

BEFORE THE MONTANA TAX APPEAL BOARD

<p>CLAYTON A. GREENWOOD</p> <p>Appellant,</p> <p>v.</p> <p>THE STATE OF MONTANA, DEPARTMENT OF REVENUE,</p> <p>Respondent.</p>	<p>CASE NO.: IT-2015-4</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER AND OPPORTUNITY FOR JUDICIAL REVIEW</p>
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Statement of the Case

This case comes to the Board through a direct appeal by Taxpayer Clayton A. Greenwood from an adverse decision of the Office of Dispute Resolution (ODR) of the Department of Revenue (DOR) dated April 22, 2015. This Board held a hearing on September 10, 2015. Taxpayer Clayton Greenwood appeared with his attorney, James M. Ramlow. Tax Counsel Teresa Whitney represented the DOR, and Field Audit Unit Manager Douglas Peterson and Auditor Sylvia Headley appeared as witnesses for the DOR. By agreement of the parties, the ODR decision and transcript were considered by the Board. The Board, having fully considered the testimony, exhibits, evidence, and all matters presented, finds and concludes as follows:

Issue

The issue is whether the Taxpayer was a Montana resident during the tax years 2008 through 2012 and, therefore, was required to file resident Montana individual income tax returns for those years.

Findings of Fact

1. Due, proper and sufficient notice was given of this matter, and of the time and place of the hearing. All parties were afforded an opportunity to present oral and documentary evidence.

2. Many of these facts are not in dispute and will be taken from the April 22, 2015 Findings of Fact, Conclusions of Law, and Order of the DOR's Office of Dispute Resolution Hearing Examiner, Laura Cunningham (ODR decision), the parties' joint stipulation and post hearing submissions.

3. Taxpayer Clayton Greenwood was born in Texas and lived with his family in Houston, Texas, until 1999, when he and his family moved to Montana and became residents for all intents and purposes.

4. Greenwood has been in business in Texas since 1980, when he worked for and eventually became a shareholder in Schaffer Precision Machine Shop.

5. In 1997, Greenwood started another business called Greenwood Manufacturing, Inc., doing business as "Tech Fab."

6. Greenwood owned another company, “Carolock”, which was a real estate holding company. ODR Tr. 22.

7. Greenwood’s Texas business interests have always required his involvement for purchasing and loan transactions as well as permit transactions, though for the years under audit, his brother and sister were managing the day-to-day operations for Schaffer Precision Machine Shop. ODR Tr. 96.

8. Greenwood sold Schaffer Precision Machine Shop in 2010, and his presence in Texas was required to manage the transaction, which took approximately ten months. ODR Tr. 24.

9. Terry Malone managed Greenwood Manufacturing (“Tech Fab”) until he left the company in 2003, then Kevin Parent managed the business until 2007, when Glen Byrum took over operations. ODR Tr., p. 97. Since 2011, Greenwood’s three adult children, Jessica, Justin, and Travis Greenwood, have been managing Tech Fab. ODR Tr. 60.

10. Greenwood purchased property and a home¹ outside of Kalispell, Montana, in 1999. The home was located at 2070 Farm to Market Road, which Flathead County later renamed 442 Snow Camp Road, Kalispell, Montana, 59901. ODR Tr., p. 38.

11. From 1999 until September 2004, the Greenwoods’ three children attended school in Kalispell, and one child graduated from Kalispell High School in 2000.

¹ There was a name discrepancy in the record. The DOR’s Exhibit H represented that the Greenwoods purchased two homes in Kalispell in 1999, one located at 442 Snow Camp Road and the other located at 2070 Farm to Market Road. During the ODR hearing, Greenwood stated that “It was the same property” but the county had simply renamed the Farm to Market Road address as 442 Snow Camp Road. ODR Tr. 38.

ODR Tr. 25.

12. The parties stipulated that Greenwood applied for and obtained a Montana driver's license in 2000 after he moved to Montana. DOR Ex. K. Greenwood's wife Carol also applied for and obtained a Montana driver's license in 2000. ODR Tr. 118.

13. In September 2004, Greenwood and Carol purchased a 2,432 square foot modular home and placed the home on the site of one of his businesses, Schaffer Precision Machine Shop, in Houston, Texas. The address was 7472 Miller Road 2, Houston, Texas. ODR Tr. 25.

14. In September of 2004, Greenwood's wife Carol and three children moved back to Houston, Texas. ODR Tr. 36. Mr. Greenwood contends that he also relocated to Texas with his family at this time. Taxpayer Response to Administrative Hearing Questionnaire at 1.

15. Carol Greenwood surrendered her Montana driver's license and obtained a Texas driver's license in 2004. ODR Tr. 118.

16. Prior to and for the entire period under audit, Greenwood and his family obtained their health insurance through Greenwood Manufacturing, doing business as "Tech Fab," and their providers were either United Health Care or Blue Cross/Blue Shield of Texas. Taxpayer's Exhibit T-11; ODR Tr. 45-46.

