

BEFORE THE MONTANA TAX APPEAL BOARD

GORDON L. OLSON,)	
)	
Appellant,)	DOCKET NO.: IT-2014-3
)	
-v-)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
DEPARTMENT OF REVENUE)	ORDER AND OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

Statement of the Case

This matter comes before the Montana Tax Appeal Board (Board) for administrative review of the Final Agency Decision and Order entered by the Montana Department of Revenue (DOR) pursuant to §15-2-302, MCA. The Taxpayer, Gordon Olson, challenges the DOR determination that he was a Montana resident for tax years 2010, 2011 and 2012 for the purposes of filing a resident state income tax return. A hearing was held on March 24, 2015, at which Gordon Olson did not appear.

The Taxpayer had previously agreed to both the hearing date and the location of the hearing. He had fully participated in the pre-hearing discovery matters. He propounded numerous interrogatories and requests for production to the DOR.

Many of his requests required the DOR to expend considerable time and resources to respond. Throughout the course of this proceeding, the DOR made numerous accommodations for this pro se litigant. Olson did not notify the Board that he had any problems with appearing at the hearing. Olson simply did not appear and he has not explained his failure to appear.

The hearing continued without him. Tax Counsel Teresa G. Whitney and Unit Manager Micah Christensen represented the DOR at the hearing.

Issue

The issue before this Board is whether the Mr. Olson was a resident of Montana for the tax years in question, 2010, 2011 and 2012, and therefore liable for taxes on income earned outside Montana.

Findings of Fact

1. On April 17, 2009, Gordon Olson ("Taxpayer") obtained a Montana driver's license. DOR Exhibit O, Bates No. 54.
2. The address used to obtain the driver's license was 5929 Ironwood Drive, Billings, Montana. DOR Exhibit O, Bates No. 54; Tr. 18: 22-25.
3. Taxpayer registered to vote in Montana and voted in the Federal General election on November 4, 2008, at a polling place in Yellowstone County. DOR Exhibit P, Bates No. 55.

4. Taxpayer voted by mail in Yellowstone County in the school elections. His ballot was received on May 1, 2010. DOR Exhibit P, Bates No. 55.
5. Taxpayer voted in Yellowstone County in the Federal General election on November 2, 2010, at a polling place in Yellowstone County. DOR Exhibit P, Bates No. 55.
6. Taxpayer purchased resident hunting and fishing licenses for tax years 2009 through 2014. In order to obtain these licenses Olson attested to being a Montana resident. DOR Exhibit Q, Bates Nos. 56-96.
7. Taxpayer maintained his residence at 5929 Ironwood Drive, Billings, Montana, during tax years 2010, 2011, and 2012. Exhibit J, Bates No. OLSON-DOR 35.
8. Taxpayer's auto insurance evidenced that Taxpayer was a resident of Montana and reflected the address of 5929 Ironwood Drive, Billings, Montana. Exhibit J, Bates No. OLSON-DOR 35.
9. Taxpayer's vehicles were registered in Montana and Taxpayer did not register vehicles in another state. Exhibit D, Bates No. OLSON-DOR 12, Exhibit J, Bates No. OLSON-DOR 35. Olson did not present any evidence that he registered vehicles in any other state.

10. Taxpayer's banks and his certified public accountant were located in Montana. Exhibit J, Bates No. OLSON-DOR 35.
11. The address shown on Taxpayer's federal tax returns for years 2010, 2011 and 2012, was 5929 Ironwood Drive, Billings, Montana. Exhibit J, Bates No. OLSON-DOR 35.
12. Taxpayer filed Montana Individual Income Tax returns for tax years 2010 and 2011 as "non-resident."
13. The DOR audited Taxpayer's 2010 and 2011 Montana Individual Income Tax returns.
14. The DOR issued its initial audit determination letter wherein the DOR determined that Taxpayer was a resident of Montana for tax years 2010 and 2011. DOR Exhibit C, Bates Nos. OLSON-DOR 9-10.¹
15. The DOR advised Taxpayer of the requirement to amend his Montana Individual Income Tax returns for tax years 2010 to 2011 from "non-resident full year" to "resident full year." DOR Exhibit C, Bates No. 9.

¹ Although the letter briefly referenced a residency questionnaire, the DOR did not admit the residency questionnaire into evidence. Transcript of Montana Tax Appeal Board Hearing, March 24, 2015 at 5: 13-21. The DOR testified that removing the reference to the residency questionnaire did not affect the DOR's determination. Tr. 7: 12-24.

