance

(1) Utah Code Ann. § 59-2-103.5 (2012)

(2) Utah Code Ann. § 59-10-136 (2012)

### Tax Commission Decision

(3) Findings of Fact, Conclusions of Law, and Final Decision dated June 9, 2020. (R. 88-127)

# Utah Statutes Annotated - 2012

West's Utah Code Annotated
Title 59. Revenue and Taxation
Chapter 2. Property Tax Act (Refs & Annos)
Part 1. General Provisions

U.C.A. 1953 § 59-2-103.5

## § 59-2-103.5. Procedures to obtain an exemption for residential property --Procedure if property owner or property no longer qualifies to receive a residential exemption

Currentness

(1) Subject to the other provisions of this section, a county legislative body may by ordinance require that in order for residential property to be allowed a residential exemption in accordance with Section 59-2-103, an owner of the residential property shall file with the county board of equalization a statement:

(a) on a form prescribed by the commission by rule;

(b) signed by all of the owners of the residential property;

(c) certifying that the residential property is residential property; and

(d) containing other information as required by the commission by rule.

(2)(a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county board of equalization shall allow an owner described in Subsection (1) a residential exemption for the residential property described in Subsection (1) if:

(i) the county legislative body enacts the ordinance described in Subsection (1); and

(ii) the county board of equalization determines that the requirements of Subsection (1) are met.

(b) A county board of equalization may require an owner of the residential property described in Subsection (1) to file the statement described in Subsection (1) only if:

(i) that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property;

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(ii) an ownership interest in that residential property changes; or

(iii) the county board of equalization determines that there is reason to believe that that residential property no longer qualifies for the residential exemption in accordance with Section 59-2-103.

(3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an ordinance requiring an owner to file a statement in accordance with this section, the county board of equalization:

(a) may not require an owner to file a statement for residential property to be eligible for a residential exemption in accordance with Section 59-2-103; and

(b) shall allow a residential exemption for residential property in accordance with Section 59-2-103.

(4)(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing:

(i) the form for the statement described in Subsection (1); and

(ii) the contents of the form for the statement described in Subsection (1).

(b) The commission shall make the form described in Subsection (4)(a) available to counties.

(5) Except as provided in Subsection (6), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence, the property owner shall:

(a) file a written statement with the county board of equalization of the county in which the property is located:

(i) on a form provided by the county board of equalization; and

(ii) notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence; and

(b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for that property owner's primary residence.

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(6) A property owner is not required to file a written statement or make the declaration described in Subsection (5) if the property owner:

(a) changes primary residences;

(b) qualified to receive a residential exemption authorized under Section 59-2-103 for the residence that was the property owner's former primary residence; and

(c) qualifies to receive a residential exemption authorized under Section 59-2-103 for the residence that is the property owner's current primary residence.

**Credits**

Laws 2002, c. 169, § 1, eff. Jan. 1, 2003; Laws 2008, c. 382, § 964, eff. May 5, 2008; Laws 2011, c. 410, § 2, eff. Jan. 1, 2012.

HISTORICAL AND STATUTORY NOTES

Section 4 of Laws 2002, c. 169, provides that this section has retrospective operation for an action or appeal for which a court of competent jurisdiction, the State Tax Commission, or a county board of equalization has not issued a final unappealable judgment or order if the retrospective operation of this section does not enlarge, eliminate, or destroy a vested right.

Laws 2008, c. 382, § 964, in subsec. (4)(a), substituted “Title 63G, Chapter 3” for “Title 63, Chapter 46a”.

Laws 2011, c. 410, § 2, added subsecs. (5) and (6).

Laws 2011, c. 410, § 5, provides:

“Section 5. Effective date.

“This bill takes effect for a taxable year beginning on or after January 1, 2012.”

LIBRARY REFERENCES

Taxation 2366.
Westlaw Topic No. 371.

U.C.A. 1953 § 59-2-103.5, UT ST § 59-2-103.5

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# Utah Statutes Annotated - 2012

West's Utah Code Annotated
Title 59. Revenue and Taxation
Chapter 10. Individual Income Tax Act
Part 1. Determination and Reporting of Tax Liability and Information (Refs & Annos)

U.C.A. 1953 § 59-10-136

## § 59-10-136. Domicile--Temporary absence from state

Currentness

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

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

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

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

(i) is the noncustodial parent of a dependent:

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

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

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

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

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

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(b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or

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

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

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

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

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

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

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

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

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

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;

(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;

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(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;

(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;

(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;

(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or

(xii) whether the individual is an individual described in Subsection (1)(b).

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

(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and

(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:

(A) return to this state for more than 30 days in a calendar year;

(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);

(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;

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

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

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

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

(i) begins on the later of the date:

(A) the individual leaves this state; or

(B) the individual's spouse leaves this state; and

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

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

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

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5)(a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

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

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

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

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

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

**Credits**
Laws 2011, c. 410, § 4, eff. Jan. 1, 2012.

HISTORICAL AND STATUTORY NOTES
Laws 2011, c. 410, § 5, provides:

"Section 5. Effective date.

"This bill takes effect for a taxable year beginning on or after January 1, 2012."

U.C.A. 1953 § 59-10-136, UT ST § 59-10-136

Current through 2012 Fourth Special Session.
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BEFORE THE UTAH STATE TAX COMMISSION

| | |
|---|---|
| JOHNATHAN & BROOKE BUCK,<br><br>Petitioners,<br><br>v.<br><br>AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION,<br><br>Respondent. | **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION**<br><br>Appeal No. 18-888<br><br>Account No. 1943<br>Tax Type: Individual Income Tax<br>Tax Year: 2012<br><br>Judge: Jensen |

**Presiding:**
Lawrence C. Walters, Commissioner
Clinton Jensen, Administrative Law Judge

**Appearances:**
For Petitioner: Sam Lambert, for the Taxpayer
Brooke Buck, Taxpayer
Respondent: John McCarrey, Assistant Attorney General
Sammy Batarseh, Income Tax Audit Manager

## STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on August 21, 2019. Based on the evidence and testimony presented at the hearing, the Tax Commission makes its:

## FINDINGS OF FACT

1. Petitioners (the "taxpayers" or "Taxpayers") are appealing the assessment of Utah individual income tax for the 2012 tax year.

2. On April 9, 2018, the Auditing Division of the Utah State Tax Commission (the "Division") sent a Statutory Notice of Deficiency. The Statutory Notice indicated that the Taxpayers owed additional tax and interest as follows:

| Year | Tax | Penalties | Interest[1] |
|---|---|---|---|
| 2012 | $335,245 | $67,049 | $38,511.84 |

[1] Interest continues to accrue on any unpaid balance.

3. The Division based its audit on the assertion that the Taxpayers were full year residents of Utah for tax purposes for 2012.

4. The Taxpayers did not file a 2012 Utah individual income tax return, believing that there were not sufficient ties to Utah to require either a 2012 full-year resident or part-year resident Utah return.

5. The issue in this appeal is whether one or both of the Taxpayers would qualify as a full year "resident individual" in Utah for the purposes of Utah Code Ann. §59-10-103 during 2012.

**Background and Home Ownership**

6. Jonathan R. Buck and Brooke L. Buck (individually "John" and "Brooke," collectively, the "Bucks") married each other in 1999.

7. John was drafted and became a professional baseball player in 1998.

8. John was traded to the Kansas City Royals in 2004.

9. The Royals organization conducts spring training in Arizona.

10. John and Brooke purchased their first home in Arizona in 2004.

11. In 2007, the Bucks purchased a property in Bluffdale, Utah ("Bluffdale House").

12. The Bluffdale House received a primary residential property tax exemption in 2008 and each year thereafter, including the audit period. The following table shows how the exemption was applied to this property:

| Year | Market Value | Residential Exemption | Taxable Value |
|---|---|---|---|
| 2008 | $712,290 | $319,469 | $392,821 |
| 2009 | $574,590 | $257,540 | $317,050 |
| 2010 | $637,690 | $285,953 | $351,737 |
| 2011 | $586,690 | $263,088 | $323,602 |
| 2012 | $548,090 | $245,772 | $302,318 |
| 2013 | $591,190 | $265,091 | $326,099 |

13. The Bucks took no action to request a residential property tax exemption on the Bluffdale House.

14. In 2010, John played for the Toronto Blue Jays.

15. In November 2010, John signed a three-year contract to play for the Florida Marlins.

16. The Bucks moved to Florida in approximately February 2011.

17. On March 17, 2011, the Bucks made an offer to purchase a home in Pembroke Pines, Florida for $657,500.

18. The proposed purchase in Pembroke Pines fell through when the sellers learned Mr. Buck was a professional baseball player and the sellers refused to repair many of the significant deficiencies detected during the home inspection.

