

1 **INCOME TAX DOMICILE AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Steve Eliason

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies tax provisions relating to income tax domicile requirements.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ requires certain owners of residential property in the state to file a written
- 13 declaration with the county assessor under penalty of perjury certifying certain
- 14 property tax information on a form prescribed by the Tax Commission;
- 15 ▶ amends the definition of resident individual for income tax purposes;
- 16 ▶ amends voting provisions that create a rebuttable presumption that an individual is
- 17 considered to have domicile in this state for income tax purposes;
- 18 ▶ amends the requirements for determining whether an individual is considered to
- 19 have domicile in the state for income tax purposes;
- 20 ▶ grants the Tax Commission rulemaking authority to define by rule what constitutes
- 21 spending a day in the state for determining domicile;
- 22 ▶ specifies when a spouse is not considered to have domicile in the state when the
- 23 other spouse has domicile for income tax purposes; and
- 24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill provides retrospective operation.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **59-2-103.5**, as last amended by Laws of Utah 2014, Chapter 65

32 **59-10-103**, as last amended by Laws of Utah 2010, Chapter 202

33 **59-10-136**, as last amended by Laws of Utah 2018, Chapters 405 and 456



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **59-2-103.5** is amended to read:

37 **59-2-103.5. Procedures to obtain an exemption for residential property --**
38 **Procedure if property owner or property no longer qualifies to receive a residential**
39 **exemption -- Declaration for calendar year 2019.**

40 (1) [~~For~~] Subject to Subsection (8), for residential property other than part-year
41 residential property, a county legislative body may adopt an ordinance that requires an owner to
42 file an application with the county board of equalization before a residential exemption under
43 Section **59-2-103** may be applied to the value of the residential property if:

44 (a) the residential property was ineligible for the residential exemption during the
45 calendar year immediately preceding the calendar year for which the owner is seeking to have
46 the residential exemption applied to the value of the residential property;

47 (b) an ownership interest in the residential property changes; or

48 (c) the county board of equalization determines that there is reason to believe that the
49 residential property no longer qualifies for the residential exemption.

50 (2) (a) The application described in Subsection (1) shall:

51 (i) be on a form the commission prescribes by rule and makes available to the counties;

52 (ii) be signed by all of the owners of the residential property;

53 (iii) certify that the residential property is residential property; and

54 (iv) contain other information as the commission requires by rule.

55 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
56 commission may make rules prescribing the contents of the form described in Subsection

57 (2)(a).

58 (3) (a) Regardless of whether a county legislative body adopts an ordinance described
59 in Subsection (1), before a residential exemption may be applied to the value of part-year
60 residential property, an owner of the property shall:

61 (i) file the application described in Subsection (2)(a) with the county board of
62 equalization; and

63 (ii) include as part of the application described in Subsection (2)(a) a statement that
64 certifies:

65 (A) the date the part-year residential property became residential property;

66 (B) that the part-year residential property will be used as residential property for 183 or
67 more consecutive calendar days during the calendar year for which the owner seeks to obtain
68 the residential exemption; and

69 (C) that the owner, or a member of the owner's household, may not claim a residential
70 exemption for any property for the calendar year for which the owner seeks to obtain the
71 residential exemption, other than the part-year residential property, or as allowed under Section
72 [59-2-103](#) with respect to the primary residence or household furnishings, furniture, and
73 equipment of the owner's tenant.

74 (b) An owner may not obtain a residential exemption for part-year residential property
75 unless the owner files an application under this Subsection (3) on or before November 30 of the
76 calendar year for which the owner seeks to obtain the residential exemption.

77 (c) If an owner files an application under this Subsection (3) on or after May 1 of the
78 calendar year for which the owner seeks to obtain the residential exemption, the county board
79 of equalization may require the owner to pay an application fee of not to exceed \$50.