16. On September 11, 2013, the DOR received Taxpayer's letter in response to the DOR's initial audit determination letter. DOR Exhibit D, Bates Nos. 12-13.
17. Taxpayer stated that he had established his Montana residency in 2008. DOR Exhibit D, Bates No. 12.
18. Taxpayer stated that he moved to Texas to pursue employment in Texas in 2010. DOR Exhibit D, Bates No. 12.
19. Taxpayer admitted that he did not obtain a Texas driver's license, did not register to vote in Texas, and did not obtain resident hunting and fishing licenses in Texas. DOR Exhibit D, Bates No. 12.
20. Taxpayer stated that he moved to Colorado to pursue employment in Colorado on or about September 9, 2011.² DOR Exhibit D, Bates No. 13.
21. Taxpayer admitted that he did not obtain a Colorado driver's license, did not register to vote in Colorado, and did not obtain resident hunting and fishing licenses in Colorado. DOR Exhibit D, Bates No. 13.
22. Taxpayer filed a Colorado Individual Income Tax Form 104 for tax years 2011 and 2012 as a part-year or non-resident. DOR Exhibit G, Bates Nos. 19-27.

² This is the date when he signed the lease for his Denver Park Avenue Lofts apartment.

23. The DOR allowed a credit for the taxes Taxpayer paid to Colorado. Tr. 11: 3-6.
24. Shortly after the October 2, 2013 letter, DOR auditor Logan Nordahl (“Nordahl”) requested that Taxpayer file a Montana Individual Income Tax return for tax year 2012.³ Taxpayer then filed a Montana Individual Income Tax return as a non-resident for tax year 2012. Tr. 10: 7-18.
25. The DOR determined that Taxpayer should have filed the 2012 Montana Individual Income Tax return as a resident and added tax year 2012 to the audit. Tr. 10: 7-18.
26. On October 2, 2013, Nordahl mailed to Taxpayer the DOR’s Final Determination letter encompassing tax years 2010, 2011, and 2012. DOR Exhibit E, Bates Nos. 15-16.
27. On January 24, 2014, Micah Christensen, Compliance Unit Manager, mailed to Taxpayer the DOR’s final determination encompassing tax years 2010, 2011, and 2012. Mr. Christensen also attached the DOR’s October 2, 2013

³ Although the October 2, 2013 letter was titled “Final Determination,” Tr. 9: 17-24.

letter as well as a Statement of Account dated January 24, 2014.⁴ DOR Exhibit J, Bates Nos. 35-42.

28. Christensen testified that because an indicator was erroneously removed from Taxpayer's account and was not put back onto the account, Taxpayer's account was erroneously sent to collections automatically by the DOR. Tr. 14: 9-20.
29. As a result, the DOR mailed to Taxpayer a 14 Day Final Notice on January 31, 2014. DOR Exhibit K, Bates Nos. 43-44.
30. On February 3, 2014, the DOR received Taxpayer's Notice of Referral to the Office of Dispute Resolution. DOR Exhibit L, Bates Nos. 45-48.
31. On February 5, 2014, Ryan Hultin, a DOR collector, mailed to Taxpayer a letter stating that the 14-Day Final Notice was sent mistakenly. DOR Exhibit M, Bates No. 49.
32. The DOR did not engage in any further collection activities against Taxpayer. Tr. 15: 20-22.

⁴ DOR notified the Board during the hearing that Exhibit J contains two Typographical errors. The first being that the date of the letter should be January 24, 2014. Tr. 11: 22-24. The second error is that Mr. Olson obtained his Montana driver's license in 2009 and maintained it through the audit period. Tr. 12: 1-6.

33. The DOR has determined that Taxpayer was required to file resident Montana Individual Tax returns for tax years 2010, 2011, and 2012 and that Taxpayer has failed to do so. Tr. 23: 9-18. DOR Exhibit J, Bates Nos. 35-42.
34. The Taxpayer maintains that he was not a resident of Montana for the tax years 2010, 2011 and 2012.

Conclusions of Law

1. The Board has jurisdiction over this appeal. Section 15-2-302, MCA.
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 (ARM) 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. Section 15-30-2605, MCA.

5. If a taxpayer does not file returns pursuant to the requirements of Title 15, chapter 30, MCA, 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. Section 15-30-2605(2), MCA.
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. Section 15-30-2101(18), MCA.
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 Title 15, chapter 30, MCA. Section 15-30-2302, MCA.
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. Section 15-30-2302(2), MCA.
9. By law, every person has a residence. Section 1-1-215, MCA. 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 Title 15, chapter 30, MCA, 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. Section 15-30-2101(28), MCA.
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. Section 1-1-215, MCA, sets forth rules for determining residency, and ‘domiciled’ is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances.” ARM 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." ARM 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 distinguishable from a domicile. Residence usu[ally] just means 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." [sic] *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. *Cade v. Lombard*, 727 So. 2d 121, 1223 (La. Ct. App. 4th Cir. 1999); 25 Am. Jur. 2d Domicile, § 54; *Burchett v.*

MasTec N. Am., Inc., 2004 MT 177, ¶ 22, 322 Mont. 93, 100, 93 P.3d 1247, 1251. (There may only be one residence [as a person's domicile].)

