

DEC 10 2020

IN THE UTAH SUPREME COURT

JOHNATHAN BUCK AND BROOKE
BUCK,

Appellants,

v.

UTAH STATE TAX COMMISSION,

Appellee.

Case No. 20200531-SC

**BRIEF OF *AMICI CURIAE* UTAH TAXPAYERS ASSOCIATION AND UTAH
ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTS AND IN SUPPORT OF
APPELLEES JOHNATHAN AND BROOKE BUCK**

On Appeal from Utah State Tax Commission
Case No. 18-888

Stanford E. Purser
Deputy Solicitor General
John C. McCarrey
Michelle Lombardi
Assistant Attorneys General
Sean Reyes
Utah Attorney General
P.O. Box 140858
Salt Lake City, Utah 84114-0858
Telephone: 801-366-0375
Email: mlombardi@agutah.gov
Attorneys for Appellant
Utah State Tax Commission

Paul W. Jones #11688
Hale & Wood, PLLC
4766 South Holladay Boulevard
Salt Lake City, UT 84117
Telephone: 801-930-5101
pwjones@halewoodlaw.com
Attorneys for *Amici Curiae* Utah
Taxpayers Association and Utah
Association of Certified Public
Accountants

See the Additional Party and Counsel on the Following Page

Samuel A. Lambert
Ray Quinney & Nebeker
36 S. State St., Ste. 1400
Salt Lake City, Utah 84111
Telephone: 801-532-7543
Email: slambert@rqn.com
Attorneys for Appellant Johnathan
and Brooke Buck

List of Parties

Petitioners

Johnathan Buck

Brooke Buck

Counsel for Petitioners

Samuel A. Lambert

Respondent

Utah State Tax Commission

Counsel for Respondent

John C. McCarrey

Michelle A. Lombardi

Stanford E. Purser

TABLE OF CONTENTS

Table of Authorities.....	ii
Interest of the Amici Curiae	1
Summary of the Argument	4
Arguments	5
I. The Plain Language of the Statute Allows Any and All Facts to Be Used to Rebut A Presumption of Utah Domicile	5
II. Based on the Plain Language of the Statute, the Focus of a Rebuttable Presumption Analysis Should Be Where the Taxpayer Is Domiciled	8
III. Based on Its Plain Language, the Statute Should Be Applied So There Is a Material Distinction Between Subsection (1) Mandatory Domicile and Subsection (2) Presumptive Domicile	10
IV. To the Extent the Court Finds the Statutory Language Ambiguous, the Court Must Construe the Statute In Favor of the Taxpayer	11
V. The Standard of Review to Be Applied in Rebutting Presumptive Domicile Should Be Based on Common Law As the Statute Is Silent.....	13
Conclusion	15
Certificate of Compliance.....	16
Certificate of Service	17

TABLE OF AUTHORITIES

Cases

<i>Cnty Bd. of Equalization v. Utah State Tax Comm’n</i> , 944 P.2d 370, 373-74 (Utah 1997)	12
<i>Egbert v. Nissan N. Am., Inc.</i> , 2007 UT 64, ¶ 11	13, 15
<i>Gould v Gould</i> , 245 U.S. 151 (1917)	12
<i>Oklahoma Tax Comm’n v. Chickasaw Nation</i> , 515 U.S. 450, 463, 115 S. Ct 2214 (1995)	1
<i>Savely v. Utah Highway Patrol</i> , 2018 UT 44, ¶ 33	8
<i>State v. Malo</i> , 2020 UT 42, ¶ 22	7
<i>Superior Soft Water Co. v. Tax Comm’n</i> , 843 P.2d 525, 529 (Utah Ct. App. 1992)	12
<i>Uzalac v. Thurgood</i> , 2006 UT 46	14

Statutes

Utah Code § 59-10-136	passim
Utah Code Ann. § 59-1-1417(2) (2018)	12

Other Authorities

2011 debate on Senate Bill 21 audio found at 1:16:00 https://le.utah.gov/av/committeeArchive.jsp?timelineID=55008	9
<i>Buck v. Tax Comm’n</i> , Tax Commission Case No. 18-888	3, 4, 11

Other Authorities Cont.