19. The Bucks leased a home in Davie, Florida from April 2011 through March 2012.

20. The Bucks estimated the square footage of their Florida home at 6,000 square feet and estimated the square footage of their Bluffdale home at 4,200 square feet.

21. In December 2011 the Bucks executed a contract to lease a home in Plantation, Florida from February 2012 through January 2013. The contract provided that the Bucks and their landlord "agree to enter into a more comprehensive lease which shall include [the Bucks'] option to purchase [the property] during lease term, at a price of $1,550,000."

22. The Bucks moved into the Plantation home and made arrangements for utilities including sewer and water. They also made repairs to the Plantation home. The facts provided by the parties did not include the date that the Bucks moved into the Plantation home, but the date on the contract for sewer and water services was April 17, 2012 and provided that service was to begin on April 18, 2012.

23. John spent approximately 11 full or partial days and Brooke spent approximately 22 full or partial days in Utah in 2012 visiting relatives.

24. Salt Lake County assessed the Bluffdale home at a value of $712,290 in 2008, a value of $586,690 in 2011, and a value of $548,090 in 2012.

25. The total assessed value of the primary residential exemption in Salt Lake County in 2007 was $42,812,321,683. This value had dropped over 11% to $38,058,569,807 by 2011, and fell further to $36,793,392,119 in 2012.

26. An article published in the *Salt Lake Tribune* on March 10, 2011, quotes James Wood, Director of the University of Utah's Bureau of Economic and Business Research, as stating that "the number of distressed properties for sale is certain to keep home prices from rising anytime soon," and the "data show we've seen probably somewhere around 15 percent to 20 percent decline in prices of home[s] sold in the last couple of years . . . It will probably drift down a little bit more this year. I just can't imagine housing prices could go up, with the headwind of foreclosures and short sales."

27. An article published in the *Salt Lake Tribune* on May 24, 2010 states that the home foreclosure rate in Utah was fifth highest in the nation and quotes Julia Borst, president of the Utah Mortgage Lenders Association as saying, "I truly believe that we have not seen the worst of this."

28. An article published in *Utah Business Magazine* on December 1, 2011 quotes Mark Knold, Senior Economist with the Utah Department of Workforce Services, stating that "[h]ousing prices are close to being done sliding," but that "the recession's consequences will continue to drag on next year," and quoting Juliette Tennert, Chief Economist in the Utah Governor's Office of Planning and Budget, as stating that "[w]e've been going through the process of bottoming out for awhile now, and looking at the data, we see that continuing for a year or two. . . . [House prices] are still falling but the rate at which they're falling is starting to decline."

29. The Bucks did not attempt to sell the Bluffdale home in 2011 or 2012. They found the Utah housing market unfavorable to do so in 2011 and 2012. Additionally, the Bucks found it useful to keep the Bluffdale home so they would have a place to stay when they visited Utah in 2011 and 2012.

30. Mrs. Buck testified that their Bluffdale home was among the first in a new development and was surrounded by a large number of bank-owned lots following a period of economic downturn.

31. Mrs. Buck further testified that a lack of neighbors near the Bluffdale home led to a feeling of isolation and lack of community.

32. Mrs. Buck testified that one of the major streets that would link the Bluffdale home to neighboring areas was gated. This, she testified, deepened the feelings of isolation at the Bluffdale home.

33. Mrs. Buck testified that snow removal near the Taxpayers' Bluffdale home was, at best, sporadic. Mrs. Buck associated this with the small number of homes in the area that would have caused snow removal for a substantial number of streets for the benefit of relatively few residents. Whatever the reason for the lack of snow removal, Mrs. Buck found that snow-covered streets was yet another impediment to a sense of community at the Bluffdale home.

34. When the Taxpayers returned to Utah in 2013, they determined that it would be best to move into their Bluffdale home. However, to bring the Bluffdale home up to the standards that the Bucks had experienced in their Florida home, the Bucks completed what Mrs. Buck described as million-dollar renovations to the Bluffdale home.

**Driver Licenses, Vehicles, Voter Registration, and Mail**

35. Brooke and John obtained Florida driver's licenses on September 30, 2011.

36. Brooke and John registered to vote in Florida on September 30, 2011 and remained registered to vote in Florida in 2012.

37. John registered a 2010 Ford F250 truck in Utah on January 21, 2010, where it remained registered until January 31, 2017. The Bucks gave the truck to Brooke's father, David Noble, to use. David continued to use it as his primary vehicle after John and Brooke moved to Florida.

38. Brooke registered a 2007 Acura MDX in Utah from January 2011 to October 31, 2013. In 2011, Brooke gave the Acura to her mother, Diane Noble. Diane used the Acura as her primary vehicle until it was sold.

39. The Bucks purchased a Jeep Wrangler and registered it in Utah on January 4, 2011. They registered it in Florida in January 2012 and retained Florida registration through July 2013. They registered the Jeep Wrangler again in Utah in October 2014.

40. The Bucks registered a Toyota Sequoia in Florida from November 10, 2012 through October 31, 2015.

41. A commercial trailer was registered in the Bucks' name in Utah from May 2012 to February 2015. The trailer was purchased by David Noble to be used by a business (Tools of Ignorance a/k/a/ Buck Athletics LLC) partly owned by the Bucks, but operated by David and his son-in-law Justin Jensen.

42. John purchased a BMW in Florida on January 3, 2012 and received a Florida title for the vehicle and a Florida license plate. John renewed Florida registration through July 2013.

43. John registered a Ford Expedition in Florida in January 2012 and renewed registration through July 2013.

44. The Bucks purchased a Toyota Sequoia that was first registered in Utah in December 2014.

45. Mrs. Buck testified that in 2012, she and Mr. Buck received the majority of their mail at their address in Florida. The Bucks continued to receive a lesser amount of mail at their Bluffdale home, mostly related to the Bluffdale home itself. For that mail, the Bucks made arrangements for Mrs. Buck's mother to occasionally gather mail from the Bluffdale home and send it to Florida.

**Tax Filings**

46. The Bucks filed a Utah Form TC-40 for 2011 and indicated on form TC-40B that they were part-year residents of Utah in 2011.

47. The Bucks filed 2011 tax returns in California, Missouri, Ohio, and Wisconsin and indicated on each return that Florida was their state of residence.

48. The Bucks filed 2012 tax returns in California, Missouri, Ohio, and Wisconsin and indicated on these returns that Florida was their state of residence.

49. The Bucks filed no income tax return for Utah for 2012.

50. The Bucks had no income from a Utah source in 2012.

51. The Bucks' tax returns for all relevant periods were filed using an address in New Jersey. Mrs. Buck testified that this was because their accountant was in New Jersey.

52. Brody and Cooper Buck were born in May 2008.

53. Cooper had a severe developmental delay and had very little language ability by 2011.

54. One significant reason the Bucks decided to move to Florida was to give Cooper access to superior doctors and education programs. Mrs. Buck testified that she and Mr. Buck had specifically sought out homes to purchase or lease to purchase in areas of Florida school districts that would best serve Cooper's needs.

55. Mrs. Buck testified that Nicklaus Children's Hospital in Weston, Florida had the first brain institute for children in the United States. She testified that the institute operated an Autism/Attention Deficit/Developmental Disorders Program. According to the Hospital's website, "The program at the Nicklaus Children's Dan Marino Outpatient Center is internationally recognized and offers a comprehensive care program for autism and other developmental/cognitive disorders in children referred from all over the world."

56. Cooper was evaluated and assisted by Board Certified Behavior Analyst Kelly Teeples in Ft. Lauderdale, Florida.

57. Ms. Teeples' May 2011 behavior assessment of Cooper describes Cooper as residing in Florida with his family.

58. The Bucks worked with Dr. Roberto Tuchman at Miami Children's Hospital to help Cooper.

59. While they lived in Florida, the Buck children received all routine medical care from a pediatric group in Florida.

60. In early 2011, Cooper was enrolled in the Broward Early Steps Program at the Children's Diagnostic & Treatment Center in Fort Lauderdale, Florida.

61. From August 2011 to June 2012, Cooper attended Indian Trace Elementary in Weston, Florida in their special needs/early intervention preschool program. He attended summer camp and then was enrolled in preschool at Temple Beth Emet in Plantation, Florida from June 2012 through June 2013.

62. Brody attended Cambridge School in Weston, Florida from August 2011 to June 2012. He then attended summer school and preschool at Temple Beth Emet in Plantation, Florida from June 2012 through June 2013.

63. Cooper had an Individualized Education Program (IEP) in Florida in place for the 2011 and 2012 school years.

64. Cooper and Brody participated in Florida youth karate and soccer programs in 2012.

**Licenses, Memberships, Social Participation**

65. The Bucks joined the YMCA in Weston, Florida on June 29, 2011.

66. The Bucks were members of a gym in Weston, Florida in 2011 and 2012.

67. In 2011, John became involved as a volunteer with Camp Shriver in Miami, a camp associated with Special Olympics Miami Dade County and other local organizations.