17. Prior to and for the entire period under audit, Greenwood was under the care of health care providers in Texas, even after he and the family moved permanently to Kalispell in 1999. Greenwood attended dermatology appointments in

Texas on the following dates: January 28, 2000; February 28, 2000; May 22, 2002; April 26, 2005; January 26, 2007; January 30, 2007; February 14, 2007; February 1, 2008; February 15, 2008; February 22, 2008; May 7, 2008; April 23, 2010; January 25, 2011; January 26, 2011; February 18, 2011; February 1, 2013; February 8, 2013; and April 23, 2013. Taxpayer's Exhibit T-3.

18. Though not as frequently, prior to and for the entire period under audit, Greenwood received dental and optometry care from other health care providers in Texas. Taxpayer's Exhibits T-11A, T-11B, T-11C, and T-11D.

19. Greenwood has done business with Monument Chevrolet, formerly Timber Chevrolet in Pasadena, Texas since 1995 or 1996. ODR Tr. 87-89.

20. Greenwood and Carol opened their first joint checking account in 1980 in Texas, and have maintained their current checking account at Woodforest National Bank in Houston since December 4, 2007. Tr. 75-76; Taxpayer's Exhibit T-15. 21.

Greenwood and Carol have also maintained a savings account through Woodforest National Bank since 2004, and a money market account through Capital Bank in Houston since 2010. ODR Tr. 79-81. Taxpayer's Exhibits T-16 and T-17.

21. Greenwood maintained a Montana checking account in Kalispell during the years under audit, and used it primarily to write local checks in Montana. ODR Tr., p. 107.

22. Greenwood has been retired from the daily operations of his Houston businesses since 2007, and spends his time hunting, fishing, and recreating with his family. ODR Tr. 61.

23. Greenwood and Carol received a federal tax bill from the Internal Revenue Service for the tax period ending December 31, 2012. It was addressed to them at 7450 Miller Road 2, Houston, Texas, 77049. Taxpayer's Exhibit T-19 at 346-347.

24. Greenwood and Carol received property tax notices from Harris County in Texas for tax years 2011 and 2012. The notices were addressed to them at 7450 Miller Road 2, Houston, Texas 77049. Taxpayer's Exhibit T-20, Greenwood at pp. 348-52.

25. Greenwood and Carol have relied on the accounting and tax preparation services of a firm in Houston since 2000. ODR Tr. 105.

26. The parties stipulated that between March 2007 and January 2013, Greenwood applied for and obtained approximately twenty-one different Montana resident hunting and fishing licenses. Upon questioning by this Board, Greenwood testified that he saved \$920 a year by purchasing resident hunting and fishing license, "Q: So the money was a factor? A: Yes sir, without a doubt." MTAB Hr'g Tr. 32: 1-6. Greenwood purchased the following resident hunting and fishing licenses:

Date	License	Retailer	Residency Status	Years of Residency indicated
3/1/07	Hunting Access ²	Whitefish Army Navy	Resident	10
3/1/07	Turkey-Spring Only	Whitefish Army Navy	Resident	10
3/1/07	AntelopeB/Antelope /Deer	FWP-Region 1	Resident	10
3/1/08	Hunting Access	FWP-Region 1	Resident	10
3/1/08	Turkey	Snappy Sports Center	Resident	10
3/1/09	Hunting Access	Sportsmen and Ski Haus	Resident	10
3/1/09	Turkey	FWP-Region 1	Resident	10
3/1/09	Wolf	FWP-Region 1	Resident	10
3/1/10	Hunting Access	Discovering Montana (online)	Resident	10
3/1/10	Antelope	Discovering Montana	Resident	10
3/1/10	Bow and Arrow	Hook and Horn	Resident	10
3/15/11	Hunting Access	Discovering Montana	Resident	10
4/25/11	Turkey	Discovering Montana	Resident	10
7/19/11	Deer B	Discovering Montana	Resident	10
7/21/11	Antelope B	Discovering Montana	Resident	10

DOR Ex. L.

See also MTAB Hr'g Tr. 32:23-25, 33:1-15. Greenwood also obtained a Montana resident wolf trapping license after attending a certification course in 2013. MTAB Hr'g Tr. 32:23-25, 33:1-10.

27. The parties stipulated that a Montana Fish, Wildlife, and Parks database summary showed that Greenwood had applied for and purchased Montana resident hunting and fishing licenses every year, from 2004 through 2013. According to the

² For brevity, the "Hunting Access" license name is truncated in the table. The full title of this license is "Hunting Access Enhancement/State Lands/Upland Bird/General Elk/Black Bear-Spring and Fall/ General Deer/Bow and Arrow/Season fishing/sportsman w/Bear/Conservation."

summary, Greenwood listed his residential address as 442 Snow Camp Road, Kalispell, Montana, 59901. DOR Ex. M and N. Mr. Greenwood contends that the use of data from on-line license purchases led to the ODR's erroneous conclusion that he was physically present in Montana when he made some of these purchases online. Taxpayer Response to Administrative Hearing Questionnaire at 2.