Tax Commission Decision 17-1624..... 2

Utah Income Tax Related Domicile Cases
 <https://tax.utah.gov/commission-office/decisions> 2

Utah Tax Commission Rule R884-24P-52 (2010) 6

INTEREST OF THE *AMICI CURIAE*

The Utah Taxpayers Association (“UTA”) as a statewide organization representing a broad array of taxpayers throughout Utah, represents many taxpayers affected by this case. The purpose of the UTA is to promote efficient, economical government and fair and equitable taxation in Utah.

The Utah Association of Certified Public Accountants (“UACPA”) as a statewide organization representing a broad array of certified public accountants (“CPAs”) throughout Utah, represents CPAs who prepare tax returns for taxpayers who are trying to comply with Utah’s domicile law. These CPAs have witnessed first-hand how difficult it has been to comply with Utah’s domicile statute given the current state of the law.

This case involves the interpretation of Utah’s individual income tax domicile statute, Utah Code section 59-10-136. As it is with other areas of the law, domicile has profound legal implications in relation to individual income taxes. The state where an individual is domiciled has much broader authority to tax the income of that individual than other states. *See Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 463, 115 S. Ct 2214 (1995) (There is a “well-established principle of interstate . . . taxation . . . that a [state] may tax *all* the income of its residents, even income earned outside the taxing jurisdiction” (emphasis in original)). Adopted in 2011, Utah’s domicile statute requires mandatory domicile in Utah if, for example, children claimed by taxpayers as dependents are in Utah public school. The statute also provides a rebuttable presumption of domicile if, for example, a taxpayer claims a primary residence property tax exemption

on their home, is registered to vote in Utah. This case involves the rebuttable presumption of domicile.

Since 2011, taxpayers and CPA's have tried their best in filing tax returns to comply with the statutory language when a rebuttable presumption of domicile exists. Taxpayers and their CPAs either conclude a full or part-year Utah domicile, or conclude the presumption has been rebutted and the domicile is outside Utah for part or all of the year. Where a taxpayer and their CPA conclude a domicile outside Utah on the tax return, Tax Commission audit assessments have been issued to numerous taxpayers since 2011 reversing that conclusion based on property tax or voter registration records. The taxpayers and CPAs then approach the Auditing Division of the Tax Commission and attempt to present evidence to show that the presumption of domicile has been rebutted.

If the parties cannot reach agreement, the taxpayer's only option is to go through the burden and expense of an appeal to the Tax Commission. In the words of the Tax Commission, since Senate Bill 21 was passed in 2011, there have been "scores, if not hundreds, of Section 59-10-136 income tax domicile decisions issued" by the Tax Commission. *See* Tax Commission Decision 17-1624. Most of these cases have involved a rebuttable presumption of domicile. *See* all domicile and rebuttable presumption domicile cases reported on the Tax Commission website at <https://tax.utah.gov/commission-office/decisions>.

In the discussions with auditors, and in appeals that follow, taxpayers and CPAs take the position that, as the statute says, the presumption of a Utah domicile is

“rebuttable.” Taxpayers and CPA’s attempt to provide credible evidence that the domicile of the taxpayer is outside Utah, that the taxpayer was unaware they were benefiting from the primary residence property tax exemption and are happy to pay retroactive property taxes, and/or that the taxpayer did not realize that failing to immediately register to vote upon moving to a new state could have Utah income tax consequences.

