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INDIVIDUAL INCOME TAX ACT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill addresses the State Tax Commission's determination of domicile for purposes of individual income taxation.

Highlighted Provisions:

This bill:

- establishes an irrebuttable presumption of domicile in the state based on an individual's voting record;
- allows the State Tax Commission to consider evidence of certain tax filings in determining domicile;
- repeals provisions addressing temporary absences from the state; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-10-136, as last amended by Laws of Utah 2021, Chapter 392

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

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

59-10-136 . Domicile.

(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

- 28 individual or the individual's spouse claims a personal exemption or a tax credit
 29 under Section 24, Internal Revenue Code, on the individual's or individual's
 30 spouse's federal individual income tax return is enrolled in a public kindergarten,
 31 public elementary school, or public secondary school in this state; [or]
- 32 (ii) the individual or the individual's spouse is a resident student in accordance with
 33 Section 53B-8-102 who is enrolled in an institution of higher education described
 34 in Section 53B-2-101 in this state[-] ; or
- 35 (iii) the individual or the individual's spouse, in that taxable year:
- 36 (A) votes in this state in a regular general election, municipal general election,
 37 primary election, or special election;
- 38 (B) has not registered to vote in another state; and
- 39 (C) has not voted in another state that does not require voter registration.
- 40 (b) The determination of whether an individual is considered to have domicile in this
 41 state may not be determined in accordance with Subsection (1)(a)(i) if the individual:
- 42 (i) is the noncustodial parent of a dependent:
- 43 (A) with respect to whom the individual claims a personal exemption or a tax
 44 credit under Section 24, Internal Revenue Code, on the individual's federal
 45 individual income tax return; and
- 46 (B) who is enrolled in a public kindergarten, public elementary school, or public
 47 secondary school in this state; and
- 48 (ii) (A) is divorced from the custodial parent of the dependent described in
 49 Subsection (1)(b)(i); or
- 50 (B) was never married to the custodial parent of the dependent described in
 51 Subsection (1)(b)(i).
- 52 [~~(2) There is a rebuttable presumption that an individual is considered to have domicile in~~
 53 ~~this state if:]~~
- 54 [~~(a) the individual or the individual's spouse claims a residential exemption in accordance~~
 55 ~~with Chapter 2, Property Tax Act, for that individual's or individual's spouse's primary~~
 56 ~~residence;]~~
- 57 [~~(b) the individual or the individual's spouse:]~~
- 58 [~~(i) votes in this state in a regular general election, municipal general election, primary~~
 59 ~~election, or special election during the taxable year; and]~~
- 60 [~~(ii) has not registered to vote in another state in that taxable year; or]~~
- 61 [~~(c) the individual or the individual's spouse asserts residency in this state for purposes of~~

62 filing an individual income tax return under this chapter, including asserting that the
63 individual or the individual's spouse is a part-year resident of this state for the portion of
64 the taxable year for which the individual or the individual's spouse is a resident of this
65 state.]

66 [(3)] (2) (a) Subject to Subsection [(3)(b)] (2)(b), if the requirements of Subsection (1) [or
67 (2)] are not met for an individual to be considered to have domicile in this state, the
68 individual is considered to have domicile in this state if:

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

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

75 (b) The determination of whether an individual is considered to have domicile in this
76 state under this Subsection [(3)(a)] (2) shall be based on the preponderance of the
77 evidence, taking into consideration the totality of only the following facts and
78 circumstances:

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

80 (ii) whether the individual or the individual's spouse receives a residential exemption
81 in accordance with Chapter 2, Property Tax Act, for that individual's or
82 individual's spouse's primary residence;

83 [(ii)] (iii) whether a dependent with respect to whom the individual or the individual's
84 spouse claims a personal exemption or a tax credit under Section 24, Internal
85 Revenue Code, on the individual's or individual's spouse's federal individual
86 income tax return is a resident student in accordance with Section 53B-8-102 who
87 is enrolled in an institution of higher education described in Section 53B-2-101 in
88 this state;

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

91 [(iv)] (v) the presence in this state of a spouse or dependent with respect to whom the
92 individual or the individual's spouse claims a personal exemption or a tax credit
93 under Section 24, Internal Revenue Code, on the individual's or individual's
94 spouse's federal individual income tax return;