68. In January 2012, the Bucks participated in the Dan Marino Walkabout Autism event in Florida.

69. The Bucks were members of a Florida church congregation. Brooke volunteered to teach children's classes for the Florida congregation.

70. Brooke threw a baby shower for an expecting mother-to-be in their Florida home in June 2012.

71. Brooke was the room mom for Cooper's school classes at both Indian Trace Elementary and Temple Beth Emet.

72. The Bucks took their pets to a Florida veterinarian throughout 2011, 2012, and into 2013.

73. The Bucks became the poster family for public service messages in Florida urging the public to adopt pets.

74. Brooke was a campaign leader for a campaign by the Pets Trust Initiative to reduce killing animals in Miami-Dade County.

75. On February 9, 2012, John obtained a Utah nonresident combination hunting license, which was mailed to him in Florida.

76. In 2012, John also went hunting in Texas.

**Taxpayers' Additional Arguments**

77. The Taxpayers argued that they took no action to "claim" a primary residential exemption for their Utah home in 2012. They argue that the word "claim" denotes some type of active participation that is not satisfied by the Taxpayers' inaction that led to their receiving a primary residential exemption on their Utah home for the 2012 tax year.

78. The Taxpayers acknowledge that the Commission does not have authority to declare a Utah statute unconstitutional. However, the Taxpayers argue that when faced with a choice between interpreting a Utah statute in one manner that is constitutional and another manner that is unconstitutional,

the Commission should choose the constitutional interpretation over the unconstitutional interpretation. In this regard, the Taxpayers argue that the Commission's interpretation of presumptions and rebuttal of presumptions in Utah Code Ann. §59-10-136(2) impermissibly and unconstitutionally ignores the word "rebuttable." They argue that in previous cases, for example in Utah Tax Commission Case No. 14-30, the Commission has only allowed rebuttal of the presumption created by Utah Code Ann. §59-10-136(2)(a) through facts that would have caused the presumption of domicile not to have arisen in the first place.

79. The Taxpayers argued that the Commission should use facts and circumstances from Utah Code Ann. §59-10-136(3) to rebut a presumption of domicile created by Utah Code Ann. §59-10-136(2)(a) because Utah Code Ann. §59-10-136(3) applies "if the requirements of Subsection (1) or (2) are not met." The Taxpayers argue that failing to use the facts and circumstances of Utah Code Ann. §59-10-136(3) to rebut a presumption created by Utah Code Ann. §59-10-136(2)(a) impermissibly changes the meaning of Utah Code Ann. §59-10-136(3) to replace the word "if" with a concept embodied by the words "only if." This, the Taxpayers argue, ignores the principle that courts and the Commission are to assume that the legislature used each word in a statute advisedly.

80. The Taxpayers' counsel argued that the Taxpayers have rebutted the Subsection 59-10-136(2)(a) presumption for 2012 when they lived in Florida because the Taxpayers have shown that it is more probable than not that they changed their domicile from Utah to Florida for this period. The Taxpayers' counsel specifically argued that the Division has failed to take into account the Utah Rules of Evidence. The Taxpayers' position is that under Rule 301 of the Utah Rules of Evidence, proof of certain basic facts serves as proof of certain presumed facts, where, in the instant case, the basic fact is primary residential exemption and the presumed fact is Utah domicile. The Taxpayers' counsel contends that once the basic fact of primary residential exemption is established, then the presumed fact of Utah domicile is established unless the Taxpayers prove that it is more probable than not that the presumed fact

of Utah domicile is nonexistent than existent. The Taxpayers' counsel claims that the Taxpayers have shown that it is more probable than not that the presumed fact of Utah domicile is nonexistent than existent and that, as a result, the Taxpayers have sufficiently rebutted the Subsection 59-10-136(2)(a) presumption that has arisen. For these reasons, the Taxpayers claim that they are not considered to be domiciled in Utah under Subsection 59-10-136(2)(a) for 2012, when they lived in Florida. As a result, the Taxpayers ask the Commission to find that the Division incorrectly found the Taxpayers domiciled in Utah for the 2012 tax year.

## APPLICABLE LAW

A tax is imposed on the state taxable income of every resident individual for each taxable year. Utah Code Ann. §59-10-104(1).

Utah Code Ann. §59-10-103(1)(q) defines "resident individual" as follows:

> (i) "Resident individual" means:
> (A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or
> (B) an individual who is not domiciled in this state but:
> (I) maintains a place of abode in this state; and
> (II) spends in the aggregate 183 or more days of the taxable year in this state.
> (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what constitutes spending a day of the taxable year in the state.

Utah Code Ann. §59-10-136 provides guidance concerning the determination of "domicile," as follows:

> (1) (a) An individual is considered to have domicile in this state if:
> (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or
> (ii) the individual or the individual's spouse is a resident student in accordance with Section 53B-8-102 who is enrolled in an institution of higher education described in Section 53B-2-101 in this state.

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

(i) is the noncustodial parent of a dependent:

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

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

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

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

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

(b) the individual or the individual's spouse is registered to vote in this state in accordance with Title 20A, Chapter 2, Voter Registration; or

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

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

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

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

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

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

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

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

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

(v) the physical location in which earned income as defined in Section 32(c)(2), Internal Revenue Code, is earned by the individual or the individual's spouse;

(vi) the state of registration of a vehicle as defined in Section 59-12-102 owned or leased by the individual or the individual's spouse;
(vii) whether the individual or the individual's spouse is a member of a church, a club, or another similar organization in this state;
(viii) whether the individual or the individual's spouse lists an address in this state on mail, a telephone listing, a listing in an official government publication, other correspondence, or another similar item;
(ix) whether the individual or the individual's spouse lists an address in this state on a state or federal tax return;
(x) whether the individual or the individual's spouse asserts residency in this state on a document, other than an individual income tax return filed under this chapter, filed with or provided to a court or other governmental entity;
(xi) the failure of an individual or the individual's spouse to obtain a permit or license normally required of a resident of the state for which the individual or the individual's spouse asserts to have domicile; or
(xii) whether the individual is an individual described in Subsection (1)(b).

(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of this Subsection (4), an individual is not considered to have domicile in this state if the individual meets the following qualifications:
(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's spouse are absent from the state for at least 761 consecutive days; and
(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the individual's spouse:
(A) return to this state for more than 30 days in a calendar year;
(B) claim a personal exemption on the individual's or individual's spouse's federal individual income tax return with respect to a dependent who is enrolled in a public kindergarten, public elementary school, or public secondary school in this state, unless the individual is an individual described in Subsection (1)(b);
(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an institution of higher education described in Section 53B-2-101 in this state;
(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary residence; or
(E) assert that this state is the individual's or the individual's spouse's tax home for federal individual income tax purposes.

(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of Subsection (4)(a) to not be considered to have domicile in this state may elect to be considered to have domicile in this state by filing an individual income tax return in this state as a resident individual.
(c) For purposes of Subsection (4)(a), an absence from the state:
(i) begins on the later of the date:
(A) the individual leaves this state; or
(B) the individual's spouse leaves this state; and

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

(d) An individual shall file an individual income tax return or amended individual income tax return under this chapter and pay any applicable interest imposed under Section 59-1-402 if:

(i) the individual did not file an individual income tax return or amended individual income tax return under this chapter based on the individual's belief that the individual has met the qualifications of Subsection (4)(a) to not be considered to have domicile in this state; and

(ii) the individual or the individual's spouse fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state.

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

(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5) if an individual who is required by Subsection (4)(d) to file an individual income tax return or amended individual income tax return under this chapter:

(A) files the individual income tax return or amended individual income tax return within 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be considered to have domicile in this state; and

(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax due on the return, any interest imposed under Section 59-1-402, and any applicable penalty imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or (5).

(5) (a) If an individual is considered to have domicile in this state in accordance with this section, the individual's spouse is considered to have domicile in this state.

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

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

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

(c) Except as provided in Subsection (5)(b)(ii), for purposes of this section, an individual's filing status on a federal individual income tax return or a return filed under this chapter may not be considered in determining whether an individual has a spouse.

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

In Section 59-10-136, two subsections require the Commission to determine whether the property for which an individual or an individual's spouse claims a residential exemption is that individual's or individual spouse's "primary residence." To assist in determining whether a property is considered the

"primary residence" of the individual or individual's spouse who claimed the exemption, the Legislature enacted new property tax provisions at the same time it enacted the new domicile law in Section 59-10-136. Specifically, to assist in the determination of Utah income tax domicile of a property owner, Utah Code Ann. §59-2-103.5(5) and (6) provide as follows:

> (5) Except as provided in Subsection (6), if a property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, the property owner shall:
>
> (a) file a written statement with the county board of equalization of the county in which the property is located:
>
> (i) on a form provided by the county board of equalization; and
>
> (ii) notifying the county board of equalization that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence; and
>
> (b) declare on the property owner's individual income tax return under Chapter 10, Individual Income Tax Act, for the taxable year for which the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence, that the property owner no longer qualifies to receive a residential exemption authorized under Section 59-2-103 for the property owner's primary residence.
>
> (6) A property owner is not required to file a written statement or make the declaration described in Subsection (4) if the property owner:
>
> (a) changes primary residences;
>
> (b) qualified to receive a residential exemption authorized under Section 59-2-103 for the residence that was the property owner's former primary residence; and
>
> (c) qualifies to receive a residential exemption authorized under Section 59-2-103 for the residence that is the property owner's current primary residence.