In turn, in those discussions and in appeals that follow, the Auditing Division and Tax Commission have taken the position that the circumstances where a presumption of domicile can be rebutted are very limited, such as where: (1) the taxpayer “asked the county to remove the [primary residence] property tax exemption, and the county failed to do so,” (2) the taxpayer “disclosed on their tax return that the home no longer qualified for the [primary residence property tax] exemption,” (3) the home receiving the primary residence property tax exemption “was listed for sale, but only if the home was vacant,” (4) the home receiving the primary residence property tax exemption is “being rented to tenants who would use the home as the tenants’ primary residence,” or (5) the home receiving the primary residence property tax exemption “was under its initial construction [and] would be used as a primary residence upon its completion.” *Buck v. Tax Comm’n*, Tax Commission Case No. 18-888 at pp. 26-27. In each of these circumstances, the presumption should not even arise in the first place. In the first two examples, the taxpayer took express action to remove the primary residence property tax exemption. In the latter three examples, a separate and specific statute or rule provides that the primary residence property tax exemption is allowed.

The long and short is that under Tax Commission decisions, the opportunity to rebut a presumption of Utah domicile after it has arisen is extremely narrow, and does not allow taxpayers to present facts relating to their domicile. This is true for all taxpayers, including those who clearly reside outside Utah, but who did not immediately register to vote upon moving from Utah, or who own a home in Utah in a county that automatically places the primary residence property tax exemption on all homes, and the taxpayer is unaware the exemption exists.

This has resulted in a trap for the unwary, into which the scores, if not hundreds, of referenced taxpayers and CPAs have fallen. This *Buck* case is the first individual income tax domicile case to reach the Utah Supreme Court since the 2011 statute was passed. Guidance is sorely needed from the Supreme Court on the issue of what can and cannot be considered to rebut a presumption of domicile under the statutory language.

UTA and UACPA are uniquely situated through this *amici curiae* brief to provide a helpful perspective in relation to these widespread issues which impact the Bucks and many other taxpayers.

SUMMARY OF THE ARGUMENT

The plain language of Utah Code section 59-10-136 allows any and all facts to be used to rebut a presumption of Utah domicile. The statute specifies that the presumption of “domicile” is “rebuttable” and does not limit in any way what facts can and cannot be considered to rebut the presumption of a Utah domicile. Allowing any and all facts to be considered, including those related to domicile (1) respects the statutory language which

expressly ties the rebuttable presumption to “domicile,” and (2) prevents presumptive domicile under Utah Code subsection 59-10-136(2) from functionally becoming mandatory domicile under Utah Code subsection 59-10-136(1). While the plain language of the statute is clear that any and all facts can be used to rebut a presumption of Utah domicile, to the extent the Court finds any ambiguity in the statute, the statute at issue is a taxing statute so any doubts about its meaning must be resolved in favor of the taxpayer to prevent imposing taxes by implication. Based on common law, the standard of review to be applied to rebut presumptive domicile should be overcoming a statutory presumption by a preponderance of the evidence.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE STATUTE ALLOWS ANY AND ALL FACTS TO BE USED TO REBUT A PRESUMPTION OF UTAH DOMICILE.

The plain language of the statute in question allows any and all facts to be used to rebut a presumption of Utah domicile. The statute in question is Utah Code section 59-10-136, which provides as follows, which emphasis added:

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

(i) except as provided in Subsection (1)(b), a dependent with respect to whom the individual or the individual's spouse claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is enrolled in a public kindergarten, public elementary school, or public secondary school in this state; or

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

* * *

(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:

[Several traditional domicile factors such as driver's license, vehicle registration, and quality of living arrangements are then listed in Subsection (3)].

The issue in this case is whether this statutory language allows taxpayers to use any and all facts to rebut a presumption of domicile under Utah Code subsection 59-10-136(2), as argued by the taxpayers; or whether this statutory language prohibits taxpayers from using any facts listed in Utah Code subsection 59-10-136(3) or in Utah Tax Commission Rule R884-24P-52 (2010) to rebut a presumption of domicile under Utah Code subsection 59-10-136(2), as argued by the Tax Commission.

