18-888
TAX TYPE: INCOME TAX
TAX YEAR: 2012
DATE SIGNED: 6/9/2020
COMMISSIONERS: J. VALENTINE, M. CRAGUN, R. ROCKWELL
DISSENT: L. WALTERS

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER-1 & TAXPAYER-2, Petitioners, v. AUDITING DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal No. 18-888 Account No. ##### Tax Type: Individual Income Tax Tax Year: 2012 Judge: Jensen

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

Appearances:
For Petitioner: REPRESENTATIVE FOR TAXPAYERS, for the Taxpayer
TAXPAYER-2, Taxpayer
Respondent: REPRESENTATIVE FOR RESPONDENT, Assistant Attorney General
RESPONDENT, Income Tax Audit Manager

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on DATE, 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 DATE, 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	$$$$$	$$$$$	$$$$$

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. TAXPAYER-1 and TAXPAYER-2 (individually "TAXPAYER-1" and "TAXPAYER-2," collectively, the "TAXPAYERS") married each other in 1999.

7. TAXPAYER-1 was drafted and became a professional ATHLETE in 1998.

8. TAXPAYER-1 was traded to the PROFESSIONAL TEAM in 2004.

9. The PROFESSIONAL TEAM organization conducts spring training in STATE-1.

10. TAXPAYER-1 and TAXPAYER-2 purchased their first home in STATE-1 in 2004.

11. In 2007, the TAXPAYERS purchased a property in CITY-1, Utah ("CITY-1 House").

12. The CITY-1 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	$$$$$	$$$$$	$$$$$
2009	$$$$$	$$$$$	$$$$$
2010	$$$$$	$$$$$	$$$$$
2011	$$$$$	$$$$$	$$$$$
2012	$$$$$	$$$$$	$$$$$

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

2013	$$$$$	$$$$$	$$$$$

13. The TAXPAYERS took no action to request a residential property tax exemption on the CITY-1 House.

14. In 2010, TAXPAYER-1 played for the PROFESSIONAL TEAM-2.

15. In November 2010, TAXPAYER-1 signed a three-year contract to play for the PROFESSIONAL TEAM-3.

16. The TAXPAYERS moved to STATE-2 in approximately MONTH 2011.

17. On DATE, 2011, the TAXPAYERS made an offer to purchase a home in CITY-2, STATE-2 for $$$$$.

18. The proposed purchase in CITY-2 fell through when the sellers learned TAXPAYER-1 was a professional ATHLETE and the sellers refused to repair many of the significant deficiencies detected during the home inspection.

19. The TAXPAYERS leased a home in CITY-3, STATE-2 from MONTH 2011 through MONTH 2012.

20. The TAXPAYERS estimated the square footage of their STATE-2 home at 6,000 square feet and estimated the square footage of their CITY-1 home at 4,200 square feet.

21. In MONTH 2011 the TAXPAYERS executed a contract to lease a home in CITY-4, STATE-2 from MONTH 2012 through MONTH 2013. The contract provided that the TAXPAYERS and their landlord "agree to enter into a more comprehensive lease which shall include [the TAXPAYERS] option to purchase [the property] during lease term, at a price of $$$$$."

22. The TAXPAYERS moved into the CITY-4 home and made arrangements for utilities including sewer and water. They also made repairs to the CITY-4 home. The facts provided by the parties

did not include the date that the TAXPAYERS moved into the CITY-4 home, but the date on the contract for sewer and water services was DATE, 2012 and provided that service was to begin on DATE, 2012.

23. TAXPAYER-1 spent approximately 11 full or partial days and TAXPAYER-2 spent approximately 22 full or partial days in Utah in 2012 visiting relatives.

24. COUNTY-1 assessed the CITY-1 home at a value of $$$$$ in 2008, a value of $$$$$ in 2011, and a value of $$$$$ in 2012.

25. The total assessed value of the primary residential exemption in COUNTY-1 in 2007 was $$$$$. This value had dropped over %%%%% to $$$$$ by 2011, and fell further to $$$$$ 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."

28. The TAXPAYERS did not attempt to sell the CITY-1 home in 2011 or 2012. They found the Utah housing market unfavorable to do so in 2011 and 2012. Additionally, the TAXPAYERS found it useful to keep the CITY-1 home so they would have a place to stay when they visited Utah in 2011 and 2012.

29. TAXPAYER-2 testified that their CITY-1 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.

30. TAXPAYER-2 further testified that a lack of neighbors near the CITY-1 home led to a feeling of isolation and lack of community.

31. TAXPAYER-2 testified that one of the major streets that would link the CITY-1 home to neighboring areas was gated. This, she testified, deepened the feelings of isolation at the CITY-1 home.

32. TAXPAYER-2 testified that snow removal near the CITY-1 home was, at best, sporadic. TAXPAYER-2 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, TAXPAYER-2 found that snow-covered streets was yet another impediment to a sense of community at the CITY-1 home.