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."

Utah Administrative Rule R861-1A-42 provides additional guidance on the waiver of penalties and interest, as follows in pertinent part:

> (2) 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.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing . . .
(b) Wrong Filing Place . . .
(c) Death or Serious Illness . . .
(d) Unavoidable Absence . . .
(e) Disaster Relief . . .
(f) Reliance on Erroneous Tax Commission Information . . .
(g) Tax Commission Office Visit . . .
(h) Unobtainable Records . . .
(i) Reliance on Competent Tax Advisor . . .
(j) First Time Filer . . .
(k) Bank Error . . .
(l) Compliance History . . .
(m) Employee Embezzlement . . .
(n) Recent Tax Law Change . . .

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) Whether the commission had to take legal means to collect the taxes;
(ii) If the error is caught and corrected by the taxpayer;
(iii) The length of time between the event cited and the filing date;
(iv) Typographical or other written errors; and
(v) Other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for a waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

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

## CONCLUSIONS OF LAW

### Application of Utah's Domicile Law

The Commission considers the facts of this case under Utah Code Ann. §59-10-136[2] beginning with Utah Code Ann. §59-10-136(5). The Taxpayers were a married couple, not separated or divorced, for all of 2012. They filed a joint federal return for 2012. For purposes of Utah Code Ann. §59-10-136, each of the Taxpayers is thus a spouse of the other. If one of the Taxpayers is considered to have Utah domicile under a provision of Utah Code Ann. §59-10-136 other than Utah Code Ann. § 59-10-136(5), the individual's spouse is also considered to have Utah domicile.

The Commission next considers Utah Code Ann. §59-10-136(1), which deals with attendance at Utah schools. Utah Code Ann. §59-10-136(1)(a) provides that "[a]n individual is considered to have domicile in this state if: (i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state." The Taxpayers had no dependents in Utah public schools in 2012. Based on this, Utah Code Ann. §59-10-136(1)(a)(i) is not applicable in this case[3].

The Commission rejects the argument in the dissenting opinion that the Taxpayers' children's attendance at Florida schools is relevant as evidence that the Taxpayers were not domiciled in Utah. Utah Code Ann. § 59-10-136(1)(a)(i) provides that an individual is considered to have domicile in this state if a dependent the individual or individual's spouse claims on a federal income tax return is "enrolled in a

[2] Prior to tax year 2012, an individual's income tax domicile was determined under Utah Admin. Rule R865-9I-2 (2011) ("Rule 2"), which provided, in part, criteria to be used when determining an individual's income tax domicile and which referred to a non-exhaustive list of domicile factors in Utah Admin. Rule R884-24P-52 (2011) ("Rule 52") (which is a property tax rule). After the Legislature enacted new criteria in Section 59-10-136 to determine income tax domicile for the 2012 tax year, Rule 2 was amended to remove any reference to domicile and to the Rule 52 factors.

[3] If as argued in the dissenting opinion this factor is applicable, the record does not establish whether any of the institutions listed in the findings of fact are "a public kindergarten, public elementary school, or public secondary school" as described in Utah Code Ann. §59-10-136(1)(a)(i).

public kindergarten, public elementary school, or public secondary school in this state." Neither this Subsection (1)(a)(i) nor any other provision of Utah Code Ann. § 59-10-136 requires the Commission to consider attendance at a public kindergarten, elementary, or secondary school in any other state in determining the domicile of an individual or the individual's spouse. When reviewing statutes, the Commission and Utah courts are to "presume that the legislature used each word advisedly." *See Ivory Homes, Ltd. v. Utah State Tax Comm'n*, 2011 UT 54, ¶21. Had the Utah Legislature intended for the commission to examine dependents' attendance at public schools in other states as a factor in determining whether an individual or individual's spouse is domiciled in Utah, it could have enacted such a requirement in Utah's domicile statute. However, the Legislature did not enact such a requirement in Utah's domicile statute, so the Commission declines to consider the Taxpayers' children's attendance in Florida schools in determining whether the Taxpayers are domiciled in Utah.

Utah Code Ann. §59-10-136(1)(a)(ii) provides that an individual is considered to have Utah domicile if "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." Utah Code Ann. §59-10-136(1)(a)(ii) is not applicable because the Taxpayers themselves were not students at a Utah institution of higher education in 2012.

Utah Code Ann. §59-10-136(2)(a) provides that an individual is presumed to be domiciled in Utah if the individual *or* the individual's spouse claims a property tax residential exemption for that individual's or individual's spouse's primary residence, unless the presumption is rebutted. For the presumption to arise, two elements must exist. First, the taxpayers must have claimed the residential exemption on their Utah home. Second, the Utah home on which the taxpayers claimed the residential exemption must be considered the "primary residence" of one or both of the taxpayers in accordance with the guidance provided in Subsection 59-2-103.5(5). If both of these elements exist for the 2012 tax year,

the Subsection 59-10-136(2)(a) presumption will have arisen, and the Taxpayers will be considered to be domiciled in Utah for this period, unless they are able to rebut the presumption.[4]

As to the first element, the Taxpayers claimed that they took no affirmative action that would constitute a "claim" for the residential exemption. They argued that to make a "claim" involves action and they took no action. Rather, they received the primary residential exemption through inaction. Notwithstanding these arguments, the Taxpayers are considered to have claimed the residential exemption on their Utah home for 2012 because they received the exemption for this period. Subsection 59-2-103(2) generally provides that a Utah residential property will receive a 45% residential exemption, while Subsection 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 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 in Utah that does not require an application (which includes most Utah counties) generally asserts an enduring claim to the residential exemption. Furthermore, in those counties in Utah that require an application, receiving the residential exemption after filing the application also constitutes a claim to the exemption.[5] In the instant case, the

[4] Subsection 59-10-136(6) provides that claiming a residential exemption may not be considered in determining domicile if the home for which the exemption is claimed is the primary residence of a tenant. As a result, had the Taxpayers' Utah home been the primary residence of a tenant during the 2012 tax year, the Subsection 59-10-136(2)(a) presumption would not have even arisen. However, the Taxpayers admit that except during the limited times when they visited Utah, the home was vacant during the 2012 tax year. Accordingly, the Subsection 59-10-136(6) exception is not applicable for this period.

[5] On the other hand, in a county that requires an application, receiving the residential exemption without filing an application does not constitute a claim to the exemption. Under such circumstances, the first

Taxpayers received the residential exemption for the 2012 tax year without the need to fill out an application with Salt Lake County. Accordingly, the first element for the Subsection 59-10-136(2)(a) presumption to arise, exists for the 2012 tax year.

As to the second element, for purposes of Section 59-10-136, the Taxpayers' Utah home is considered to be their "primary residence" during the 2012 tax year regardless of whether they considered their home in Florida to be their "primary residence" during this period. When Section 59-10-136 and Subsection 59-2-103.5(5) 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 for which the property owner no longer qualifies to receive the residential exemption, that the property owner no longer qualifies to receive the residential exemption allowed for a primary residence.

The Taxpayers did not file a written statement to notify Salt Lake County that their Utah home did not qualify for the residential exemption for any portion of the 2012 tax year. In addition, the Taxpayers did not file a Utah income tax return on which they declared (on Part 7 of the return) that they no longer qualified to receive the residential exemption for their Utah home for any portion of this period. Accordingly, under Subsection 59-2-103.5(5), the Taxpayers' Utah home is considered to be their

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element would not exist, and the Subsection 59-10-136(2)(a) presumption would not arise. In addition, the Subsection 59-10-136(2)(a) presumption would not arise for an individual if the property receiving the residential exemption was in the name of the individual but had been sold under contract to someone else. *See, e.g., USTC Appeal 16-1368* (Initial Hearing Order Apr. 18, 2018). Redacted versions of this and other selected Commission decisions can be reviewed the Commission's website at https://tax.utah.gov/commission-office/decisions.

"primary residence" for the 2012 tax year. As a result, the second element for the Subsection 59-10-136(2)(a) presumption to arise also exists for this period.