To determine this issue, “the first step of statutory interpretation is to look to the plain language, and where statutory language is plain and unambiguous, this Court will not look beyond the same to divine legislative intent. Rather, we are guided by the rule that a statute should generally be construed according to its plain language.” *State v. Malo*, 2020 UT 42, ¶ 22 (citations omitted).

The plain language of this statute allows any and all facts to be used to rebut presumptive domicile. Utah Code Subsection 59-10-136(2) provides that a presumption of “domicile” is “rebuttable.” This language clearly provides that a taxpayer has the right to *rebut* a presumption of Utah *domicile*. No language in the statute limits what facts a taxpayer can provide in presenting such a rebuttal.

The Tax Commission has relied on language in Utah Code Subsection 59-10-136(3) to limit such facts, but this interpretation does not comport with the plain language. Utah Code subsection 59-10-136(3) provides that certain facts will be considered to determine Utah domicile “if the requirements of subsection (1) or (2) are not met.” This language specifies what facts *can* be considered if, under the hierarchy of the statute, the requirements of Subsections (1) and (2) are not met and Subsection (3) is applied. This language does not specify what facts can or cannot be considered to rebut presumptive domicile under Utah Code Subsection 59-10-136(2). To reach the Tax Commission’s application of the statute, the plain language of the statute would need to state as follows: Facts listed under Subsection (3), and other facts historically used by courts to determine domicile, may not be used to rebut a presumption of domicile under Subsection (2).

The statute does not say that, and nothing in the plain language of the statute prohibits a taxpayer from presenting, and the trier of fact from considering, any and all facts to determine whether a taxpayer has rebutted a presumption of Utah domicile under Utah Code subsection 59-10-136(2).

II. BASED ON THE PLAIN LANGUAGE OF THE STATUTE, THE FOCUS OF A REBUTTABLE PRESUMPTION ANALYSIS SHOULD BE WHERE THE TAXPAYER IS DOMICILED.

The statute in question provides that the rebuttable presumption analysis should focus on where the taxpayer is domiciled, not just on whether the taxpayer intended to take the action that creates the presumption, or whether a presumption ever arose. Utah Code subsection 59-10-136(2) provides that “[t]here is a rebuttable presumption that an individual is considered to have *domicile* in this state if:” (Emphasis added). The presumption to be rebutted is not whether the taxpayer intended to try to remove the primary resident property tax exemption, as has been applied by the Tax Commission as noted above. *See supra* at 6. It is whether the taxpayer is “considered to have domicile in” Utah. Utah Code subsection 59-10-136(2). The statute directly places the focus on domicile, and facts relating to domicile should be the focus in whether the presumption has been rebutted.

This plain language of the statute is clear on this point, but to the extent the Court finds “there is ambiguity in the act’s plain language” for any reason as to what the focus of the rebuttable presumption inquiry should be, the Court “then seek[s] guidance from the legislative history and relevant policy considerations.” *Savely v. Utah Highway Patrol*, 2018 UT 44, ¶ 33. In this instance, the legislative history supports the point that

facts relating to domicile should be the focus in whether the presumption should be rebutted.

In the 2011 debate on Senate Bill 21, which created the statute in question, bill sponsor Senator Wayne Niederhauser stated as follows: “The second tier . . . it’s a rebuttable presumption. If . . . you’ve registered to vote in Utah or if you’re taking the primary residence exemption on your property tax . . . *that is pretty much prime facie evidence that you intend to be domiciled in the state of Utah.*” Statement of Bill sponsor Senator Neiderhauser on March 2, 2011 to the House Revenue and Taxation Committee, found at 1:16:00 of the 1:46:38 length recording at <https://le.utah.gov/av/committeeArchive.jsp?timelineID=55008> (Emphasis added). As with the language of the statute, the legislative history reflects that the focus of the facts presented to rebut presumptive domicile should be on “domicile.” Otherwise, a taxpayer who clearly lives outside Utah has no reasonable means to establish that fact, contrary to the language passed by the Legislature which expressly allows a taxpayer to rebut presumptive domicile.