28. Greenwood applied for and obtained a concealed weapons permit from Flathead County in 2010. DOR Ex. H. To obtain a Montana concealed weapons permit, a person must be: (1) a U.S. citizen; (2) at least 18 years old; and (3) a resident of the state for at least six months. Mont. Code Ann. § 45-8-321.

29. The parties stipulated that Greenwood registered to vote in Montana and voted in person in the following elections: the November 7, 2006, federal general election; the November 2, 2010, federal general election; and in the June 15, 2010, local West Valley Special Bond election. Greenwood voted absentee for the November 4, 2008, federal general election. DOR Ex. H at 2. Greenwood testified that he only voted in Montana and that he did not also vote in Texas. MTAB Hr'g Tr. 38:1-25.

30. The parties stipulated that Greenwood renewed his Montana driver's license on June 15, 2010. DOR Ex. K at 2.

31. The parties stipulated that Greenwood had a 2002 GMC Sierra crewcab truck registered in Montana from 2002 to 2012; he had a 2000 Subaru Tribeca wagon sport utility vehicle registered in Montana from 2008 through 2012; and he registered a

2000 Ford F150 extended cab truck in Montana in 2012. ODR Tr. 93. By registering the vehicles in Montana, Greenwood avoided Texas sales tax. Greenwood Proposed Findings, ¶ 71.

32. The parties stipulated that on March 28, 2013, the Department mailed Greenwood a residency questionnaire and asked that he complete and return it to the Department. DOR Ex. A.

33. The parties stipulated that the Department mailed a second information request regarding his residency status to Greenwood on April 30, 2013. DOR Ex. B.

34. The parties stipulated that Greenwood and Carol completed the residency questionnaire and mailed it back to the Department on June 13, 2013. DOR Ex. C.

35. Question 1 of section I on the residency questionnaire stated, "On what date did you move from Montana?" Greenwood responded, "9-1-2004." Questions 3 and 4 requested a list of dates for when Greenwood was in Texas and when he was in Montana for the tax years under audit. Greenwood provided the following list of dates and locations:

12-8-2006 thru 9-21-2007 in Texas
9-22-2007 thru 11-12-2007 in Montana
11-14-2007 thru 6-20-2008 in Texas
6-22-2008 thru 8-31-2008 in Montana
9-2-2008 thru 10-24-2008 in Texas
10-26-2008 thru 12-1-2008 in Montana
12-2-2008 Flew to Houston, TX; Returned to Montana 12-16-2008
12-16-2008 thru 4-8-2009 in Montana
4-10-2009 thru 9-18-2009 in Texas
9-18-2009 thru 11-20-2009 in Montana
11-20-2009 thru 12-12-2009 in Texas

12-14-2009 thru 1-6-2010 in Montana
1-8-2010 thru 6-12-2010 in Texas
6-14-2010 thru 7-24-2010 in Montana
7-26-2010 thru 8-27-2010 in Texas
8-29-2010 thru 9-14-2010 in Montana
9-14-2010 thru 11-13-2010 in Texas
11-15-2010 thru 1-4-2011 in Montana
1-6-2011 thru 7-25-2011 in Texas
7-27-2011 thru 10-25-2011 in Montana
10-27-2011 thru 12-15-2011 in Texas
12-17-2011 thru 1-6-2012 in Montana
1-8-2012 thru 6-28-2012 in Texas
7-8-2012 thru 8-12-2012 in Montana
8-14-2012 thru 11-10-2012 in Texas
11-12-2012 thru 1-2-2013 in Montana
1-4-2013 thru 5-12-2013 in Texas
5-14-2013 Arrived Back in Montana.

DOR Ex. C.

36. The parties stipulated that on June 28, 2013, the Department sent Greenwood supplemental questions to the residency questionnaire. DOR Ex. D.

37. The parties stipulated that Greenwood and Carol responded to the supplemental questions on July 20, 2013. DOR Exhibit E.

38. Question 1(a) and (b) on the supplemental questionnaire asked Greenwood to list the full addresses of the homes he occupied as a primary residence and secondary residence for the five year period beginning January 1, 2003, and ending December 31, 2007. For January 1, 2003, through August 31, 2004, Greenwood listed the following address as a primary residence: 2070 Farm to Market Road, Kalispell, Montana 59901.

39. For September 1, 2004, through December 31, 2007, Greenwood listed the following address as a primary residence: 7470 Miller Road 2, Houston, Texas 77049

40. For September 1, 2004, through December 31, 2007, Greenwood listed the following address as a "Secondary Personal Use Vacation Home": 2070 Farm to Market Road, Kalispell, Montana, 59901.

41. Question 2(a) and (b) asked Greenwood to list the full addresses of the homes he occupied as a primary residence and secondary residence for the five year audit period beginning January 1, 2008, and ending December 31, 2012. As a primary residence, Greenwood listed the following address: 7470 Miller Road 2, Houston, Texas, 77049.³

42. For the same five year audit period, Greenwood listed the following address as a "Secondary Personal Use Vacation Home": 442 Snow Camp Road, Kalispell, Montana, 59901. DOR Ex. E.

