

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MARK C. and JOAN E. SINNARD,)	
)	DOCKET NO. IT-2012-1
Appellants,)	
)	
-vs-)	
)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

This case comes to us through a direct appeal by Taxpayers Mark C. Sinnard and Joan E. Sinnard from an adverse decision of the Office of Dispute Resolution (ODR) of the Department of Revenue (DOR). Michael W. Green, Crowley Fleck, PLLP, represented Taxpayers and Teresa G. Whitney represented the DOR. The case was heard on the record by agreement of the parties. Both parties submitted briefs and materials and, by agreement of the parties, the ODR decision and transcript were included in the materials considered by this Board.

ISSUE

The issue presented is whether or not the Sinnards were residents of Montana for the tax years 2005 through 2008 and were required to file resident income tax returns during those years.

FACTS PRESENTED

1. Mark Sinnard was employed by the 3M Corporation from 1974 until his retirement in 2009. Mark was assigned to work in several foreign countries during his career. Sinnards' Opening Brief, p.2.
2. When Mark's foreign service began, in 1995, in San Juan, Puerto Rico, the Sinnard family moved there with their children. They filed resident tax returns and obtained local driver's licenses. They also retained ownership of their home in Minnesota, maintained Minnesota driver's licenses, filed non-resident Minnesota tax returns, and voted in Minnesota elections. Sinnards' Opening Brief, p.2.
3. With every foreign assignment, 3M allocated a fixed percentage of Mark's income to the foreign country and the remaining portion to Minnesota, representing the time he worked at company headquarters in that state. Sinnards' Opening Brief, p.2.
4. Each year, while on "home leave" from their foreign assignments, the Sinnards visited family in Minnesota and began annual summer vacations in Montana. Sinnards' Opening Brief, p.2.
5. In 1998, 3M transferred Mark to Shanghai, China, and the Sinnards moved there directly from Puerto Rico. They maintained their property, voter registrations and tax filings with Minnesota and continued to spend summer vacations in Montana. Sinnards' Opening Brief, pgs.2 and 3.
6. In 2001, the Sinnards purchased a vacation property, consisting of a double-wide trailer and land outside of Wilsall, Montana. They leased the land to neighboring farmers for agricultural use and stayed at the property during summer vacations. Sinnards' Opening Brief, p.3.
7. In 2002, 3M assigned Mark to Texas. The Sinnards purchased a home there, obtained Texas driver's licenses and registered their vehicle there. They

sold their Minnesota home. Texas does not have an income tax, so they did not file a state tax return. Their Montana vacations continued. Sinnards' Opening Brief, p.3.

8. From 2002 to 2004, Mark purchased annual non-resident conservation and fishing licenses from Montana Fish, Wildlife and Parks Department. DOR Opening Brief, p.3.

9. In 2004, the Sinnards purchased additional land in Montana near Wilsall. They built a cabin on the property which they leased. They filed non-resident Montana tax returns reporting the rental income on their two properties. Sinnards' Opening Brief, p.4.

10. The Sinnards registered two vehicles in Montana which they kept at the Wilsall property. Sinnards' Opening Brief, p.4.

11. In 2004, Mark was reassigned to Singapore. The Sinnards sold their Texas home when they moved abroad. They vacationed in Montana and obtained Montana driver's licenses. They also registered to vote in Montana. Sinnards' Opening Brief, p. 4.

12. In Singapore, the Sinnards obtained Singapore drivers licenses, filed resident tax returns and US federal tax returns. They continued to file non-resident Montana tax returns reporting the income from their rental property and Minnesota income tax returns reporting the income Mark earned when assigned to corporate headquarters in that state. Sinnards' Opening Brief, p. 5.

13. In 2005, Mark purchased a Montana resident conservation hunting license, attesting that he was a resident of Montana and using his Montana driver's license to substantiate his residency. DOR Opening Brief, p.3.

14. The Sinnards reported that they maintained a home in Wilsall, Montana, in their federal tax returns for 2006, 2007, and 2008. DOR Opening Brief, p.2.