To the extent the Court finds ambiguity on the statute for any reason, relevant policy considerations also support focusing on domicile in the rebuttable presumption analysis. As the statute is presently being applied by the Tax Commission, Utah is declaring domicile over individuals who have never lived nor worked in Utah, who move from Utah and do not immediately register to vote in their new state, or who are unaware they are benefiting from a primary residence property tax exemption on a Utah residence. We live in a nation where mobility between states is common. If other states applied

domicile laws as Utah is currently applying its domicile laws, mobile taxpayers would be caught unawares in an unpredictable and endless web of different states declaring domicile over them for individual income tax purposes. By applying the Utah statute according to its language, and focusing on domicile-related facts in the rebuttable presumption analysis, a proper balance is reached. Those who claim to have moved from Utah, but who have not really moved from Utah, are still properly taxed in Utah as they will be unable to rebut the presumption based on all facts and circumstances. At the same time, those who clearly do not live in Utah are not improperly pulled into Utah based on all facts and circumstances. That is the fair, predictable and consistent policy domicile statutes in all states are designed to implement. These policy considerations also present constitutional issues (*see Amicus Curiae* brief filed in the instant case on December 10, 2020 by the American College of Tax Counsel), which must be considered regardless of whether the Court finds the language of the statute ambiguous.

III. BASED ON ITS PLAIN LANGUAGE, THE STATUTE SHOULD BE APPLIED SO THERE IS A MATERIAL DISTINCTION BETWEEN SUBSECTION (1) MANDATORY DOMICILE AND SUBSECTION (2) PRESUMPTIVE DOMICILE.

Based on its plain language, Utah Code subsection 59-10-136 should be read and applied so that Subsection (2) is not functionally applied as being mandatory domicile under Subsection (1). To date, in the Tax Commission decisions available online, taxpayers have been allowed to rebut the Subsection (2) presumptions only where (1) the government was in error in not implementing taxpayer actions regarding a presumption,

or (b) the taxpayer satisfies a separate statute establishing no Utah domicile. *Buck v. Tax Comm'n*, Tax Commission Case No. 18-888 at pp. 26-27.

The concern with these limited options to rebut a Utah Code subsection 59-10-136(2) presumption is that it functionally converts subsection (2) presumptive domicile into Utah Code subsection 59-10-136(1) mandatory domicile as a taxpayer could avoid subsection (1) mandatory domicile using these very same methods. If, under Subsection (1), a taxpayer tried not to claim a dependent on a tax return, tried not to enroll their child in public school, or tried not to claim resident tuition, and the government failed to implement the taxpayer's wishes, the taxpayer should not be subjected to mandatory Subsection (1) domicile. Similarly, if a separate statute specified there was no Utah domicile, the taxpayer should not be subjected to mandatory Subsection (1) domicile. Given the limited rebuttals allowed by the Commission to date, the Commission's application of the statute has functionally converted presumptive domicile under Utah Code subsection 59-10-136(2) into mandatory domicile under Utah Code subsection 59-10-136(1). The Court should apply subsection (2) according to its plain language and confirm that a presumption of domicile under subsection (2) is "rebuttable," with consideration of any and all facts a taxpayer wishes to present.

IV. TO THE EXTENT THE COURT FINDS THE STATUTORY LANGUAGE AMBIGUOUS, THE COURT MUST CONSTRUE THE STATUTE IN FAVOR OF THE TAXPAYER.

To the extent the Commission finds there is an ambiguity in the statute, that ambiguity must be construed in favor of the taxpayer such that any and all facts can be used to rebut presumptive domicile under Utah Code Subsection 59-10-136(2). Utah

Code section 59-10-136 is a tax imposition statute (as opposed to a statute creating an exemption or credit) as it specifies who is domiciled in Utah, which results in such individuals paying tax on 100% of their income to Utah under Utah Code sections 59-10-104 and 59-10-103(1)(r) & (x).