80 (4) Except as provided in Subsection (5), if a property owner no longer qualifies to
81 receive a residential exemption authorized under Section [59-2-103](#) for the property owner's
82 primary residence, the property owner shall:

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

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

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

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

94 (5) A property owner is not required to file a written statement or make the declaration
95 described in Subsection (4) if the property owner:

96 (a) changes primary residences;

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

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

101 (6) Subsections (2) through (5) do not apply to qualifying exempt primary residential
102 rental personal property.

103 (7) (a) ~~For~~ Subject to Subsection (8), for the first calendar year in which a property
104 owner qualifies to receive a residential exemption under Section 59-2-103, a county assessor
105 may require the property owner to file a signed statement described in Section 59-2-306.

106 (b) ~~Notwithstanding~~ Subject to Subsection (8) and notwithstanding Section 59-2-306,
107 for a calendar year after the calendar year described in Subsection (7)(a) in which a property
108 owner qualifies for an exemption described in Subsection 59-2-1115(2) for qualifying exempt
109 primary residential rental personal property, a signed statement described in Section 59-2-306
110 with respect to the qualifying exempt primary residential rental personal property may only
111 require the property owner to certify, under penalty of perjury, that the property owner qualifies
112 for the exemption under Subsection 59-2-1115(2).

113 (8) (a) Subject to the requirements of this Subsection (8) and except as provided in

114 Subsection (8)(c), on or before May 1, 2020, a county assessor shall:

115 (i) notify each owner of residential property that the owner is required to submit a
116 written declaration described in Subsection (8)(b) within 30 days after the day on which the
117 county assessor mails the notice under this Subsection (8)(a); and

118 (ii) provide each owner with a form described in Subsection (8)(e) to make the written
119 declaration described in Subsection (8)(b).

120 (b) Each owner of residential property that receives a notice described in Subsection
121 (8)(a) shall file a written declaration with the county assessor under penalty of perjury:

122 (i) certifying whether the property is residential property or part-year residential
123 property;

124 (ii) certifying whether during any portion of the current calendar year, the property
125 receives a residential exemption under Section [59-2-103](#); and

126 (iii) certifying whether the property owner owns other property in the state that receives
127 a residential exemption under Section [59-2-103](#), and if so, listing:

128 (A) the parcel number of the property;

129 (B) the county in which the property is located; and

130 (C) whether the property is the primary residence of a tenant.

131 (c) A county assessor is not required to provide a notice to an owner of residential
132 property under Subsection (8)(a) if the situs address of the residential property is the same as
133 any one of the following:

134 (i) the mailing address of the residential property owner or the tenant of the residential
135 property;

136 (ii) the address listed on the:

137 (A) residential property owner's driver license; or

138 (B) tenant of the residential property's driver license; or

139 (iii) the address listed on the:

140 (A) residential property owner's voter registration; or

141 (B) tenant of the residential property's voter registration.

142 (d) If an ownership interest in residential property changes, the new owner of the
143 residential property, at the time title to the property is transferred to the new owner, shall make
144 a written declaration under penalty of perjury:

145 (i) certifying whether the property is residential property or part-year residential
146 property;

147 (ii) certifying whether the property receives a residential exemption under Section
148 59-2-103; and

149 (iii) certifying whether the property owner owns other property in the state that receives
150 a residential exemption under Section 59-2-103, and if so, listing:

151 (A) the parcel number of the property;

152 (B) the county in which the property is located; and

153 (C) whether the property is the primary residence of a tenant.

154 (e) The declaration required by Subsection (8)(b) or (d) shall:

155 (i) be on a form the commission prescribes and makes available to the counties;

156 (ii) be signed by all of the owners of the property; and

157 (iii) include the following statement:

158 "If a property owner or a property owner's spouse claims a residential exemption under
159 Utah Code Ann. § 59-2-103 for property in this state that is the primary residence of the
160 property owner or the property owner's spouse, that claim of a residential exemption creates a
161 rebuttable presumption that the property owner and the property owner's spouse have domicile
162 in Utah for income tax purposes. The rebuttable presumption of domicile does not apply if the
163 residential property is the primary residence of a tenant of the property owner or the property
164 owner's spouse."

