

INCOME TAX DOMICILE AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

Committee Note:

The Revenue and Taxation Interim Committee recommended this bill.

General Description:

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

Highlighted Provisions:

This bill:

- requires certain owners of residential property in the state to file a written declaration with the county assessor under penalty of perjury certifying certain property tax information on a form prescribed by the Tax Commission;
- amends the definition of resident individual for income tax purposes;
- amends voting provisions that create a rebuttable presumption that an individual is considered to have domicile in this state for income tax purposes;
- amends the requirements for determining whether an individual is considered to have domicile in the state for income tax purposes;
- grants the Tax Commission rulemaking authority to define by rule what constitutes spending a day in the state for determining domicile;
- specifies when a spouse is not considered to have domicile in the state when the other spouse has domicile for income tax purposes; 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

59 (2)(a).

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

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

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

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

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

71 (C) that the owner, or a member of the owner's household, may not claim a residential
72 exemption for any property for the calendar year for which the owner seeks to obtain the
73 residential exemption, other than the part-year residential property, or as allowed under Section
74 59-2-103 with respect to the primary residence or household furnishings, furniture, and
75 equipment of the owner's tenant.

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

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

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

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

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

88 (ii) notifying the county board of equalization that the property owner no longer
89 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.

(5) 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.

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

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

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

(8) (a) Subject to the requirements of this Subsection (8) and except as provided in Subsection (8)(c), on or before November 30, 2019, a county assessor shall:

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

(ii) provide each owner with a form described in Subsection (8)(e) to make the written

121 declaration described in Subsection (8)(b).

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

124 (i) certifying whether the property is residential property or part-year residential
125 property;

126 (ii) certifying whether during any portion of calendar year 2019, the property receives a
127 residential exemption under Section 59-2-103; and

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

130 (A) the parcel number of the property;

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

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

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

136 (i) the mailing address of the residential property owner or the tenant of the residential
137 property;

138 (ii) the address listed on the:

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

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

141 (iii) the address listed on the:

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

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

144 (d) If an ownership interest in residential property changes, the new owner of the
145 residential property, at the time title to the property is transferred to the new owner, shall file a
146 written declaration with the county assessor under penalty of perjury:

147 (i) certifying whether the property is residential property or part-year residential
148 property;

149 (ii) certifying whether the property receives a residential exemption under Section
150 59-2-103; and

151 (iii) certifying whether the property owner owns other property in the state that receives

a residential exemption under Section [59-2-103](#), and if so, listing:

(A) the parcel number of the property;

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

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

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

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

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

(iii) include the following statement:

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

(f) (i) If, after receiving a written declaration filed under Subsection (8)(b) or (d), the county determines that the property has been incorrectly qualified or disqualified to receive a residential exemption, the county shall:

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

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

(ii) The redetermination provided in Subsection (8)(f)(i)(A) shall be final unless appealed within 30 days after the notice required by Subsection (8)(f)(i)(B).

(g) (i) If a residential property owner fails to file a written declaration required by Subsection (8)(b) or (d), the county assessor shall mail to the owner of the residential property a notice that:

(A) the property owner failed to file a written declaration as required by Subsection (8)(b) or (d); and

(B) the property owner will no longer qualify to receive the residential exemption authorized under Section [59-2-103](#) for the property that is the subject of the written declaration if the property owner does not file the written declaration required by Subsection (8)(b) or (d) within 30 days after the day on which the county assessor mails the notice under this

Subsection (8)(g)(i).

(ii) If a property owner fails to file a written declaration required by Subsection (8)(b) or (d) after receiving the notice described in Subsection (8)(g)(i), the property owner no longer qualifies to receive the residential exemption authorized under Section 59-2-103 in the calendar year for the property that is the subject of the written declaration.

(iii) A property owner that is disqualified to receive the residential exemption under Subsection (8)(g)(ii) may file an application described in Subsection (1) to determine whether the owner is eligible to receive the residential exemption in the next calendar year.

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

59-10-103. Definitions.

(1) As used in this chapter:

(a) "Adjusted gross income":

(i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue Code; or

(ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.

(b) "Corporation" includes:

(i) an association;

(ii) a joint stock company; and

(iii) an insurance company.

(c) "Distributable net income" is as defined in Section 643, Internal Revenue Code.

(d) "Employee" is as defined in Section 59-10-401.

(e) "Employer" is as defined in Section 59-10-401.