As a result, if “any doubt exists as to the meaning of the statute,” the Tax Commission must “construe [the] taxation statute[] liberally in favor of the taxpayer.” *Cnty Bd. of Equalization v. Utah State Tax Comm’n*, 944 P.2d 370, 373-74 (Utah 1997) (citations omitted). This is because “[w]hen interpreting statutes levying taxes, ‘it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out.’” *Superior Soft Water Co. v. Tax Comm’n*, 843 P.2d 525, 529 (Utah Ct. App. 1992) (quoting *Gould v Gould*, 245 U.S. 151 (1917)). The Utah Legislature has codified this long-standing common-law principle in Utah Code Ann. § 59-1-1417(2) (2018), which states: “a court considering a case involving the tax, fee, or charge shall . . . construe a statute imposing the tax, fee, or charge strictly in favor of the taxpayer.”

As noted in the previous sections, the plain meaning of the statute in question is clear that any and all facts can be used to rebut presumptive domicile under Utah Code subsection 59-10-136(2). To the extent this Court considers the statutory language ambiguous on that point, any doubt relating to the meaning of the statute must be construed in favor of the taxpayer. Under that scenario the outcome is the same – that any and all facts can be used to rebut presumptive domicile under Utah Code subsection 59-10-136(2).

V. THE STANDARD OF REVIEW TO BE APPLIED IN REBUTTING PRESUMPTIVE DOMICILE SHOULD BE BASED ON COMMON LAW AS THE STATUTE IS SILENT.

The Utah Legislature did not specify in statute the standard of review that should be applied in rebutting presumptive domicile under Utah Code section 59-1-136(2).

Where “the standard of proof required to rebut a presumption is not specified in the statute, [t]he degree of proof required in a particular type of proceeding has traditionally been left to the judiciary to resolve.” *Egbert v. Nissan N. Am., Inc.*, 2007 UT 64, ¶ 11.

Based on common law, the preponderance of the evidence standard of review suggested in the brief filed by the Bucks is a reasonable standard.

One reasonable question to ask is whether applying a preponderance of the evidence standard under Utah Code subsection 59-10-136(2) appropriately differentiates Utah Code subsection 59-10-136(2) from Utah Code subsection 59-10-136(3), and leaves Utah Code subsection 59-10-136(3) with meaning, where the Legislature expressly specified that a preponderance of the evidence standard applies under Utah Code subsection 59-10-136(3). Under this Court’s case law, the answer is yes. Utah Code subsection 59-10-136(2) and Utah Code subsection 59-10-136(3) can still be reasonably distinguished and given independent meaning through applying a preponderance standard under Utah Code subsection 59-10-136(3) and a heightened preponderance to overcome a presumption standard under Utah Code subsection 59-10-136(2).

In *Egbert*, one party argued that applying a preponderance standard of review to a rebuttable presumption statute rendered the statute a nullity because cases not covered by such a presumption statute also applied a preponderance standard. The Supreme Court

disagreed and held that the statute was not a nullity because there was a material difference between (1) weighing evidence using a preponderance standard, and (2) overcoming a statutory presumption using a preponderance standard. *Egbert*, 2007 UT at ¶ 16. The Court highlighted this difference through the following statements: (a) the Legislature “intended to benefit the manufacturer by creating the presumption;” (b) “the presumption clearly communicates to the [fact-finder] that, for the plaintiff to succeed, the plaintiff must overcome by a preponderance of the evidence the presumption,” (c) [t]he presumption gives a kind of legal imprimatur to the significance of compliance with federal standards,” and (d) [i]n light of this benefit to the manufacturer, requiring rebuttal by a preponderance of the evidence does not render the statute a nullity.” *Id.* (emphasis added). As the Court clearly recognized a material difference between a preponderance standard and a heightened standard of overcoming a presumption by a preponderance, Utah Code subsection 59-10-136(2) and Utah Code subsection 59-10-136(3) can each be given material meaning by applying to Utah Code subsection 59-10-136(2) a heightened standard of overcoming a presumption by a preponderance of the evidence. This Court should thus rule that a taxpayer may rebut a presumption of domicile under Utah Code subsection 59-10-136(2) by overcoming that presumption based on a preponderance of the evidence.¹