Because the two elements necessary for the Subsection 59-10-136(2)(a) presumption to arise exist for the 2012 tax year, the Taxpayers will be considered to be domiciled in Utah for this period unless they are able to rebut the presumption for all or a portion of this period. Because Subsection 59-10-136(2)(a) involves a rebuttable presumption, the Legislature clearly intended not only for there to be circumstances where an individual whose actions give rise to this presumption *is* considered to have domicile in Utah, but also for there to be circumstances where an individual whose actions give rise to this presumption *is not* considered to have domicile in Utah.[6] However, the Legislature has not provided in statute what circumstances will be or will not be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. As a result, it is left to the Commission, consistent with the structure and language of Section 59-10-136, to delineate between those circumstances that are sufficient and not sufficient to rebut the presumption.

The Taxpayers ask the Commission to find that they have rebutted the Subsection 59-10-136(2)(a) presumption for the 2012 tax year because they lived in Florida during this period and because most of their contacts were with Florida, not Utah, during this period. The Taxpayers specifically rely on Rule 301 of the Utah Rules of Evidence for the proposition that it is more probable than not that the presumed fact of Utah domicile is nonexistent than existent. The Taxpayers' argument may rely on weighing an individual's contacts with various states when determining whether they are considered to be domiciled in Utah, as was done under Utah Administrative Rule 884-24P-52 ("Rule 52") (prior to Section 59-10-136 becoming effective for tax year 2012) and is done under Subsection 59-10-136(3)(b) if an individual is not considered to be domiciled in Utah under Subsection 59-10-136(1) or (2). The

[6] The Legislature did not provide that claiming the Utah residential exemption on a primary residence is an "absolute" indication of domicile (as it did in Subsection 59-10-136(1) for an individual who is enrolled as a resident student in a Utah institution of higher education or, with certain exceptions, has a dependent enrolled in a Utah public kindergarten, elementary, or secondary school).

Taxpayers maintain that they do not meet a preponderance of the 12 factors listed in Subsection 59-10-136(3)(b) for the 2012 tax year.

The Commission has previously found that an individual has not rebutted a Subsection 59-10-136(2) presumption because he or she would not be considered to be domiciled in Utah under Rule 52, the property tax rule used to determine income tax domicile for tax years prior to 2012.[7] It is arguable that using the "old" income tax domicile criteria found in the pre-2012 version of Utah Administrative Rule R865-9I-2 ("Rule 2") and/or in Rule 52 to determine an individual's income tax domicile for years when Section 59-10-136 is in effect would be giving the Legislature's "new" law little or no effect, which the Commission declines to do.[8]

Similarly, the Commission has found that an individual cannot rebut a Subsection 59-10-136(2) presumption by showing that he or she would not be considered to have domicile in Utah under the 12 factors listed in Subsection 59-10-136(3)(b). If the Commission were to do so, one could argue that the Commission was giving no meaning to the Subsection 59-10-136(2) presumptions (i.e., that it was determining domicile as though the Subsection 59-10-136(2) presumptions did not exist).[9]

To allow an individual to rebut a Subsection 59-10-136(2) presumption by showing that they could be considered to be domiciled outside of Utah using the 12 domicile factors listed in Subsection 59-10-136(3)(b) (or using domicile factors found in Rule 2 and/or Rule 52 or other sources) would clearly frustrate the plain meaning of Section 59-10-136. The Subsection 59-10-136(2) presumptions involve three specific factors: 1) claiming the residential exemption on a Utah residential property (the Subsection

[7] The Commission has also found that "ignorance of the law is not sufficient to . . . rebut" the presumption of domicile under Utah Code Ann. §59-10-136(2). *See, e.g. USTC Appeal No. 18-893* (Initial Hearing Order July 12, 2019).

[8] *See, e.g., USTC Appeal No. 15-1857* (Initial Hearing Order Aug. 26, 2016).

[9] *See, e.g., USTC Appeal No. 15-1857.* This conclusion is further supported by the plain language of Subsection 59-10-136(3)(a), which provides that a person may be considered to be domiciled in Utah subject to Subsection 59-10-136(3)(b) "if the requirements of Subsection (1) or (2) are not met[.]" As a result, the provisions of Subsection 59-10-136(3)(b) only come into play if neither Subsection 59-10-136(1) nor one of the presumptions of Subsection 59-10-136(2) is met.

59-10-136(2)(a) presumption); 2) being registered to vote in Utah (the Subsection 59-10-136(2)(b) presumption); and 3) asserting Utah residency on a Utah income tax return (the Subsection 59-10-136(2)(c) presumption).

Prior to Section 59-10-136 becoming effective for the 2012 tax year, the three factors that the Utah Legislature described and set forth as rebuttable presumptions in Subsection 59-10-136(2) (as well as the two education factors described in Subsection 59-10-136(1)) had been among the numerous and non-exhaustive list of factors that the Commission had used to determine income tax domicile for tax years prior to 2012 (as set forth in Rule 2 and/or Rule 52).[10] In Section 59-10-136, however, the Utah Legislature established a hierarchy of specific factors described in Subsections 59-10-136(1) and (2) to establish income tax domicile, with the education factors creating an absolute indication of domicile and the three Subsection 59-10-136(2) factors creating rebuttable presumptions of domicile. Thus, each of the factors described in Subsections 59-10-136(1) and (2) were given greater import than they had received in establishing income tax domicile for years prior to 2012 (when each of these factors was merely one of the many factors with which domicile was determined).[11]

As a result, it is clear that the Legislature intended that an individual meeting one of the factors described in Subsection 59-10-136(1) would, with limited exception, be considered to be domiciled in Utah; and that an individual meeting one of the factors described and set forth as a rebuttable presumption in Subsection 59-10-136(2) might be considered to be domiciled in Utah, regardless of whether that

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[10] Prior to tax year 2012, Rule 2(1)(b) had provided that for purposes of determining income tax domicile, "an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation" and that Rule 52 "provides a *non-exhaustive* list of factors or objective evidence determinative of domicile" (emphasis added).

[11] Almost all of the factors that were given greater import in Subsections 59-10-136(1) and (2) are based on an individual or individual's spouse availing themselves of certain benefits of being a resident of Utah, such as having their dependent attend a Utah public school, being enrolled as a resident student at a Utah institution of higher education, receiving a property tax benefit in the form of a residential exemption, or being registered to vote in Utah.

individual would otherwise be deemed to be domiciled somewhere other than Utah under a more traditional domicile test (such as the one found in Rule 2 and/or Rule 52). To find that a Subsection 59-10-136(2) presumption can be rebutted by showing that the individual would not be considered to be domiciled under some more traditional type of domicile test does not consider the Subsection 59-10-136(2) presumptions in concert with the structure and language of Section 59-10-136 as a whole and would frustrate the plain meaning of Section 59-10-136.[12]

Moreover, relying on the limited and exhaustive list of 12 factors described in Subsection 59-10-136(3)(b) to rebut a Subsection 59-10-136(2) presumption would: 1) be contrary to the express language of Subsection 59-10-136(3)(a), which provides that the Subsection 59-10-136(3)(b) factors should be used to determine domicile "if the requirements of Subsection (1) or (2) are not met[;]" and 2) be contrary to the plain meaning of Section 59-10-136 as a whole by allowing the hierarchy of factors set forth in Subsection 59-10-136(2) to be rebutted by satisfying a list of factors set forth in Subsection 59-10-136(3) that are lower in the hierarchy of domicile factors established by the Legislature.

It is a rule of statutory construction that the terms of a statute should not be interpreted in a piecemeal fashion, but as a whole.[13] An equally important rule of statutory construction mandates that a statute be read according to its literal wording unless it would be unreasonably confusing or inoperable.[14] Finally, it is presumed that a statute is valid.[15] In this case the Utah Legislature chose to enact a hierarchy of factors for determining domicile. The Commission, since 2012, has consistently applied Utah's domicile laws to consider the Subsection 59-10-136(3) domicile factors if an individual or the

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[12] For example, it is arguable that an individual whose only contact with Utah was claiming the residential exemption on a vacation home located in Utah could continue to do so without any Utah income tax consequences if the individual showed that they would be considered to have domicile outside of Utah based on some sort of traditional income tax domicile criteria.

[13] *Peay v. Board of Education of Provo City Schools*, 377 P.2d 490, 492 (1962).

[14] *Horne v. Horne*, 737 P.2d 244, 247 (Utah 1987); accord *Gord v. Salt Lake City*, 20 Utah 2d 138, 434 P.2d 449, 451 (Utah 1967).

[15] *West Jordan v. Morrison*, 656 P.2d 445, 446 (Utah 1982); *see generally Mills Music, Inc. v. Snyder*, 469 U.S. 153, 83 L. Ed. 2d 556, 105 S. Ct. 638 (1985).

individual's spouse is not found to be domiciled in Utah under Subsection 59-10-136(1) or (2). A contrary interpretation of Section 59-10-136 would violate the plain meaning of the statute.