43. The parties stipulated that on July 30, 2013, the Department issued a request to Greenwood to file amended Montana individual income tax returns for tax years 2008 through 2012. DOR Ex. F.

44. The parties stipulated that on August 23, 2013, counsel for Greenwood requested additional time to respond to the Department's request to amend tax returns. DOR Ex. G.

³In 2011, Greenwood sold Schaffer Precision Machine Shop in 2010 and relocated to some adjoining property. The new address for his home was 7450 Miller Road 2, Houston, Texas 77049. Tr. at 30-31. The prior address was 7470 Miller Road 2.

45. Prior to the years in the audit, Greenwood sought and received a property tax rebate of \$400 for his Montana residence. This rebate was only available to those taxpayers who represented that the residence was owned and occupied as their principal residence for at least seven months in 2006. Greenwood Proposed Findings, ¶ 73. 2007 Mont. Laws, 1st Sp. Sess., ch 6, § 2 (H.B. 9).

46. The parties stipulated that DOR sent the Greenwoods a residency determination letter on October 29, 2013, finding that Greenwood was a resident of Montana for tax years 2008 through 2012, and informing him that adjustments were made to his 2008, 2009, 2010, 2011, and 2012 Montana individual income tax returns to reflect that residency determination.

47. The Department summarized the factors upon which the residency determination was made. It stated that Greenwood continued to maintain ties in Montana after 2005 by purchasing resident hunting and fishing licenses, registering to vote and voting in Montana, obtaining a Montana driver's license in 2010, registering multiple vehicles with the Montana Department of Motor Vehicles, and obtaining a concealed weapons permit in Montana. The letter also stated, in relevant part:

While Mr. Greenwood may spend a significant portion of his time in Texas he returns to Montana frequently during seasons of repose to hunt, fish, and spend time in Montana.

Based on the information presented above, it is our determination Mr. Greenwood established domicile in Montana, and filed returns as a resident in 2001-2005, then never took steps to sever those ties with Montana.

We have adjusted the 2008, 2009, 2010, 2011, and 2012 returns filed with the Department from a status of nonresident to status of Montana resident.

The letter concluded by providing guidelines for objecting to the assessment, if the Greenwoods disagreed. DOR Ex.H.

48. The parties stipulated that a Form APLS101F, request for informal review, was submitted by the Taxpayer, as well as letter dated November 20, 2013. Taxpayer's counsel referred to evidence the Department used to determine that Greenwood had severed his domiciliary ties with Texas, and requested copies of all of those documents, and stated the Taxpayer was reserving the right to raise additional issues for informal review once he considered the documents. The letter also questioned the Department's inclusion of Carol Greenwood's name on the Statement of Account (SOA), noting that until receiving the SOA, all of the Department's information requests had been directed solely to Clayton Greenwood. The letter requested the basis for why the Department included Carol on the SOA. DOR Ex. I.

49. The parties stipulated that on March 31, 2014, Compliance Unit Manager Micah Christensen sent a final determination letter to Greenwood, upholding the Department's adjustments to Greenwood's 2008 through 2012 Montana individual income tax returns. The letter is summarized, in pertinent part, here: The Department acknowledged that the information provided by Greenwood made it evident that he spent time in Texas for both work and leisure. Greenwood provided documents showing that he maintained checking accounts, utilized health care providers, owned

property, received mail, purchased vehicles, and recreated in Texas during the years under audit. The letter also noted that Greenwood provided a copy of his Texas driver's license acquired in September 2013; a resident Texas hunting license acquired in January 2014; a resident Texas fishing license acquired in March 2012; and a nonresident Montana combination hunting and fishing license acquired August 28, 2013. Recognizing Greenwood's argument that the information was offered in support of his position that he never severed domiciliary ties with Texas to establish a Montana domicile. Mr. Christensen countered that Greenwood had taken significant actions to establish a Montana domicile beginning in 1999, when he and his family permanently moved to Kalispell, Montana. Mr. Christensen noted that Greenwood affirmed that he was a Montana resident until September 2004 on the residency questionnaire; that Greenwood's children attended school in Flathead County from 2000 through 2004; that he obtained numerous resident Montana hunting and fishing licenses; and that Greenwood filed resident Montana individual income tax returns for tax years 2001 through 2004.

50. Mr. Christensen observed that while Carol took evident steps to sever her domiciliary ties with Montana in 2004, such as surrendering her Montana driver's license and declaring Texas residency by obtaining a driver's license there, Greenwood took no such steps, but in fact continued to declare Montana residency by obtaining resident hunting and fishing licenses, voting in Montana, renewing his Montana driver's license, and claiming a 2006 resident property tax refund. Emphasizing that

these actions demonstrated Greenwood's intent to maintain Montana residency for all intents and purposes, Mr. Christensen pointed out that Greenwood only took steps to establish other Texas domiciliary ties after he was contacted by the Department and residency became an issue for income tax purposes.