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* (1909), 38 Mont.590, 602, 101 P. 153, 158.

18. Under Montana law, when a person registers and votes in Montana, that person holds him or herself out as a resident of the state because only residents can vote in our elections. See Section 13-1-111(1)(c), MCA.
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. Olson claimed to be a Montana resident when he purchased Montana hunting and fishing licenses at a considerable discount from the rate charged to non-residents. Finding of Fact ¶6. Montana law has a separate definition of residency for tax purposes and for purposes of obtaining hunting and fishing licenses in the state, which includes a variety of factors. Section 87-2-102, MCA. To qualify for such licenses, 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. *See* Sections 87-2-102(2) and (4), MCA (emphasis added). The resident hunting and fishing licenses obtained by Mr. Olson during the years in question required him to state affirmatively that he was a resident of the state of Montana. He voluntarily made those declarations.

22. Whenever a change in domicile is at issue, a domicile of origin is presumed to continue until it is shown to have changed. Section 1-1-215, MCA. *See also* *Pletcher v. Department of Revenue* (1996), 280 Mont. 419, 424-25, 930 P.2d 656, 658. 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.*

23. 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. Section 15-30-2101, MCA. See also *Williams v. Clark County Dist. Attorney*, 50 P.3d 539 (Nev. 2002), *Pletcher v. Department of Revenue* (1996), 280 Mont. 419, 424-25, 930 P.2d 656, 658, *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.*
24. The issue before this Board is whether the Mr. Olson was a resident of Montana for the tax years in question, 2010, 2011 and 2012, and therefore liable for taxes on income earned outside Montana. "Montana source income' means: (i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state." Section 15-30-2101(18)(a), MCA.
25. Taxpayer has not established by a preponderance of the evidence that he intended to, or actually established, a domicile elsewhere.

26. Taxpayer argues that his actions in voting in Montana, in maintaining a Montana driver's license and in purchasing resident hunting and fishing licenses in Montana do not meet the statutory "union" test because he was not physically present in Montana during the period of time, thus, he did not live in Montana. Findings of Fact ¶¶18-22.
27. Montana law, however, contains a specific statutory section that controls this situation: 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. Section 1-1-215(2), MCA.
28. Olson held himself out to be a resident of Montana by the physical acts of voting in Montana elections, purchasing resident hunting and fishing licenses, and maintaining a Montana driver's license. Findings of Fact ¶¶5-6, 19, 21. No specific statutory exception exists that would entitle Olson to the benefits of Montana residency for the purposes of voting, hunting and fishing, and license registration, but exclude him from the requirement to file resident state income tax returns.

This Board concludes that the Taxpayer's acts proved that he remained a Montana resident for tax purposes and that his employment and temporary residences in Texas and Colorado did not terminate 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 maintained a number of indicia of residency establishing that his residence was in Montana.

Conclusion

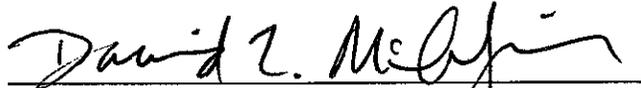
We conclude that Section 1-1-215(2) is controlling and find that in light of all the facts and circumstances, Gordon Olson is a Montana resident for Montana income tax purposes.

ORDER

The Montana Tax Appeal Board hereby affirms the determination of the Department of Revenue that Gordon L. Olson was a Montana resident during tax years 2010, 2011, and 2012.

Dated this 14th of May 2015.

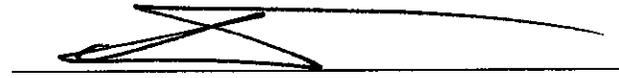
BY ORDER OF THE
MONTANA TAX APPEAL BOARD



DAVID L. McALPIN, Chairman



STEPHEN A. DOHERTY, Board Member



VALERIE A. BALUKAS, Board Member

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of May 2015, a true and correct copy of the foregoing has been served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Gordon Olson
5929 Ironwood Drive
Billings, Montana 59106-9539

- U.S. Mail
- Hand delivered
- E-Mail
- Telecopy

Teresa Whitney
Tax Counsel
Office of Legal Affairs
Department of Revenue
Mitchell Building
PO Box 7701
Helena, Montana 59604-7701

- U.S. Mail
- Hand delivered
- Interoffice delivery
- E-Mail
- Telecopy


JERE ANN NELSON
Office Manager