The Taxpayers argued that the Commission should use facts and circumstances from Utah Code Ann. §59-10-136(3) to rebut any presumption of domicile created by Utah Code Ann. §59-10-136(2)(a) because Utah Code Ann. §59-10-136(3) applies "if the requirements of Subsection (1) or (2) are not met." The Taxpayers argue that failing to use the facts and circumstances of Utah Code Ann. §59-10-136(3) to rebut a presumption created by Utah Code Ann. §59-10-136(2)(a) impermissibly changes the meaning of Utah Code Ann. §59-10-136(3) to replace the word "if" with ~~the~~ a concept embodied by the words "only if." This, the Taxpayers argue, ignores the principle that courts and the Commission are to assume that the legislature used each word in a statute advisedly.

As the Taxpayers have correctly stated, the Commission and Utah courts are to "presume that the legislature used each word advisedly." *See Ivory Homes, Ltd. v. Utah State Tax Comm'n*, 2011 UT 54, ¶21. The word "if" as used in Utah Code Ann. §59-10-136(3) creates a condition precedent that must be satisfied before the twelve facts and circumstances of Utah Code Ann. §59-10-136(3) apply. This condition precedent provides that the twelve facts and circumstances of Subsection 59-10-136(3) apply if an individual or the individual's spouse does not have domicile in Utah under Subsection 59-10-136(1) or (2). The legislature created this condition precedent with the single word "if." Thus, to use facts and conditions from Utah Code Ann. §59-10-136(3) without satisfying the condition precedent created by the word "if" effectively eliminates the word "if" from Utah Code Ann. §59-10-136(3) and is contrary to the plain meaning of the statute. The Commission declines the Taxpayers' invitation to ignore the condition precedent created by the word "if" in Utah Code Ann. §59-10-136(3) because the legislature did not use a longer phrase that, in this case, would have created the same condition precedent.

When a Subsection 59-10-136(2) presumption is considered in concert with Section 59-10-136 as a whole, the Commission has generally looked to actions or inactions related to the specific factor

described in the presumption to determine whether an individual has rebutted the presumption or not. For example, where the Subsection 59-10-136(2)(a) presumption has arisen in regards to claiming the residential exemption, the Commission has found that this presumption can be rebutted by showing that the property owner asked the county to remove the exemption, and the county failed to do so.[16] In the instant case, however, the Taxpayers did not contact Salt Lake County and ask it to remove the residential exemption from their Utah home for the 2012 tax year.[17]

The Commission has also found that the Subsection 59-10-136(2)(a) presumption was rebutted where an individual whose home was receiving the residential exemption disclosed on their Utah income tax return that the home no longer qualified for the exemption (even if the individual did not contact the county directly).[18] The Taxpayers, however, did not declare on a 2012 Utah income tax return that their Utah home no longer qualified for the residential exemption for any portion of the 2012 tax year.[19]

In addition, the Commission has found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home was listed for sale, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for sale).[20] The Taxpayers, however,

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[16] *See, e.g., USTC Appeal No. 17-1589* (Initial Hearing Order Aug. 8, 2018).

[17] Furthermore, if the Taxpayers were now, subsequent to the audit, to contact Salt Lake County and ask for the residential exemption to be removed from their Utah home for the 2012 tax year, it would not be sufficient to rebut the Subsection 59-10-136(2)(a) presumption. Where an individual, subsequent to an audit, has asked the county to remove the residential exemption for the audit years and has paid the additional property taxes associated with having the exemption removed for the audit years, the Commission has found that taking such "corrective" actions after the audit process has begun do not negate the actions taken during the tax years at issue. *See, e.g., USTC Appeal No. 15-1582* (Initial Hearing Order Aug. 26, 2016).

[18] *See, e.g., USTC Appeal No. 17-812* (Initial Hearing Order Mar. 13, 2018).

[19] Furthermore, if the Taxpayer were now, subsequent to the audit, to file an original or amended Utah income tax return for the 2012 tax year on which they declared that their Utah home did not qualify for the residential exemption, it would also be insufficient to rebut the Subsection 59-10-136(2)(a) presumption. Again, such corrective actions after the audit process has begun do not negate the actions taken during the tax years at issue.

[20] *See, e.g., USTC Appeal No. 15-1332* (Initial Hearing Order Jun. 27, 2016).

did not list their Utah home for sale during the 2012 tax year. In addition, the Taxpayers used their Utah home when they were present in Utah during 2012.

Furthermore, the Commission has found that the Subsection 59-10-136(2)(a) presumption can be rebutted for that period that a home that was listed for rent, but only if the home was vacant (i.e., if no one was residing in the home even on an occasional basis while it was listed for rent) and if the home would continue to qualify for the residential exemption by being rented to tenants who would use the home as the tenants' primary residence (i.e., not being rented to tenants who would not use the home as their primary residence, such as a short-term rental).[21] The Taxpayers, however, did not list their Utah home for rent during the 2012 tax year. In addition, the Taxpayers used their Utah home on occasion when they were present in Utah during 2012.

The Commission has also found that the Subsection 59-10-136(2)(a) presumption would be rebutted for that period that a home was under its initial construction (not a remodel) and until it received a certificate of occupancy, if the home would be used as a primary residence upon its completion.[22] No evidence, however, was provided to show that the Taxpayers' Utah home was under its initial construction and did not have a certificate of occupancy for any portion of the 2012 tax year.

On the other hand, the Commission has previously found that the Subsection 59-10-136(2)(a) presumption is not rebutted because an individual had never heard of the residential exemption or did not know that they were receiving the residential exemption.[23] Thus, that the Taxpayers did not understand that they were receiving the residential exemption for their Utah home is insufficient to rebut the Subsection 59-10-136(2)(a) presumption. The Commission has also stated in prior cases that it could find in future cases that other circumstances would be sufficient to rebut the Subsection 59-10-136(2)(a)

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[21] *See, e.g., USTC Appeal No. 17-758* (Initial Hearing Order Jan. 26, 2018).
[22] *See, e.g., USTC Appeal No. 17-1589.*
[23] *See, e.g., USTC Appeal No. 15-1582.*

presumption. The Taxpayers, however, have not provided sufficient arguments or evidence to rebut the Subsection 59-10-136(2)(a) presumption for any portion of the 2012 tax year. Accordingly, under Subsection 59-10-136(2)(a), both Taxpayers are considered to be domiciled in Utah for all of the 2012 tax year.

Utah Code Ann. §59-10-136(2)(b) does not apply in this case because the Taxpayers were registered to vote in Florida, not Utah, during 2012.

Utah Code Ann. §59-10-136(2)(c) creates a presumption of Utah domicile if an "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." This Subsection is not applicable to the 2012 tax year because the Taxpayers did not file a Utah individual income tax return for 2012.

Utah Code Ann. §59-10-136(3) sets forth a list of twelve "facts and circumstances" to determine Utah domicile. However, the twelve "facts and circumstances" listed in Utah Code Ann. §59-10-136(3) do not apply in this case. Utah Code Ann. §59-10-136(3) is applicable "if the requirements of Subsection (1) or (2) are not met." As indicated above, this is a case in which the Taxpayers met the requirements of Subsection (2)(a) of Utah Code Ann. §59-10-136. Thus, as noted in the decision above, Subsection (3) is inapplicable in this case.

Utah Code Ann. §59-10-136(4) provides certain exceptions from the requirements of Subsections (1) through (3) for an individual who is absent from Utah "for at least 761 consecutive days" and meets certain other requirements. This exception does not apply to the Taxpayers because of a requirement in Utah Code Ann. §59-10-136(4)(a)(ii)(D) that the exception is only applicable if "neither the individual nor the individual's spouse . . . claim a residential exemption in accordance with Chapter 2, Property Tax

Act, for that individual's or individual's spouse's primary residence." In this case, the Taxpayers claimed a residential exemption for the 2012 tax year on their Utah home.

Utah Code Ann. §59-10-136(6) deals with exceptions from domicile for those claiming a primary residential exemption for Utah real property occupied by a tenant. As indicated above, it does not apply in this case because there is no showing that the Taxpayers rented their Utah property to a tenant in 2012.

**Other Arguments**

The Taxpayers correctly argued in the formal hearing in this case, that rules of law developed in the context of agency adjudication are as binding as those promulgated by agency rulemaking, citing *Pacific Gas & Elec. Co. v. Federal Power Commission.*, 506 F.2d 33 (D.C. Cir. 1974). Rules of law established by adjudication of the Tax Commission apply to the future conduct of all taxpayers subject to the jurisdiction of the Commission, unless they are altered by statute, rule or other agency action. The Taxpayers argue that agencies have the power to overrule a prior decision when there is a reasonable basis to do so, citing *Reaveley v. Public Service Commission*, 436 P.2d 797 (Utah 1968). As the Supreme Court noted in dicta: "Certainly an administrative agency which has a duty to protect the public interest ought not be precluded from improving its collective mind should it find that a prior decision is not now in accordance with its present idea of what the public interest requires. This does not necessarily mean that we think the Commission has changed its mind in this case." *Reaveley* at 800. (In fact, the Public Service Commission was faced with a different set of facts from its prior decisions so the Supreme Court sustained the Commission's decision).