165 (f) The written declaration made under Subsection (8)(d) shall be remitted to the
166 county assessor of the county where the property described in Subsection (8)(d) is located
167 within five business days of the title being transferred to the new owner.

168 (g) (i) If, after receiving a written declaration filed under Subsection (8)(b) or (d), the
169 county determines that the property has been incorrectly qualified or disqualified to receive a

170 residential exemption, the county shall:

171 (A) redetermine the property's qualification to receive a residential exemption; and

172 (B) notify the claimant of the redetermination and its reason for the redetermination.

173 (ii) The redetermination provided in Subsection (8)(g)(i)(A) shall be final unless

174 appealed within 30 days after the notice required by Subsection (8)(g)(i)(B).

175 (h) (i) If a residential property owner fails to file a written declaration required by

176 Subsection (8)(b) or (d), the county assessor shall mail to the owner of the residential property

177 a notice that:

178 (A) the property owner failed to file a written declaration as required by Subsection

179 (8)(b) or (d); and

180 (B) the property owner will no longer qualify to receive the residential exemption

181 authorized under Section 59-2-103 for the property that is the subject of the written declaration

182 if the property owner does not file the written declaration required by Subsection (8)(b) or (d)

183 within 30 days after the day on which the county assessor mails the notice under this

184 Subsection (8)(h)(i).

185 (ii) If a property owner fails to file a written declaration required by Subsection (8)(b)

186 or (d) after receiving the notice described in Subsection (8)(h)(i), the property owner no longer

187 qualifies to receive the residential exemption authorized under Section 59-2-103 in the calendar

188 year for the property that is the subject of the written declaration.

189 (iii) A property owner that is disqualified to receive the residential exemption under

190 Subsection (8)(h)(ii) may file an application described in Subsection (1) to determine whether

191 the owner is eligible to receive the residential exemption.

192 (i) The requirements of this Subsection (8) do not apply to a county assessor in a

193 county that has, for the five calendar years prior to 2019, had in place and enforced an

194 ordinance described in Subsection (1).

195 Section 2. Section 59-10-103 is amended to read:

196 **59-10-103. Definitions.**

197 (1) As used in this chapter:

- 198 (a) "Adjusted gross income":
199 (i) for a resident or nonresident individual, is as defined in Section 62, Internal
200 Revenue Code; or
201 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),
202 Internal Revenue Code.
- 203 (b) "Corporation" includes:
204 (i) an association;
205 (ii) a joint stock company; and
206 (iii) an insurance company.
- 207 (c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.
208 (d) "Employee" is as defined in Section 59-10-401.
209 (e) "Employer" is as defined in Section 59-10-401.
210 (f) "Federal taxable income":
211 (i) for a resident or nonresident individual, means taxable income as defined by Section
212 63, Internal Revenue Code; or
213 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
214 (b), Internal Revenue Code.
- 215 (g) "Fiduciary" means:
216 (i) a guardian;
217 (ii) a trustee;
218 (iii) an executor;
219 (iv) an administrator;
220 (v) a receiver;
221 (vi) a conservator; or
222 (vii) any person acting in any fiduciary capacity for any individual.
- 223 (h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).
224 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
225 homesteaded land that was held to have been diminished from the Uintah and Ouray

226 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).

227 (j) "Individual" means a natural person and includes aliens and minors.

228 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
229 all or part of the trust without the consent of a person who has a substantial beneficial interest
230 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
231 revoke or terminate all or part of the trust.

232 (l) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

233 (m) "Nonresident individual" means an individual who is not a resident of this state.

234 (n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
235 resident estate or trust.

236 (o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
237 unincorporated organization:

238 (A) through or by means of which any business, financial operation, or venture is
239 carried on; and

240 (B) which is not, within the meaning of this chapter:

241 (I) a trust;

242 (II) an estate; or

243 (III) a corporation.

244 (ii) "Partnership" does not include any organization not included under the definition of
245 "partnership" in Section 761, Internal Revenue Code.