95 [(v)] (vi) the physical location in which earned income as defined in Section 32(c)(2),

96 Internal Revenue Code, is earned by the individual or the individual's spouse;
97 [~~(vi)~~] (vii) the state of registration of a vehicle as defined in Section 59-12-102 owned
98 or leased by the individual or the individual's spouse;
99 [~~(vii)~~] (viii) whether the individual or the individual's spouse is a member of a church,
100 a club, or another similar organization in this state;
101 [~~(viii)~~] (ix) whether the individual or the individual's spouse lists an address in this
102 state on mail, a telephone listing, a listing in an official government publication,
103 other correspondence, or another similar item;
104 [~~(ix)~~] (x) whether the individual or the individual's spouse lists an address in this state
105 on a state or federal tax return;
106 (xi) whether the individual or the individual's spouse asserts residency in this state for
107 purposes of filing an individual income tax return under this chapter, including
108 asserting that the individual or the individual's spouse is a part-year resident of
109 this state for the portion of the taxable year for which the individual or the
110 individual's spouse is a resident of this state;
111 [~~(x)~~] (xii) whether the individual or the individual's spouse asserts residency in this
112 state on a document, other than an individual income tax return filed under this
113 chapter, filed with or provided to a court or other governmental entity;
114 [~~(xi)~~] (xiii) the failure of an individual or the individual's spouse to obtain a permit or
115 license normally required of a resident of the state for which the individual or the
116 individual's spouse asserts to have domicile;
117 [~~(xii)~~] (xiv) whether the individual is an individual described in Subsection (1)(b);
118 [~~(xiii)~~] (xv) whether the individual:
119 (A) maintains a place of abode in [~~the~~] this state; and
120 (B) spends in the aggregate 183 or more days of the taxable year in [~~the~~] this state;
121 or
122 [~~(xiv)~~] (xvi) whether the individual or the individual's spouse:
123 (A) did not vote in this state in a regular general election, municipal general
124 election, primary election, or special election during the taxable year, but voted
125 in the state in a general election, municipal general election, primary election,
126 or special election during any of the three taxable years prior to that taxable
127 year; and
128 (B) has not registered to vote in another state during a taxable year described in
129 Subsection [~~(3)(b)(xiv)(A)~~] (2)(b)(xvi)(A).

- 130 ~~[(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
131 ~~and for purposes of Subsection (3)(b)(xiii), the commission may by rule define what~~
132 ~~constitutes spending a day of the taxable year in the state.]~~
- 133 ~~[(4) (a) Notwithstanding Subsections (1) through (3) and subject to the other provisions of~~
134 ~~this Subsection (4), an individual is not considered to have domicile in this state if the~~
135 ~~individual meets the following qualifications:]~~
- 136 ~~[(i) except as provided in Subsection (4)(a)(ii)(A), the individual and the individual's~~
137 ~~spouse are absent from the state for at least 761 consecutive days; and]~~
- 138 ~~[(ii) during the time period described in Subsection (4)(a)(i), neither the individual nor the~~
139 ~~individual's spouse:]~~
- 140 ~~[(A) return to this state for more than 30 days in a calendar year;]~~
- 141 ~~[(B) claim a personal exemption or a tax credit under Section 24, Internal Revenue Code,~~
142 ~~on the individual's or individual's spouse's federal individual income tax return with~~
143 ~~respect to a dependent who is enrolled in a public kindergarten, public elementary~~
144 ~~school, or public secondary school in this state, unless the individual is an individual~~
145 ~~described in Subsection (1)(b);]~~
- 146 ~~[(C) are resident students in accordance with Section 53B-8-102 who are enrolled in an~~
147 ~~institution of higher education described in Section 53B-2-101 in this state;]~~
- 148 ~~[(D) claim a residential exemption in accordance with Chapter 2, Property Tax Act, for~~
149 ~~that individual's or individual's spouse's primary residence; or]~~
- 150 ~~[(E) assert that this state is the individual's or the individual's spouse's tax home for federal~~
151 ~~individual income tax purposes.]~~
- 152 ~~[(b) Notwithstanding Subsection (4)(a), an individual that meets the qualifications of~~
153 ~~Subsection (4)(a) to not be considered to have domicile in this state may elect to be~~
154 ~~considered to have domicile in this state by filing an individual income tax return in this~~
155 ~~state as a resident individual.]~~
- 156 ~~[(e) For purposes of Subsection (4)(a), an absence from the state:]~~
- 157 ~~[(i) begins on the later of the date:]~~
- 158 ~~[(A) the individual leaves this state; or]~~
- 159 ~~[(B) the individual's spouse leaves this state; and]~~
- 160 ~~[(ii) ends on the date the individual or the individual's spouse returns to this state if the~~
161 ~~individual or the individual's spouse remains in this state for more than 30 days in a~~
162 ~~calendar year.]~~
- 163 ~~[(d) An individual shall file an individual income tax return or amended individual income~~

