

1 **INCOME TAX DOMICILE AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

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

5 House Sponsor: Steve Eliason

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7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that an individual may not be determined to have domicile in this state for  
13 purposes of assessing an income tax based on the individual's dependent being  
14 enrolled in a public school in this state if the individual is a noncustodial parent and  
15 the individual was never married to the dependent's custodial parent.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides retrospective operation.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-10-136**, as last amended by Laws of Utah 2020, Chapter 354

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

25 Section 1. Section **59-10-136** is amended to read:

26 **59-10-136. Domicile -- Temporary absence from state.**

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

28 (i) except as provided in Subsection (1)(b), a dependent with respect to whom the  
29 individual or the individual's spouse claims a personal exemption or a tax credit under Section

30 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual  
31 income tax return is enrolled in a public kindergarten, public elementary school, or public  
32 secondary school in this state; or

33 (ii) the individual or the individual's spouse is a resident student in accordance with  
34 Section 53B-8-102 who is enrolled in an institution of higher education described in Section  
35 53B-2-101 in this state.

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

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

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

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

44 (ii) (A) is divorced from the custodial parent of the dependent described in Subsection  
45 (1)(b)(i)~~[-]~~; or

46 (B) was never married to the custodial parent of the dependent described in Subsection  
47 (1)(b)(i).

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

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

53 (b) the individual or the individual's spouse:

54 (i) votes in this state in a regular general election, municipal general election, primary  
55 election, or special election during the taxable year; and

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

57 (c) the individual or the individual's spouse asserts residency in this state for purposes

58 of filing an individual income tax return under this chapter, including asserting that the  
59 individual or the individual's spouse is a part-year resident of this state for the portion of the  
60 taxable year for which the individual or the individual's spouse is a resident of this state.

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

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

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

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

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

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

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

80 (iv) the presence in this state of a spouse or dependent with respect to whom the  
81 individual or the individual's spouse claims a personal exemption or a tax credit under Section  
82 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual  
83 income tax return;

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

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

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

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

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

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

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

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

102 (xiii) whether the individual:

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

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

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

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

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

112 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and  
113 for purposes of Subsection (3)(b)(xiii), the commission may by rule define what constitutes

114 spending a day of the taxable year in the state.

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

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

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

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

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

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

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

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

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

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

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

140 (A) the individual leaves this state; or

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

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

145 (d) An individual shall file an individual income tax return or amended individual  
146 income tax return under this chapter and pay any applicable interest imposed under Section  
147 59-1-402 if:

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

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

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

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

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

162 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax  
163 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty  
164 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or  
165 (5).

166 (5) Notwithstanding Subsections (2) and (3), for individuals who are spouses for  
167 purposes of this section and one of the spouses has domicile under this section, the other  
168 spouse is not considered to have domicile in this state under Subsection (2) or (3) if one of the  
169 spouses establishes by a preponderance of the evidence that, during the taxable year and for

170 three taxable years prior to that taxable year, that other spouse:

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

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

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

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

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

178 (6) (a) Except as provided in Subsection (5), an individual is considered to have  
179 domicile in this state in accordance with this section, the individual's spouse is considered to  
180 have domicile in this state.

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

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

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

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

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

192 **Section 2. Retrospective operation.**

193 This bill has retrospective operation for a taxable year beginning on or after January 1,  
194 2021.