51. Citing statutory authority and case law, Mr. Christensen concluded by affirming the adjustments made to Greenwood's residency status, stating that the associated tax, penalties, and interest remained due. He also noted that there may be outstanding adjustments to Greenwood's 2010 Montana tax return, and noted that the Department was willing to discuss the matter though it was unrelated to the residency determination. Appeal language, advising Greenwood of his appeal rights, was included in the letter. DOR Ex. J.

52. The parties stipulated that a Form APLS102F, Notice of Referral, dated April 3, 2014, was received by the DOR's Office of Dispute Resolution and an appeal duly opened. Under the basis for objection was the text:

Clayton Greenwood never "severed" his significant residential contacts with Texas throughout the audited years and was incorrectly classified by the Department as a Montana resident for those years. Although the Department's Final Determination acknowledges that Carol Greenwood was not a resident of Montana during the audited years, she is named on the Statement of Account which accompanied the Department's Final Determination.

53. Taxpayer's counsel also attached a detailed letter, dated April 15, 2014, which included "Tab" references to a notebook of supplementary information submitted earlier to the Department at the informal review stage. The first full paragraph stated:

The Taxpayer requests review and reversal of the Department's final determination dated March 31, 2013⁴ that he was a Montana resident for income tax purposes during the years 2008 through 2012. The legal grounds upon which this request is based are that the Department has misapplied the statutory criteria for determination of residence, has given undue weight to the Taxpayer's improper legal determinations of his residency in various permit and license applications, and has ignored or minimized substantial evidence of the Taxpayer's ongoing residential ties to his home in Texas (including a Texas resident fishing license obtained in 2012 before it first notified Mr. Greenwood of its questions concerning his residency status). In addition, the Taxpayer contends that the Department's determination denies him of due process of law, imposes an excessive fine, and denies him equal protection of the law, all in violation of the constitutions of Montana and the United States.

Taxpayer's Notice of Referral Letter, 1 (April 15, 2014).

54. For the sake of brevity, the rest of the letter is summarized in relevant part, here: Taxpayer's counsel informed the Department that Greenwoods' amended Montana individual income tax returns for years 2008 through 2012 would be prepared and filed as nonresidents of Montana, and their income was community property under Texas law, which meant one-half was allocable to Carol Greenwood.

55. The letter provided extensive background information on the Greenwood's residence in Houston, Texas, and his personal and business connections and activities in Texas. It referenced various tabs in the notebook showing construction and business contracts relating to Greenwood's Texas businesses, Schaffer Precision Machine Shop, Inc. and Greenwood Manufacturing, doing business as "Tech-Fab,"

⁴The date here is a scrivener's error; the actual date of Mr. Christensen's final determination was March 31, 2014.

and noted those transactions required Greenwood's presence in Texas. *See* Tabs 1, 4, 6, 7, 8, 9, 10, 12-14.

56. Among personal connections listed, the letter stated throughout the audit period, Greenwood maintained health insurance through group policies held by his businesses. *See* Tab 11. Similarly, Greenwood maintained health care relationships with providers in Texas, including physicians in the fields of dermatology, optometry, oral surgery and dentistry. *See* Tabs 3, 11A, 11B, 11C, and 11D. Greenwood also had sought emergency dental care in Kalispell. MTAB Hr'g Tr., p.35, l. 1-10.

57. Other personal connections to Texas referenced included the Greenwoods' "most active" checking account (Tab 15A); tax reporting address (Tab 17); other real property (Tab 18); personal vehicle maintenance (Tab 19); hunting/fishing licenses (Tab 20); and leisure/recreational time in Texas with his family (Tabs 5 and 16).

58. In conclusion, Taxpayer's counsel asserted that Greenwood never severed ties to Texas, and he incorrectly claimed residency status on Montana licenses and permits and was prepared to pay penalties associated with those mistakes, those errors did not require him to forfeit his Texas residency and pay taxes, penalties and interest to Montana. Concluding that the Department could only reach its residency determination by ignoring Greenwood's significant and permanent domiciliary ties to Texas, and instead relying on Greenwood's "residency declarations" and his "legal conclusions," the letter noted that Greenwood "is not trained in law and never

consulted the residency definitions of state law when making those applications." *Taxpayer's Notice of Referral Letter*, 6 (April 15, 2014).

59. Citing case law, Greenwood's counsel reiterated that the Department narrowly focused on Greenwood's connections to Montana while ignoring or minimizing his connections to Texas. He also emphasized Taxpayer's constitutional objections of due process of law, excessive fines, and equal protection of law for the record, citing statutory authority to support the Taxpayer's position. *Taxpayer's Notice of Referral Letter* (April 15, 2014). This Board has no authority to review questions of constitutional law. Mont. Code Ann. § 15-2-201.