33. When the TAXPAYERS returned to Utah in 2013, they determined that it would be best to move into their CITY-1 home. However, to bring the CITY-1 home up to the standards that the TAXPAYERS had experienced in their STATE-2 home, the TAXPAYERS completed what TAXPAYER-2 described as $$$$$ renovations to the CITY-1 home.

Driver Licenses, Vehicles, Voter Registration, and Mail

34. TAXPAYER-2 and TAXPAYER-1 obtained STATE-2 driver's licenses on DATE, 2011.

35. TAXPAYER-2 and TAXPAYER-1 registered to vote in STATE-2 on DATE, 2011 and remained registered to vote in STATE-2 in 2012.

36. TAXPAYER-1 registered a YEAR, MAKE AND MODEL OF VECHICLE-1 in Utah on DATE, 2010, where it remained registered until DATE, 2017. The TAXPAYERS gave the VEHICLE-1 to TAXPAYER-2's father, NAME-5, to use. NAME-5 continued to use it as his primary vehicle after TAXPAYER-1 and TAXPAYER-2 moved to STATE-2.

37. TAXPAYER-2 registered a YEAR, MAKE AND MODEL OF VECHICLE-2 in Utah from MONTH 2011 to DATE, 2013. In 2011, TAXPAYER-2 gave the VECHICLE-2 to her mother, NAME-6. NAME-6 used the VECHICLE-2 as her primary vehicle until it was sold.

38. The TAXPAYERS purchased a VEHICLE-3 and registered it in Utah on DATE, 2011. They registered it in STATE-2 in MONTH 2012 and retained STATE-2 registration through MONTH 2013. They registered the VEHICLE-3 again in Utah in MONTH 2014.

39. The TAXPAYERS registered a VEHICLE-4 in STATE-2 from DATE, 2012 through DATE, 2015.

40. A commercial trailer was registered in the TAXPAYERS name in Utah from MONTH 2012 to MONTH 2015. The trailer was purchased by NAME-5 to be used by a business (BUSINESS-1) partly owned by the TAXPAYERS, but operated by NAME-5 and his son-in-law NAME-9.

41. TAXPAYER-1 purchased a VEHICLE-5 in STATE-2 on DATE 2012 and received a STATE-2 title for the vehicle and a STATE-2 license plate. TAXPAYER-1 renewed STATE-2 registration through MONTH 2013.

42. TAXPAYER-1 registered a VEHICLE-5 in STATE-2 in MONTH 2012 and renewed registration through MONTH 2013.

43. The TAXPAYERS purchased a VEHICLE-4 that was first registered in Utah in MONTH 2014.

44. TAXPAYER-2 testified that in 2012, she and TAXPAYER-1 received the majority of their mail at their address in STATE-2. The TAXPAYERS continued to receive a lesser amount of mail at their

CITY-1 home, mostly related to the CITY-1 home itself. For that mail, the TAXPAYERS made arrangements for TAXPAYER-2's mother to occasionally gather mail from the CITY-1 home and send it to STATE-2.

Tax Filings

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

46. The TAXPAYERS filed 2011 tax returns in STATE-3, STATE-4, STATE-5, and STATE-6 and indicated on each return that STATE-2 was their state of residence.

47. The TAXPAYERS filed 2012 tax returns in STATE-3, STATE-4, STATE-5, and STATE-6 and indicated on these returns that STATE-2 was their state of residence.

48. The TAXPAYERS filed no income tax return for Utah for 2012.

49. The TAXPAYERS had no income from a Utah source in 2012.

50. The TAXPAYERS tax returns for all relevant periods were filed using an address in STATE-7. TAXPAYER-2 testified that this was because their accountant was in STATE-7.

51. CHILD-1 and CHILD-2 were born in MONTH 2008.

52. CHILD-2 had a severe developmental delay and had very little language ability by 2011.

53. One significant reason the TAXPAYERS decided to move to STATE-2 was to give CHILD-2 access to superior doctors and education programs. TAXPAYER-2 testified that she and TAXPAYER-1 had specifically sought out homes to purchase or lease to purchase in areas of STATE-2 school districts that would best serve CHILD-2 needs.

54. TAXPAYER-2 testified that THE CHILDREN'S HOSPOTAL in CITY-5, STATE-2 had the first (X) institute for children in the United States. She testified that the institute operated a DEVELOPMENTAL DISORDERS PROGRAM. According to the Hospital's website, "The program at THE CHILDREN'S HOSPITAL, NAME OF OUTPATIENT CENTER is (QUOTE REMOVED)"

55. CHILD-2 was evaluated and assisted by Board Certified Behavior Analyst NAME-7 in CITY-6, STATE-2.

56. NAME-7's MONTH 2011 behavior assessment of CHILD-2 describes CHILD-2 as residing in STATE-2 with his family.

57. The TAXPAYERS worked with NAME-8 at CHILDREN'S HOSPITAL-2 to help CHILD-2.

58. While they lived in STATE-2, the TAXPAYERS children received all routine medical care from a pediatric group in STATE-2.