- 164 tax return under this chapter and pay any applicable interest imposed under Section
 165 59-1-402 if:]
- 166 [(i) the individual did not file an individual income tax return or amended individual
 167 income tax return under this chapter based on the individual's belief that the individual
 168 has met the qualifications of Subsection (4)(a) to not be considered to have domicile in
 169 this state; and]
- 170 [(ii) the individual or the individual's spouse fails to meet a qualification of Subsection
 171 (4)(a) to not be considered to have domicile in this state.]
- 172 [(e) (i) Except as provided in Subsection (4)(e)(ii), an individual that files an individual
 173 income tax return or amended individual income tax return under Subsection (4)(d) shall
 174 pay any applicable penalty imposed under Section 59-1-401.]
- 175 [(ii) The commission shall waive the penalties under Subsections 59-1-401(2), (3), and (5)
 176 if an individual who is required by Subsection (4)(d) to file an individual income tax
 177 return or amended individual income tax return under this chapter:]
- 178 [(A) files the individual income tax return or amended individual income tax return within
 179 105 days after the individual fails to meet a qualification of Subsection (4)(a) to not be
 180 considered to have domicile in this state; and]
- 181 [(B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax
 182 due on the return, any interest imposed under Section 59-1-402, and any applicable
 183 penalty imposed under Section 59-1-401, except for a penalty under Subsection
 59-1-401
 184 (2), (3), or (5).]
- 185 [(5)] (3) Notwithstanding [~~Subsections (2) and (3)~~] Subsection (2), for individuals who are
 186 spouses for purposes of this section and one of the spouses has domicile under this
 187 section, the other spouse is not considered to have domicile in this state under
 188 Subsection (2) [~~or (3)~~] if one of the spouses establishes by a preponderance of the
 189 evidence that, during the taxable year and for three taxable years prior to that taxable
 190 year, that other spouse:
- 191 (a) is not an owner of property in this state;
- 192 (b) [~~does not return to this state for~~] has not spent in the aggregate more than 30 days [in
 193 a calendar] of the taxable year in this state;
- 194 (c) has not received earned income as defined in Section 32(c)(2), Internal Revenue
 195 Code, in this state;
- 196 (d) has not voted in this state in a regular general election, municipal general election,

197 primary election, or special election; and

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

199 ~~[(6)] (4) [(a) Except as provided in Subsection (5), an individual is considered to have~~
200 ~~domicile in this state in accordance with this section, the individual's spouse is~~
201 ~~considered to have domicile in this state.]~~

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

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

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

207 ~~[(e)] (b)~~ Except as provided in Subsection ~~[(6)(b)(ii)] (4)(a)(ii)~~, for purposes of this
208 section, an individual's filing status on a federal individual income tax return or a
209 return filed under this chapter may not be considered in determining whether ~~[an]~~ the
210 individual has a spouse.

211 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for
212 purposes of Subsections (2)(b)(xv) and (3)(b), the commission may by rule define what
213 constitutes spending a day of the taxable year in this state.

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

218 Section 2. **Effective date.**

219 This bill takes effect on May 1, 2024.

220 Section 3. **Retrospective operation.**

221 This bill has retrospective operation for a taxable year beginning on or after January
222 1, 2024.