Conclusions of Law

1. The Board has jurisdiction over this appeal. Mont. Code Ann. § 15-2-302.
2. To whatever extent the foregoing Findings of Fact may be construed as Conclusions of Law, they are incorporated accordingly.
3. The Montana Department of Revenue is an agency of the executive branch of government, created and existing under the authority of Montana Code Annotated, Title 2, chapter 15, part 13. The DOR is charged with the administration and enforcement of the Montana Code Annotated, Title 15, chapter 30 (Individual Income Tax) and the ancillary Administrative Rules of Montana (Mont. Admin. R.) Title 42, chapter 15.
4. If, in the opinion of the DOR, a return of a taxpayer is in any essential respect incorrect, the agency may revise the return. Mont. Code Ann. § 15-30-2605.

5. If a taxpayer does not file returns pursuant to the requirements of Mont. Code Ann. tit. 15, ch. 30, the DOR may, at any time, audit the taxpayer or estimate his or her taxable income from any information in its possession and, based upon such audit or estimate, assess the taxpayer for taxes, penalties, and interest due the state of Montana. Mont. Code Ann. § 15-30-2605(2).

6. “Montana source income” means wages, salaries, or any other compensation for services performed in Montana or *while a resident of Montana*, regardless of where the services were performed. Mont. Code Ann. § 15-30-2101(18) (emphasis added.)

7. A resident of Montana is allowed a credit against his or her Montana income tax liability for income taxes imposed by, or paid to, another state or country on income taxable under Mont. Code Ann. tit. 15, ch. 30. Mont. Code Ann. § 15-30-2302.

8. The credit is permitted only for taxes paid to another state on income derived from sources within that other state under the laws of that jurisdiction without regard to the residency or domicile of the taxpayer. Mont. Code Ann. § 15-30-2302(2).

9. By law, every person has a residence. Mont. Code Ann. § 1-1-215. Such a residence is deemed to be the place where a person remains when not called elsewhere for labor or other special or temporary purpose, and to which the person returns in seasons of repose. *Id.* There can be only one residence. *Id.* A residence cannot be lost until another is gained. *Id.* A residence can only be changed by the union of act and intent. *Id.*

10. A “resident” is defined as applying to natural persons. For the purpose of determining income tax imposed by Mont. Code Ann. tit. 15, ch. 30, the definition of resident designates any person domiciled in Montana and any other person who maintains a permanent place of abode in the state even though temporarily absent from Montana and who has not established a residence elsewhere. Mont. Code Ann. § 15-30-2101(28).

11. The DOR’s administrative rules state that “[a]s provided in 15-30-2101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Montana Code Annotated § 1-1-215 sets forth rules for determining residency, and ‘domiciled’ is defined in Mont. Admin. R. 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances.” Mont. Admin. R. 42.15.109.

12. Further, the DOR’s administrative rules define a “Permanent place of abode” as meaning “a dwelling place habitually used by an individual as the individual's home, whether or not owned by the individual or a dwelling the individual may someday leave.” Mont. Admin. R. 42.15-107(2).

13. The term residence and domicile are used interchangeably. Domicile is defined as, “[t]he place at which a person is physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which the person

intends to return and remain even though currently residing elsewhere.” Black’s Law Dictionary, 501 (7th Ed. 1999).

14. Conversely, residence is defined as “[t]he place where one actually lives, as distinguished from a domicile.” Residence usually “just means bodily presence as an inhabitant in a given place.” Whereas domicile usually “requires bodily presence plus an intention to make the place one’s home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously.” *Id.* at 1310.

15. Therefore, while a person may have many residences, he or she has only one domicile, and in determining which of a person’s residences is his or her domicile courts will look to intent. *Burchett v. MasTec N. Am., Inc.*, 2004 MT 177, ¶ 22, 322 Mont. 93, 93 P.3d 1247; *Cade v. Lombard*, 727 So. 2d 121, 1223 (La. Ct. App. 4th Cir. 1999); 25 Am. Jur. 2d Domicile, § 54.

16. While a declaration of intent for purposes of domicile is “to be given full and fair consideration, [it] is [also] subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negated by other declarations and inconsistent facts.” *Dist. Of Columbia v. Murphy*, 314 U.S. 441, 456 (1941). Thus the law affords more weight to a person’s acts than to the person’s declarations. *Id.* See also *Veseth v. Veseth*, 147 Mont. 169, 173, 410 P.2d 930, 932 (1966); 25 Am. Jur. 2d, Domicile, § 61. When acts and declarations are inconsistent, the acts, therefore, control. *Id.*

17. The weight to be given the various facts and circumstances indicative of domicile depends upon the unique situation of each case. The determination of domicile does not depend upon any one factor, but upon cumulative circumstances that, together, show a preponderance of evidence in favor of a place as one's domicile. 25 Am. Jur. 2d Domicile, § 59. Every case must stand on its own facts. *Carwile v. Jones*, 38 Mont. 590, 602, 101 P. 153, 158 (1909); see also *Lima School District No.12 v. Simonson*, 210 Mont. 100, 109, 638 P.2d 471,475-76 (1984), *McCarthy v. Montana Power Co.*, 143 Mont.134, 140, 387 P.2d 438, 442 (1963).