The Commission agrees that an agency has the ability to alter its prior precedent, but it is obvious that the effect of applying the income tax domicile law that took effect beginning with tax year 2012 ("2012 law") in a way that is not consistent with the prior decisions of the Tax Commission on very similar facts, would be to transport taxpayers into a disarrayed world of unequal treatment depending on when a taxpayer's appeal was filed. In other words, had the legislature chosen to apply a different

standard than that being applied by the Tax Commission for the tax year under this appeal, it could have done so when it changed the domicile law in 2019 (General Session SB 13, Income Tax Domicile Amendments), which took effect beginning with tax year 2018 ("SB 13"). Instead, SB 13 applied equally to all taxpayers, with the 2012 law being applied for tax years 2012 to 2017, and the domicile law as amended in SB 13 taking effect beginning with tax year 2018.

**Penalties**

As a separate issue, the Commission considers the issue of penalties imposed by the Division as part of its audit. The Commission has discretion to waive penalties. Utah Code Ann. §59-1-401(14). Utah Administrative Rule R861-1A-42(4)(a)(v) provides that the Commission may consider "equitable considerations [including] factors the commission deems appropriate" as good cause to waive penalties. Given the complexity and fact-sensitive nature of domicile issues, the Commission has often waived penalties based on equitable considerations. *See, e.g.*, Utah State Tax Commission Case Nos. 17-609 and 17-1307. Those factors are present in this case and provide good cause to waive the penalties imposed by the Division in connection with its audit.

Given the evidence presented in the formal hearing before the Commission, there is good cause to sustain the Division's audits as to income tax and interest, but to waive penalties for the 2012 tax year.

Clinton Jensen
Administrative Law Judge

DECISION AND ORDER

Based on the evidence presented at the hearing, the Commission finds that Taxpayers were domiciled in Utah for the 2012 tax year and were therefore full-year residents of Utah for tax purposes for that year. The Commission sustains the Division's audit for income tax and interest but waives penalties assessed for the 2012 tax year. It is so ordered.

DATED this 9th day of June, 2020.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

DISSENT

Commissioner Lawrence C. Walters, Dissenting:

I respectfully dissent in this appeal decision. While the logic of the majority decision is consistent with past Commission decisions in this area, the decision fails to give adequate weight to the evidence and arguments made by the taxpayers in this instance.

The majority decision hinges on the finding that the taxpayers received a primary residential property tax exemption for the tax year in question. The taxpayers argue that the facts in the instant appeal support a rebuttal of the domicile presumption created by the primary residential exemption under Subsection 59-10-136(2)(a). The taxpayers present a plausible alternative interpretation of Section 59-10-136 taken as a whole and with due deference to the hierarchical structure of that statute. If, as the

taxpayers argue, the presumption under Subsection 59-10-136(2)(a) is rebutted, then whether the taxpayers are domiciled in Utah depends on the factors enumerated in Subsection 59-10-136(3)(b).

In Subsection 59-10-136(2)(a) the Legislature created "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 . . . ."

In this instance, the taxpayers argue correctly that the claim of the residential exemption establishes a rebuttable presumption of domicile. It does not irrefutably establish domicile. Subsection 59-10-136(2) does not specify the circumstances that will be or will not be sufficient to rebut a presumption of domicile created under this subsection. Subsection 59-10-136(3)(b) is clear that the standard for evaluating domicile under that subsection is a preponderance of the evidence. Given the hierarchical structure of Section 59-10-136, it might be reasonable to conclude that the standard for rebutting a presumption under 59-10-136(2) is higher. However, the Utah Supreme Court has ruled that ". . . a preponderance of the evidence is the level of proof required in the typical civil case where only money damages are at stake." *Egbert v. Nissan North America, Inc.*, 2007 UT 64, ¶12 (citation omitted). Given that the case at hand involves "only money damages," it seems clear that the court would support the application of a preponderance of the evidence standard.

The key issue in this appeal is the domain of evidence relevant to the rebuttal of the Subsection 59-2-136(2)(a) presumption. The taxpayers refer to Rule 301 in Utah Rules of Evidence, which in this instance requires that the taxpayers prove that it is less probable than otherwise that the taxpayers are domiciled in Utah. The majority opinion limits the domain of facts considered to those specifically related to actions or inactions involving the primary residential exemption. The taxpayers ask that a broader range of relevant facts be considered that reflect the life choices and location decisions of the taxpayers.

The majority opinion argues that to consider this additional evidence ignores or undermines the hierarchical structure of Section 59-10-136 as adopted by the legislature. Past Commission rulings have concluded that rebutting the factors that create the presumption is sufficient to rebut the presumption. Alternatively, the Commission has found that an action or inaction that changes the taxpayer's status as a recipient of a primary residential exemption (or as a registered voter) was sufficient to rebut a presumption under Subsection 59-10-136(2). But consideration of other factors identified in Section 59-10-136 would undermine the priorities established in the statute.

The taxpayers ask that a preponderance of all of the relevant evidence be considered, and that compelling evidence that a presumption of domicile under Subsection 59-10-136(2) is rebutted must encompass all of the factors enumerated by the Legislature in Section 59-10-136, with particular weight given to Subsections 59-10-136(1) and 59-10-136(2).

The Taxpayers and the majority opinion make reference to Rule 301, *Utah Rules of Evidence*. Rules 401 and 403 are also germane as they bear on the question of relevance. Rule 401 (Test for Relevant Evidence): states:

> Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

Rule 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons) states:

> The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

The Taxpayers ask that the Commission not unfairly exclude relevant evidence that they are not domiciled in Utah. The legislature has identified what constitutes the range of relevant evidence in Section 59-10-136. The question is whether there is any set of relevant facts from 59-10-136 that would

constitute sufficient evidence that the taxpayer is not domiciled in Utah when set against receipt of a primary residential property tax exemption? The plain language of the statute allows for such a possibility, the majority decision acknowledges that such facts might exist and the Commission must consider the preponderance of the evidence in this case without excluding the probative contribution of the Taxpayers' evidence.

Many of the factors traditionally used to demonstrate domicile in other contexts are enumerated in Section 59-10-136. For the Commission to reject out of hand the use of this evidence in establishing a case to rebut the presumption of domicile denies the taxpayers a fair consideration of the preponderance of the evidence. Past Commission decisions have reached the conclusion that using the twelve factors listed in Subsection 59-10-136(3)(b) would discount or render meaningless the presumptions in Subsection 59-10-136(2) (see for example *Appeal No. 14-30* for an early example and *Appeal No. 18-793* for a more recent example). The majority opinion asserts there is a condition precedent established such that factors in Subsection 59-10-136(3)(b) cannot be considered until after the facts and presumptions in Subsections 59-10-136(1) and 59-20-136(2) are found to be inadequate for determining domicile. To be sure, Subsection 59-10-136(3) articulates the criteria to be used in such instances. However, this enumeration does not negate the relevance of Subsection 59-10-136(3)(b) factors when considering a rebuttal of Subsection 59-10-136(2) presumptions. It is quite possible to maintain the hierarchical interpretation of Section 59-10-136, taken as a whole, while still considering all of the factors included by the legislature in that statute.

It may be the case that if the twelve factors listed in Subsection 59-10-136(3)(b) are the only evidence considered in determining domicile, the legislative intent would be compromised. But those are not the only factors enumerated in Section 59-10-136. Considering factors listed in Subsection 59-10-136(3) does not render the language of Subsection 59-10-136(2) meaningless when considered in conjunction with those other factors. It is simply an acknowledgement that compelling evidence to rebut

a Subsection 59-10-136(2) presumption will inevitably involve some or all of the factors listed in Subsection 59-10-136(3)(b), in addition to school enrollment, voter registration, a claim of primary residential exemption, formal declarations of domicile and potentially other factors.

Rebutting presumptions created under Subsection 59-10-136(2) must involve weighing all of the evidence from factors listed in Section 59-10-136 and potentially other factors presented by taxpayers. Only if the totality of the evidence, appropriately weighted to reflect legislative intent, provides sufficient evidence should the presumption be considered rebutted. Then and only then should the factors enumerated in Subsection 59-10-136(3) be evaluated to determine domicile as a separate analysis using the preponderance of the evidence standard.