246 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
247 organization described in Subsection (1)(o)(i).

248 (p) "Qualified nongrantor charitable lead trust" means a trust:

249 (i) that is irrevocable;

250 (ii) that has a trust term measured by:

251 (A) a fixed term of years; or

252 (B) the life of a person living on the day on which the trust is created;

253 (iii) under which:

254 (A) a portion of the value of the trust assets is distributed during the trust term:
 255 (I) to an organization described in Section 170(c), Internal Revenue Code; and
 256 (II) as a:
 257 (Aa) guaranteed annuity interest; or
 258 (Bb) unitrust interest; and
 259 (B) assets remaining in the trust at the termination of the trust term are distributed to a
 260 beneficiary:
 261 (I) designated in the trust; and
 262 (II) that is not an organization described in Section 170(c), Internal Revenue Code;
 263 (iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue
 264 Code; and
 265 (v) under which the grantor of the trust is not treated as the owner of any portion of the
 266 trust for federal income tax purposes.
 267 (q) [(†)] "Resident individual" means[:(A)] an individual who is domiciled in this state
 268 for any period of time during the taxable year, but only for the duration of the period during
 269 which the individual is domiciled in this state[; or].
 270 [~~(B) an individual who is not domiciled in this state but;~~]
 271 [~~(F) maintains a place of abode in this state; and~~]
 272 [~~(H) spends in the aggregate 183 or more days of the taxable year in this state.]~~
 273 [~~(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
 274 ~~and for purposes of Subsection (1)(q)(i)(B), the commission shall by rule define what~~
 275 ~~constitutes spending a day of the taxable year in the state.]~~
 276 (r) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
 277 (s) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.
 278 (t) "State income tax percentage for a nonresident estate or trust" means a percentage
 279 equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the
 280 nonresident estate's or trust's total adjusted gross income for that taxable year after making the
 281 adjustments required by:

- 282 (i) Section 59-10-202;
- 283 (ii) Section 59-10-207;
- 284 (iii) Section 59-10-209.1; or
- 285 (iv) Section 59-10-210.
- 286 (u) "State income tax percentage for a nonresident individual" means a percentage
- 287 equal to a nonresident individual's state taxable income for the taxable year divided by the
- 288 difference between:
 - 289 (i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross
 - 290 income for that taxable year, after making the:
 - 291 (A) additions and subtractions required by Section 59-10-114; and
 - 292 (B) adjustments required by Section 59-10-115; and
 - 293 (ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember,
 - 294 the compensation the servicemember receives for military service if the servicemember is
 - 295 serving in compliance with military orders.
- 296 (v) "State income tax percentage for a part-year resident individual" means, for a
- 297 taxable year, a fraction:
 - 298 (i) the numerator of which is the sum of:
 - 299 (A) subject to Section 59-10-1404.5, for the time period during the taxable year that the
 - 300 part-year resident individual is a resident, the part-year resident individual's total adjusted gross
 - 301 income for that time period, after making the:
 - 302 (I) additions and subtractions required by Section 59-10-114; and
 - 303 (II) adjustments required by Section 59-10-115; and
 - 304 (B) for the time period during the taxable year that the part-year resident individual is a
 - 305 nonresident, an amount calculated by:
 - 306 (I) determining the part-year resident individual's adjusted gross income for that time
 - 307 period, after making the:
 - 308 (Aa) additions and subtractions required by Section 59-10-114; and
 - 309 (Bb) adjustments required by Section 59-10-115; and

310 (II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)
311 that is derived from Utah sources in accordance with Section 59-10-117; and

312 (ii) the denominator of which is the difference between:

313 (A) the part-year resident individual's total adjusted gross income for that taxable year,
314 after making the:

315 (I) additions and subtractions required by Section 59-10-114; and

316 (II) adjustments required by Section 59-10-115; and

317 (B) if the part-year resident individual is a servicemember, any compensation the
318 servicemember receives for military service during the portion of the taxable year that the
319 servicemember is a nonresident if the servicemember is serving in compliance with military
320 orders.