18. Under Montana law, when a person registers and votes in Montana, that person holds him or herself out to be a resident of the state because only Montana residents can vote in Montana elections. Mont. Code Ann. § 13-1-111(1)(c). During the years under audit, Greenwood voted as a Montana resident in 4 different elections ranging from federal general elections to a local bond election, one of which he even made the effort to vote absentee.

19. Availing oneself of the privileges of citizenship in a place is evidence of domicile in that place. Exercising the right to vote or other civil or political rights warrants significant weight. The act of voting, in particular, has been held in some jurisdictions to constitute the highest evidence of domicile. *Oglesby v. Williams*, 812 A.2d 1061, 1069 (Md. 2002).

20. Obtaining a license ordinarily required of a domiciliary resident of a state, such as a driver's license and resident hunting and fishing licenses, indicates an intention to

establish a domicile in that state. 25 Am. Jur. 2d Domicile, § 64; *See also Elwert v. Elwert*, 248 P. 2d 847, 853 (Ore. 1952).

21. Mr. Greenwood repeatedly represented that he was a Montana resident when he purchased Montana hunting and fishing licenses at a considerable discount from the rate charged to non-residents. To qualify for a resident hunting or fishing license, a person must have “physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days, *file a Montana state income tax return as a resident if required to file*, license and title any vehicles in Montana that the person owns and operates in Montana, and if the person registers to vote, the person registers only in Montana. Mont. Code Ann. § 87-2-102(2) and (4) (emphasis added). Each resident hunting and fishing license obtained by Mr. Greenwood during the years in question required him to state that he was a resident of the state of Montana. He voluntarily made those declarations of residency every time he purchased a resident hunting and fishing license.

22. Greenwood similarly represented that he was a Montana resident in 2007 in order to obtain a property tax rebate on his home in Kalispell, which rebate was only available to Montana residents.

23. Greenwood also obtained a Montana concealed weapon permit in Flathead County, which again required Greenwood to represent that he had been a resident of the state of Montana for at least 6 months.

24. Whenever a change in domicile is at issue, a domicile of origin is presumed to continue until it is shown to have changed. Mont. Code Ann. § 1-1-215. *Pletcher v. Department of Revenue*, 280 Mont. 419, 424-25, 930 P.2d 656, 658 (1996). There is a presumption against a change of domicile. *Id.* As a general rule, the burden of showing a change in domicile is upon the party asserting the change. *Id.* The party alleging the change must do so by a preponderance of the evidence. *Id.* The intent to change one's domicile must include an intention to abandon the former domicile, permanently or indefinitely. *Id.* There must be an intent to remain in the place chosen as the new domicile, and an absence of intent to return to the old one. *Id.*

25. If a person temporarily leaves a legal domicile, or leaves for a particular purpose, and does not take up permanent residence somewhere else, that person's legal domicile is deemed not to have changed. Mont. Code Ann. § 15-30-2101. See also *Pletcher v. Department of Revenue* (1996), 280 Mont. 419, 424-25, 930 P.2d 656, 658; *Williams v. Clark County Dist. Attorney*, 50 P.3d 539 (Nev. 2002); *Manthey v. Commissioner of Revenue*, 468 N.W2d 548, 550 (Minn. 1991). Once established, a domicile is presumed to continue until the contrary is shown. *Id.* A temporary relocation away from an established domicile does not result in a change of domicile without evidence of intent to establish a domicile elsewhere. *Id.*

26. The issue before this Board is whether the Mr. Greenwood was a resident of Montana for the tax years in question, 2008 through 2012, and therefore liable for taxes on income earned outside Montana. Montana source income means: "wages,

salary, tips, and other compensation for services performed in the state or while a resident of the state.” Mont. Code Ann. § 15-30-2101(18)(a)(i).

27. It is undisputed that both Greenwoods were Texas residents prior to 1999. They then moved to Kalispell. While in Montana they availed themselves of the privileges of Montana citizenship. The Greenwoods filed Montana tax returns, voted in local elections, they registered vehicles in order to circumvent Texas sales tax, and benefited from hunting and fishing licenses available to Montana residents. Upon moving back to Texas, Carol Greenwood made affirmative steps to sever ties with Montana and to establish a new residency in Texas. The question is whether Mr. Greenwood severed ties to his Montana residence and established residence in Texas.

28. Taxpayer argues that his actions of voting in Montana, in maintaining a Montana driver's license (obtained in 2000 and renewed in 2010), in purchasing resident Montana hunting and fishing licenses, in applying for the property tax rebate, and in obtaining a concealed weapons permit, do not meet the statutory “union” test of intent with action because taxpayer did not intend to remain a Montana resident despite his actions to the contrary.