59. In early 2011, CHILD-2 was enrolled in the PROGRAM at the TREATMENT CENTER in CITY-6, STATE-2.

60. From MONTH 2011 to MONTH 2012, CHILD-2 attended SCHOOL-1 in CITY-5, STATE-2 in their special needs/early intervention preschool program. He attended summer camp and then was enrolled in preschool at SCHOOL-2 in CITY-4, STATE-2 from MONTH 2012 through MONTH 2013.

61. CHILD-1 attended SCHOOL-3 in CITY-5, STATE-2 from MONTH 2011 to MONTH 2012. He then attended summer school and preschool at SCHOOL-2 in CITY-4, STATE-2 from MONTH 2012 through MONTH 2013.

62. CHILD-2 had an Individualized Education Program (IEP) in STATE-2 in place for the 2011 and 2012 school years.

63. CHILD-2 and CHILD-1 participated in STATE-2 youth karate and soccer programs in 2012.

Licenses, Memberships, Social Participation

64. The TAXPAYERS joined the NONPROFIT ORGANIZATION in CITY-5, STATE-2 on DATE, 2011.

65. The TAXPAYERS were members of a gym in CITY-5, STATE-2 in 2011 and 2012.

66. In 2011, TAXPAYER-1 became involved as a volunteer with CAMP-1 in CITY-7, a camp associated with Special Olympics CITY-7 COUNTY-1 and other local organizations.

67. In MONTH 2012, the TAXPAYERS participated in the WALKABOUT EVENT in STATE-2.

68. The TAXPAYERS were members of a STATE-2 church congregation. TAXPAYER-2 volunteered to teach children's classes for the STATE-2 congregation.

69. TAXPAYER-2 threw a baby shower for an expecting mother-to-be in their STATE-2 home in MONTH 2012.

70. TAXPAYER-2 was the room mom for CHILD-2 school classes at both SCHOOL-1 and SCHOOL-2

71. The TAXPAYERS took their pets to a STATE-2 veterinarian throughout 2011, 2012, and into 2013.

72. The TAXPAYERS became the poster family for public service messages in STATE-2, (MESSAGE REMOVED)

73. TAXPAYER-2 was a campaign leader for a campaign by the ORGANIZATION in CITY-7, COUNTY-1.

74. On DATE, 2012, TAXPAYER-1 obtained a Utah nonresident combination hunting license, which was mailed to him in STATE-2.

75. In 2012, TAXPAYER-1 also went hunting in STATE-8.

Additional Arguments

76. 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.

77. 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.

78. 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.

79. The Taxpayers counsel argued that the Taxpayers have rebutted the Subsection 59-10-136(2)(a) presumption for 2012 when they lived in STATE-2 because the Taxpayers have shown that it is more probable than not that they changed their domicile from Utah to STATE-2 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 STATE-2. 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 STATE-2 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 STATE-2 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 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. 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 STATE-2 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 COUNTY-1 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 "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.

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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.

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 STATE-2 during this period and because most of their contacts were with STATE-2, 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 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.

[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).

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 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).

[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.

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 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

[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.

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 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.

[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).

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 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 COUNTY-1 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, 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.

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

[17] Furthermore, if the were now, subsequent to the audit, to contact 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).

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) presumption. The Taxpayers, however, have not provided sufficient arguments or evidence to rebut the Subsection 59-

[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.*

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 STATE-2, 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 _____ day of _____, 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 young children, including a special needs child, were enrolled in schools in STATE-2 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 STATE-2. 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 STATE-2 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 STATE-2 domicile, one indicates Utah, and one is

[24] It is worth noting that the taxpayers left Utah in February, 2011. By April, 2011, the taxpayers had established their residence in STATE-2. 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 ##### months after the taxpayer had established their residence in STATE-2. 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 taxpayer might have filed a 2012 Utah tax return, they had been residents of STATE-2 for about two years.

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 STATE-2 or are not relevant.

- (i) – Both taxpayers had STATE-2 driver's licenses
- (ii) – There were no dependents enrolled in institutions of higher education
- (iii) – The STATE-2 home was larger and more valuable than the Utah home
- (iv) – Both taxpayers resided in STATE-2 and no dependents remained in Utah
- (v) – There was no Utah source income
- (vi) – Of the six vehicles and one trailer registered to the, four were registered in STATE-2. Two vehicles and the trailer were registered in Utah and were for the use of TAXPAYER-2's parents.
- (vii) – Both taxpayers were actively involved in a church and were prominently involved in other community activities and groups in STATE-2

- (viii) – Most mail was sent to the STATE-2 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 STATE-7 address of the taxpayers' tax preparer
- (x) – The taxpayers asserted STATE-2 residency on all state tax returns
- (xi) – TAXPAYER-1 obtained a non-resident hunting license in Utah (and also hunted in STATE-8)
- (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 STATE-2. 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 argument that they were domiciled in STATE-2, 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.