Subsection 59-10-136(1)(a)(i) sets out a standard, which if satisfied irrefutably establishes Utah domicile: "An individual is considered to have domicile in this state if: . . . a dependent . . . is enrolled in a public kindergarten, public elementary school, or public secondary school in this state . . . ." The majority opinion states that this language is not relevant because the taxpayers had no children enrolled in Utah schools. On the contrary, it is precisely relevant as evidence that the taxpayers were not domiciled in Utah. If school enrollment absolutely establishes Utah domicile, dependent children registered in schools in other states must be considered as evidence countering any presumption of domicile. In this instance, the taxpayers' young children, including a special needs child, were enrolled in schools in Florida and this fact certainly makes domicile outside of Utah more probable.

The majority decision asserts that had the Legislature intended to establish domicile based on the state where taxpayer dependents attend school, it could have done so, but that is not the point. The point is that the Legislature identified school attendance as a key factor reflecting domicile with its attendant benefits. It is therefore relevant evidence in considering a rebuttal of a Subsection 59-10-136(2) presumption of domicile. In this case, the taxpayers searched for a state of residence and a location within that state to best meet the educational needs of their children.

Subsection 59-10-136(1)(a)(ii) articulates a second absolute domicile test: "the individual or the individual's spouse is a resident student . . . enrolled in an institution of higher education described in Section 53B-2-101 in this state." If either the taxpayer or the taxpayer's spouse were enrolled in an institution of higher education during the year in question, this fact would also need to be considered. In this instance, no evidence was presented to suggest that either taxpayer was enrolled in any institution of higher education during the audit period.

Subsection 59-10-136(2) articulates three factors that establish a rebuttable presumption of Utah domicile for the tax years in question:

- (2)(a) – claiming a primary residential property tax exemption
- (2)(b) – being registered to vote in Utah
- (2)(c) – asserting Utah residency or part-year residency on a state income tax return

As noted, the taxpayers did receive a primary residential property tax exemption. At the same time, both were registered to vote in Florida. Again, the majority decision asserts that voter registration is not relevant because the parties were registered in another state. Quite to the contrary, this is relevant evidence that would tend to make domicile outside of Utah more probable than not, and would contribute to a rebuttal of the presumption of domicile in Utah. Further, both taxpayers asserted residency in Florida on their multiple state tax returns. They filed no return in Utah because neither they nor their tax professional considered them to be full or part-year Utah residents.[24]

Thus, of the five factors the Legislature judged to be either determinative or to create a presumption of domicile, three provide relevant evidence supporting Florida domicile, one indicates Utah,

[24] It is worth noting that the taxpayers left Utah in February, 2011. By April, 2011, the taxpayers had established their residence in Florida. Section 59-10-136 was passed by the Utah legislature on March 4, 2011, it was signed by the governor on March 30, 2011 and became effective January 1, 2012. The law became effective ten months after the taxpayers had established their residence in Florida. When they completed their 2011 Utah tax return, there was no box to check to indicate they no longer qualified for the residential exemption. By 2013 when the taxpayers might have filed a 2012 Utah tax return, they had been residents of Florida for about two years.

and one is not relevant in this instance. A preponderance of the factors listed in Subsections 59-10-136(1) and 59-10-136(2) support rebuttal of the presumed domicile under Subsection 59-10-136(2)(a).

Subsection 59-10-136(3) identifies twelve factors that the Commission is to use to determine domicile "if the requirements of Subsection (1) or (2) are not met for an individual to be considered to have domicile in this state . . . ." The taxpayers correctly note in their argument that the Legislature said "if," not "only if." It is noteworthy that the word "only" is used in the majority opinion and has often been stated explicitly in past Commission decisions in connection with this statutory language but it does not appear in the statute. The Commission must consider that the Legislature framed this language with care. Thus, while the twelve factors are to be used if the requirements of Subsections (1) and (2) are not met, the plain language of the statute does not preclude their inclusion in a rebuttal of any presumption created under Subsection (2). The Commission must consider all of the relevant facts, with particular weight on factors listed in Subsections (1) and (2), in considering any attempt to rebut a Subsection (2) presumption.

In this instance, each of the factors listed in Subsection 59-10-136(3)(b) either support domicile in Florida or are not relevant.

- (i) – Both taxpayers had Florida driver's licenses
- (ii) – There were no dependents enrolled in institutions of higher education
- (iii) – The Florida home was larger and more valuable than the Utah home
- (iv) – Both taxpayers resided in Florida and no dependents remained in Utah
- (v) – There was no Utah source income
- (vi) – Of the six vehicles and one trailer registered to the taxpayers, four were registered in Florida. Two vehicles and the trailer were registered in Utah and were for the use of Ms. Buck's parents.
- (vii) – Both taxpayers were actively involved in a church and were prominently involved in other community activities and groups in Florida

- (viii) – Most mail was sent to the Florida address, though some items, including potentially property tax notices may have been sent to the Utah address
- (ix) – The address given on federal tax returns was the New Jersey address of the taxpayers' tax preparer
- (x) – The taxpayers asserted Florida residency on all state tax returns
- (xi) – Mr. Buck obtained a non-resident hunting license in Utah (and also hunted in Texas)
- (xii) – Neither party was the noncustodial parent of a dependent

Taken as a whole and with particular weight given to Subsections 59-10-136(1) and 59-10-136(2), the totality of factors listed in Section 59-10-136 make domicile in Utah less than probable, and rebut the presumption of domicile under Subsection 59-10-136(2)(a).

With this rebuttal, the Commission must turn to the twelve factors enumerated in Subsection 59-10-136(3)(b) to determine domicile. As listed previously, seven of the twelve factors clearly support domicile in Florida. Three others (vehicle registration, mail delivery and the address on the tax returns) might be considered indeterminate. Two factors are not relevant in this instance (dependents enrolled in higher education and noncustodial parents). Given this assessment, the preponderance of the evidence under Subsection 59-10-136(3)(b) supports the taxpayers' argument that they were domiciled in Florida, and the Division's audit assessment should be overturned.

The majority opinion asserts, "It is obvious that the effect of applying the 2012 law in a way that is not consistent with the prior decisions of the Tax Commission, would be to transport taxpayers into a disarrayed world of unequal treatment depending on when a taxpayer's appeal was filed."

Consistent treatment of all taxpayers is a legitimate concern, but it is a relevant concern only if the reasoning outlined in this dissent represents a significant departure from past commission decisions. Since Section 59-10-136 was enacted in 2012, the commission has ruled in numerous income tax domicile appeals. Of these, 38 decisions have been redacted and made publicly available. Presumably,

these 38 decisions explicate the reasoning and nuances the commission relies on in the majority opinion. A review of all 38 cases identified finds only two cases with fact patterns remotely similar to this appeal.

In *Appeal No. 16-1272* for tax years 2012 and 2013, the taxpayers owned a property in another state and that property received a primary residential exemption similar to Utah's. In addition, the taxpayers were registered to vote in that state and had resident hunting and fishing licenses. The taxpayers had no minor children attending school in either state, and were not enrolled in an institution of higher education. They were found to be domiciled in Utah for income tax purposes because they owned a vacation home in Utah that received the primary residential property tax exemption.

In *Appeal No. 16-1272*, the taxpayers could not rebut the presumption of domicile because the preponderance of factors identified in Subsections 59-10-136(1) and 59-10-136(2) did not overcome the presumed fact of domicile. In addition, the Subsection 59-10-136(3) factors were mixed and on balance did not support rebuttal.

In *Appeal No. 17-1624* for tax year 2014, the taxpayers owned no property in Utah or their claimed state of domicile. One of the taxpayers was registered to vote in Utah, while the other was not registered in either state. The taxpayers had one child in Utah schools for January, and two children in public schools in their claimed state of residence for the remainder of the year. The taxpayers were both found to be domiciled in Utah because one was registered to vote in Utah.

Under the reasoning outlined in this dissent, dependent children in public schools outside of Utah should weigh heavily as a factor in rebutting presumed domicile under Section 59-10-136(2) because the legislature gave this factor such weight. However, in *Appeal No. 17-1624*, none of the other factors identified in Subsections 59-10-136(1) and 59-10-136(2) supported rebuttal. In addition, the Subsection 59-10-136(3) factors on balance did not support rebuttal.

Thus, it is possible to distinguish the instant appeal from prior cases that have come before the Commission. In the current appeal, the preponderance of factors the legislature has identified in

Subsections 59-10-136(1) and 59-10-136(2) as most critical in determining domicile for income tax purposes rebut the presumption of domicile created by the property tax exemption. Other cases that have come before the Commission have not met this standard.

If the fact pattern in the present appeal differs from past appeals heard by the Commission, the consistency concerns raised are not germane. Following the logic in this dissent would not "transport taxpayers into a disarrayed world of unequal treatment." On the contrary, it preserves and gives deference to the hierarchical preferences adopted by the legislature, while at the same time affording taxpayers the right to have all of the relevant evidence heard and weighed.

Lawrence C. Walters
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit in accordance with Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63G-4-401 et. seq.

## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2020, true and correct copies of this **BRIEF OF PETITIONERS JOHNATHAN & BROOKE BUCK** was delivered via email to:

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