321 (w) "Taxable income" or "state taxable income":

322 (i) subject to Section 59-10-1404.5, for a resident individual, means the resident
323 individual's adjusted gross income after making the:

324 (A) additions and subtractions required by Section 59-10-114; and

325 (B) adjustments required by Section 59-10-115;

326 (ii) for a nonresident individual, is an amount calculated by:

327 (A) determining the nonresident individual's adjusted gross income for the taxable
328 year, after making the:

329 (I) additions and subtractions required by Section 59-10-114; and

330 (II) adjustments required by Section 59-10-115; and

331 (B) calculating the portion of the amount determined under Subsection (1)(w)(ii)(A)
332 that is derived from Utah sources in accordance with Section 59-10-117;

333 (iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

334 (iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

335 (x) "Taxpayer" means any individual, estate, trust, or beneficiary of an estate or trust,
336 that has income subject in whole or part to the tax imposed by this chapter.

337 (y) "Trust term" means a time period:

338 (i) beginning on the day on which a qualified nongrantor charitable lead trust is
339 created; and

340 (ii) ending on the day on which the qualified nongrantor charitable lead trust described
341 in Subsection (1)(y)(i) terminates.

342 (z) "Uintah and Ouray Reservation" means the lands recognized as being included
343 within the Uintah and Ouray Reservation in:

344 (i) Hagen v. Utah, 510 U.S. 399 (1994); and

345 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

346 (aa) "Unadjusted income" means an amount equal to the difference between:

347 (i) the total income required to be reported by a resident or nonresident estate or trust
348 on the resident or nonresident estate's or trust's federal income tax return for estates and trusts
349 for the taxable year; and

350 (ii) the sum of the following:

351 (A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

352 (I) for administering the resident or nonresident estate or trust; and

353 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
354 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
355 year;

356 (B) the income distribution deduction that a resident or nonresident estate or trust
357 deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or
358 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
359 year;

360 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
361 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as
362 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
363 and trusts for the taxable year; and

364 (D) the amount that a resident or nonresident estate or trust deducts as a personal
365 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or

366 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
367 year.

368 (bb) "Unitrust interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

369 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute
370 Indian Tribe of the Uintah and Ouray Reservation.

371 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

372 (ee) "Wages" is as defined in Section 59-10-401.

373 (2) (a) Any term used in this chapter has the same meaning as when used in
374 comparable context in the laws of the United States relating to federal income taxes unless a
375 different meaning is clearly required.

376 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
377 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
378 federal income taxes that are in effect for the taxable year.

379 (c) Any reference to a specific section of the Internal Revenue Code or other provision
380 of the laws of the United States relating to federal income taxes shall include any
381 corresponding or comparable provisions of the Internal Revenue Code as amended,
382 redesignated, or reenacted.

383 Section 3. Section 59-10-136 is amended to read:

384 **59-10-136. Domicile -- Temporary absence from state.**

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

386 (i) except as provided in Subsection (1)(b), a dependent with respect to whom the
387 individual or the individual's spouse claims a personal exemption or a tax credit under Section
388 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual
389 income tax return is enrolled in a public kindergarten, public elementary school, or public
390 secondary school in this state; or

391 (ii) the individual or the individual's spouse is a resident student in accordance with
392 Section 53B-8-102 who is enrolled in an institution of higher education described in Section
393 53B-2-101 in this state.