29. The ODR hearing examiner found that Greenwood was not credible. At the hearing before this Board, Greenwood’s attorney made substantial efforts to rehabilitate his client’s credibility. ODR’s conclusion that Greenwood lacked credibility appears to be based on a misreading of the Fish Wildlife and Parks license

printout. We assess Greenwood's credibility based on the hearing in front of this Board and not upon the conclusions of the ODR Hearing Examiner.

30. The record is replete with instances where Greenwood represented himself as a Montana resident in order to avail himself of the benefits of Montana residency. He represented that he was a Montana resident to obtain, year in year out, Montana resident fishing and hunting licenses at resident rates. He represented that he was a Montana resident while registering his vehicles in Montana to avoid paying Texas sales tax. Greenwood admits that he "misrepresented" that he was a Montana resident to obtain these savings. Greenwood's ability to misrepresent himself when it favors him calls his credibility into question. By his own admission he was willing to misrepresent himself to save money on hunting licenses, which raises the question whether he is now misrepresenting himself as a Texas resident to save money on taxes that might be owing to Montana if he is required to file resident Montana income tax returns.

31. The record is clear that Greenwood maintained certain aspects of his life in Texas after he moved his residence to Montana. He maintained bank accounts, he received dermatological and dental medical care in Texas, used a Texas accountant and obtained legal services from a Texas attorney. This Board considers these factors along with other indicia of residency in determining his residence. Certain indicia of residency are given significant weight. Exercising the right to vote or other civil or political rights warrants significant weight. The act of voting, in particular, has been

held in some jurisdictions to constitute the highest evidence of domicile. *Oglesby v. Williams*, 812 A.2d 1061, 1069 (Md. 2002). Other indicia that are given weight include maintaining licenses and permits such as a drivers' license, hunting and fishing licenses, and concealed weapons' permits. We are persuaded maintaining these licenses makes clear Greenwood's intent to remain a Montana resident, even though he may have carried on certain aspects of his life in Texas. The rule in Montana is that in residency cases, actions speak louder than words: "More weight or importance will be given to a person's acts than to his declarations, and when they are inconsistent, the acts will control." *Veseth v. Veseth*, 147 Mont. 169, 172, 410P.2d 930 (1966) (citing 28 C.J.S. Domicile § 18).

32. Montana law contains a specific statutory section that controls our decision in this matter, when a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception. Mont. Code Ann. § 1-1-215(2).

33. We find that Greenwood held himself out to be a resident of Montana by the physical acts of voting in Montana elections, purchasing resident hunting and fishing licenses, maintaining a Montana driver's license, obtaining the 2006 property tax rebate, obtaining a concealed weapons' permit, and licensing his vehicles in Montana. No specific statutory exception exists that would entitle Greenwood to the benefits of Montana residency for the above purposes of voting, hunting and fishing, license



registration, and avoiding another State's sales tax, but exclude him from the requirement to file resident state income tax returns.

Conclusion

34. This Board concludes that the Taxpayer established Montana residency in 1999 and that he later failed to conclusively abandon or sever his Montana residency. Taxpayer's acts proved that he remained a Montana resident for tax purposes and that his activities in Texas did not end his Montana residency for state income tax purposes. By his acts and declarations, he failed to abandon his Montana residency and to take up a new residence. There was no union of intent and acts. He voluntarily represented and maintained a number of strong indicia of residency which convince us that his residence remained in Montana. Taxpayer has not established by a preponderance of the evidence that he intended to, or actually, established a domicile elsewhere.

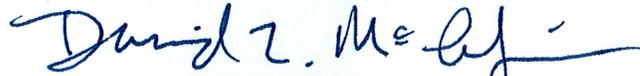
35. We conclude that Mont. Code Ann. § 1-1-215(2) is controlling and find that in light of all the facts and circumstances in the record, Taxpayer is a Montana resident for Montana income tax purposes. Thus, Taxpayer Clayton Greenwood is required to file resident Montana income tax returns for the years 2008 through 2012.

Order

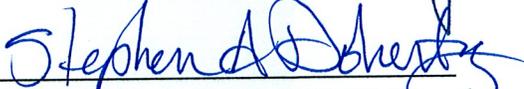
IT IS THEREFORE ORDERED by the Montana Tax Appeal Board that the Taxpayers' appeal and complaint be denied and dismissed.

Dated this 30th day of December 2015.

BY ORDER OF THE
MONTANA TAX APPEAL BOARD



DAVID L. McALPIN, Chair



STEPHEN A. DOHERTY, Member



VALERIE A. BALUKAS, Member

(S E A L)

NOTICE: You are entitled to judicial review of this Order in accordance with Mont. Code Ann. § 15-2-303(2). Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

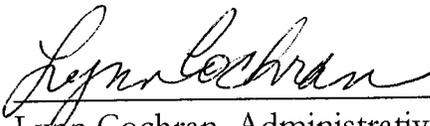
I certify that on this 3rd day of December 2015, a true and correct copy of the foregoing Order was served by placing same in the United States Mail, postage prepaid, and addressed as follows:

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Lynn Cochran, Administrative Officer