(f) "Federal taxable income":

(i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or

(ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and (b), Internal Revenue Code.

(g) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

(vii) any person acting in any fiduciary capacity for any individual.

(h) "Guaranteed annuity interest" is as defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

(i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).

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

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

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

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

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

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

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

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

(I) a trust;

(II) an estate; or

(III) a corporation.

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

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

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

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

nonresident estate's or trust's total adjusted gross income for that taxable year after making the adjustments required by:

- (i) Section 59-10-202;
- (ii) Section 59-10-207;
- (iii) Section 59-10-209.1; or
- (iv) Section 59-10-210.

(u) "State income tax percentage for a nonresident individual" means a percentage equal to a nonresident individual's state taxable income for the taxable year divided by the difference between:

(i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross income for that taxable year, after making the:

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

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

(ii) if the nonresident individual described in Subsection (1)(u)(i) is a servicemember, the compensation the servicemember receives for military service if the servicemember is serving in compliance with military orders.

(v) "State income tax percentage for a part-year resident individual" means, for a taxable year, a fraction:

(i) the numerator of which is the sum of:

(A) subject to Section 59-10-1404.5, for the time period during the taxable year that the part-year resident individual is a resident, the part-year resident individual's total adjusted gross income for that time period, after making the:

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

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

(B) for the time period during the taxable year that the part-year resident individual is a nonresident, an amount calculated by:

(I) determining the part-year resident individual's adjusted gross income for that time period, after making the:

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

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

(II) calculating the portion of the amount determined under Subsection (1)(v)(i)(B)(I)

that is derived from Utah sources in accordance with Section 59-10-117; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

340 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
341 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

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

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

346 (ii) the sum of the following:

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

348 (I) for administering the resident or nonresident estate or trust; and
349 (II) that the resident or nonresident estate or trust deducts as allowed on the resident or
350 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
351 year;

352 (B) the income distribution deduction that a resident or nonresident estate or trust
353 deducts under Section 651 or 661, Internal Revenue Code, 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 (C) the amount that a resident or nonresident estate or trust deducts as a deduction for
357 estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as
358 allowed on the resident or nonresident estate's or trust's federal income tax return for estates
359 and trusts for the taxable year; and

360 (D) the amount that a resident or nonresident estate or trust deducts as a personal
361 exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or
362 nonresident estate's or trust's federal income tax return for estates and trusts for the taxable
363 year.

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

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

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

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

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

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

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

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

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

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

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

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

(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 or a tax credit under Section 24, Internal Revenue Code, 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];~~

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

(ii) has not registered to vote in another state in that taxable year; 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 or a tax credit under Section 24, Internal Revenue Code, on the individual's or individual's spouse's federal individual income tax return is 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 or a tax credit under Section 24, Internal Revenue Code, 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)[:]; or

(xiii) whether the individual:

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

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

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

(A) did not vote in this state in a regular general election, municipal general election, primary election, or special election during the taxable year, but voted in the state in a general election, municipal general election, primary election, or special election during any of the

three taxable years prior to that taxable year; and

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

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

(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 or a tax credit under Section 24, Internal Revenue Code, 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:

493 (A) the individual leaves this state; or

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

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

498 (d) An individual shall file an individual income tax return or amended individual
499 income tax return under this chapter and pay any applicable interest imposed under Section
500 59-1-402 if:

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

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

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

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

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

515 (B) within the 105-day period described in Subsection (4)(e)(ii)(A), pays in full the tax
516 due on the return, any interest imposed under Section 59-1-402, and any applicable penalty
517 imposed under Section 59-1-401, except for a penalty under Subsection 59-1-401(2), (3), or
518 (5).

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

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

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

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

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

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

531 ~~[(5)]~~ (6) (a) ~~[H]~~ Except as provided in Subsection (5), an individual is considered to
532 have domicile in this state in accordance with this section, the individual's spouse is considered
533 to have domicile in this state.

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

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

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

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

541 ~~[(6)]~~ (7) For purposes of this section, whether or not an individual or the individual's
542 spouse claims a property tax residential exemption under Chapter 2, Property Tax Act, for the
543 residential property that is the primary residence of a tenant of the individual or the individual's
544 spouse may not be considered in determining domicile in this state.

545 Section 4. **Retrospective operation.**

546 This bill has retrospective operation for a taxable year beginning on or after January 1,
547 2018.