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

396 (i) is the noncustodial parent of a dependent:

397 (A) with respect to whom the individual claims a personal exemption or a tax credit
398 under Section 24, Internal Revenue Code, on the individual's federal individual income tax
399 return; and

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

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

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

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

409 (b) the individual or the individual's spouse ~~[is registered to vote]~~:

410 (i) votes in this state [in accordance with Title 20A, Chapter 2, Voter Registration] in a
411 regular general election, municipal general election, primary election, or special election during
412 the taxable year; and

413 (ii) has not registered to vote in another state in that taxable year; or

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

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

421 (i) the individual or the individual's spouse has a permanent home in this state to which

422 the individual or the individual's spouse intends to return after being absent; and

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

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

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

430 (ii) whether a dependent with respect to whom the individual or the individual's spouse
431 claims a personal exemption or a tax credit under Section 24, Internal Revenue Code, on the
432 individual's or individual's spouse's federal individual income tax return is a resident student in
433 accordance with Section 53B-8-102 who is enrolled in an institution of higher education
434 described in Section 53B-2-101 in this state;

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

437 (iv) the presence in this state of a spouse or dependent with respect to whom the
438 individual or the individual's spouse claims a personal exemption or a tax credit under Section
439 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual
440 income tax return;

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

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

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

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

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

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

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

458 (xii) whether the individual is an individual described in Subsection (1)(b)[-];

459 (xiii) whether the individual:

460 (A) maintains a place of abode in the state; and

461 (B) spends in the aggregate 183 or more days of the taxable year in the state; or

462 (xiv) whether the individual or the individual's spouse:

463 (A) did not vote in this state in a regular general election, municipal general election,
464 primary election, or special election during the taxable year, but voted in the state in a general
465 election, municipal general election, primary election, or special election during any of the
466 three taxable years prior to that taxable year; and

467 (B) has not registered to vote in another state during a taxable year described in
468 Subsection (3)(b)(xiv)(A).

469 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
470 for purposes of Subsection (3)(b)(xiii), the commission may by rule define what constitutes
471 spending a day of the taxable year in the state.

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

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

477 (ii) during the time period described in Subsection (4)(a)(i), neither the individual nor

478 the individual's spouse:

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

480 (B) claim a personal exemption or a tax credit under Section 24, Internal Revenue
481 Code, on the individual's or individual's spouse's federal individual income tax return with
482 respect to a dependent who is enrolled in a public kindergarten, public elementary school, or
483 public secondary school in this state, unless the individual is an individual described in
484 Subsection (1)(b);

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

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

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

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

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

496 (i) begins on the later of the date:

497 (A) the individual leaves this state; or

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

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

502 (d) An individual shall file an individual income tax return or amended individual
503 income tax return under this chapter and pay any applicable interest imposed under Section
504 59-1-402 if:

505 (i) the individual did not file an individual income tax return or amended individual

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

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

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

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

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

519 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax
520 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty
521 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or
522 (5).

523 (5) Notwithstanding Subsections (2) and (3), for individuals who are spouses for
524 purposes of this section and one of the spouses has domicile under this section, the other
525 spouse is not considered to have domicile in this state under Subsection (2) or (3) if one of the
526 spouses establishes by a preponderance of the evidence that, during the taxable year and for
527 three taxable years prior to that taxable year, that other spouse:

528 (a) is not an owner of property in this state;

529 (b) does not return to this state for more than 30 days in a calendar year;

530 (c) has not received earned income as defined in Section 32(c)(2), Internal Revenue
531 Code, in this state;

532 (d) has not voted in this state in a regular general election, municipal general election,
533 primary election, or special election; and

534 (e) does not have a driver license in this state.

535 [~~5~~] (6) (a) [~~H~~] Except as provided in Subsection (5), an individual is considered to
536 have domicile in this state in accordance with this section, the individual's spouse is considered
537 to have domicile in this state.

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

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

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

542 (c) Except as provided in Subsection [~~5~~] (6)(b)(ii), for purposes of this section, an
543 individual's filing status on a federal individual income tax return or a return filed under this
544 chapter may not be considered in determining whether an individual has a spouse.

545 [~~6~~] (7) For purposes of this section, whether or not an individual or the individual's
546 spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the
547 residential property that is the primary residence of a tenant of the individual or the individual's
548 spouse may not be considered in determining domicile in this state.

549 **Section 4. Retrospective operation.**

550 This bill has retrospective operation for a taxable year beginning on or after January 1,
551 2018.