¹ Another reasonable option would be to apply a clear and convincing evidence standard of review under Utah Code subsection 59-10-136(2), which would also clearly distinguish Utah Code subsection 59-10-136(2) from Utah Code subsection 59-10-136(3). In *Uzalac v. Thurgood*, 2006 UT 46, as in the instant case, a Utah statute provided a rebuttable presumption. The Utah Supreme Court applied a clear and convincing evidence standard of proof in the *Uzalac* case, stating as follows: “we read

CONCLUSION

Based on the plain language of the statute, this Court should reverse the decision of the Utah State Tax Commission, and rule that any and all facts can be used to rebut a presumption of Utah domicile under Utah Code subsection 59-10-136(2).

Respectfully submitted this 10th day of December, 2020.

/s/ Paul W. Jones

Paul W. Jones #11688

Hale & Wood, PLLC

4766 South Holladay Blvd

Salt Lake City, UT 84117

Attorneys for *Amici Curiae* Utah Taxpayers

Association and Utah Association of Certified

Public Accountants

the statute to require that the parental presumption be rebutted by clear and convincing evidence This distinction is not readily apparent from the plain language of the statute, but it is necessary to sufficiently protect parental rights.” Id. ¶ 33 (emphasis added). Under *Egbert*, “a preponderance of the evidence is the level of proof required in the typical civil case where only money damages are at stake.” *Egbert*, 2007 UT 64, ¶ 12. In this case, Utah Code Subsection 59-10-136 is claiming domiciliary rights over those who move from Utah or never lived in Utah. This implicates rights under the following federal constitutional provisions: the Due Process Clause, the Commerce Clause, the Privileges and Immunities Clause, and the Equal Protection Clause. *See Amicus Curiae* brief filed in the instant case on December 10, 2020 by the American College of Tax Counsel, which outlines these constitutional issues in detail. Because Utah Code subsection 59-10-136 implicates these several constitutional rights, more than money damages are at stake under Utah Code subsection 59-10-136(2). As such, if the Court feels for any reason that a preponderance standard is not appropriate, it would be reasonable under *Egbert* to apply a clear and convincing evidence standard of review to determine whether a Utah Code subsection 59-10-136(2) presumption has been rebutted. The key is simply that taxpayers be given some reasonable pathway to rebut presumptive domicile as allowed by the plain language of Utah Code subsection 59-10-136(2).

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(g)(1) because this brief contains 4,281 words.
2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman.

Dated this 10th day of December 2020.

/s/ Paul W. Jones

Paul W. Jones

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December 2020, two true and correct copies of the foregoing **BRIEF OF AMICI CURIAE BRIEF UTAH TAXPAYERS ASSOCIATION AND UTAH ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTANTS** were served via U.S. mail, first-class postage prepaid, upon the following:

Stanford E. Purser
Deputy Solicitor General
John C. McCarrey
Michelle Lombardi
Assistant Attorneys General
Sean Reyes
Utah Attorney General
P.O. Box 140858
Salt Lake City, Utah 84114-0858
Telephone: 801-366-0375
Email: mlombardi@agutah.gov
Attorneys for Appellant
Utah State Tax Commission

Samuel A. Lambert
Ray Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Telephone: 801-532-7543
E-mail: slambert@rqn.com
Attorneys for Appellant Johnathan and Brooke Buck

/s/ Paul W. Jones
Paul W. Jones