15. In 2006, 2007, and 2008, Mark again purchased a resident conservation hunting license, attesting that he had been a Montana resident for two, three or four years, respectively. DOR Opening Brief, p.4.
16. In 2008, the Sinnards voted by absentee ballot in Park County, Montana. Sinnards' Opening Brief, p.5.
17. In 2010, the Sinnards received and completed a residency questionnaire sent by the DOR. The form, completed by Joan in Mark's absence, stated that they claimed Montana as their residence since 2005. ODR/Sinnard Exhibit A, DOR Sinnard 000225.
18. Joan explained on that form: "Mark had a temporary assignment in Singapore. Joan and Abby accompanied him. However, Montana is/was still considered our residency. Due to Mark's employment with 3M in MN, he had to file a MN tax return however he did not live there. All business in U.S. was as a MT resident. No legal residence in Singapore – only MT." ODR/Sinnard Exhibit A, DOR Sinnard 000225 and 000227.
19. Joan testified in the ODR hearing that she was uncertain about the meaning of the terms resident and residence in the questionnaire. Sinnards' Opening Brief, p. 7, ODR Tr. 63:5-13.
20. In 2009, Mark retired from 3M and the Sinnards relocated to their Wilsall property, upgrading it for permanent residency. Sinnards' Opening Brief, p.6.
21. The DOR informed the Sinnards in 2010 that they were determined to be Montana residents for the tax years 2005-2008 and requested that they file tax returns for those years. The Sinnards disputed that by filing a letter from their tax accountant explaining their circumstances. Sinnards' Opening Brief, p. 7.

22. On December 13, 2010, the DOR sent an Audit Adjustment Notice and Statement of Account assessing the Sinnards with Montana income tax liability. Sinnards' Opening Brief, p.7.
23. Their taxability was upheld by the decision of the ODR following a hearing and submission of materials. This appeal followed.

Findings of Fact, Conclusions of Law and Discussion

The question at issue is whether the Sinnards are residents of Montana for the tax years in question 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.

The rules for determining residency under § 1-1-215, MCA, state:

Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

- (1) It is 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.
- (2) There may be only one residence. If 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.
- (3) A residence cannot be lost until another is gained.
- (7) The residence can be changed only by the union of act and intent.

The Taxpayers claim that they did not establish Montana residency until 2009 when they moved to the Wilsall property following Mark's retirement. Prior to that time, they came to Montana only for vacations, although they purchased two parcels of land and kept a vehicle in Montana. They argue that their actions in 2004 of obtaining drivers' licenses and registering to vote do not meet the statutory "union" test because they did not live in Montana.

The DOR contends that their actions did establish residency and that their moving to Singapore that same year did not terminate their Montana

residency because it was a temporary assignment and was known to be temporary from the outset. It is important to note that the Sinnards do not claim to have been resident anywhere else in the U.S. during the relevant time, having surrendered other prior U.S. and foreign residences, sold their Texas property and relinquished their Texas driver's licenses. Montana law, quoted above, states that "every person has, in law, a residence." Section 1-1-215, MCA.

Much of the parties' argument is focused on interpreting the various actions of the Taxpayers to indicate their intent. Intent is, of course, a key element in determining residency and domicile. Changing residence requires a union of action and intent under §1-1-215(7), MCA and regulations state that residency "is determined in light of all facts and circumstances." ARM 42.15.109(1).

Montana law, however, also contains a specific statutory section that appears to be controlling in 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.

Under Montana law, therefore, when the Sinnards registered to vote in Montana, they held themselves out as residents of the state because only residents can vote in our elections. Section 13-1-111(1)(c), MCA. Voting is certainly one of the most significant benefits of citizenship and much of the legal commentary on the subject of residency and domicile emphasizes its importance in proving an individual's intent. In determining domicile, courts have cited the act of voting as one of the most significant indicators of intent. *Oglesby v. Williams*, 372 Md. 360, 373, 812 A.2d 1061 (2002).

The Sinnards also represented themselves as residents in obtaining hunting and fishing licenses in this state at a considerable discount from the rate charged to non-residents. Montana law has a separate definition of residency for purposes of obtaining hunting and fishing licenses in the state. Section 87-2-102, MCA. To qualify, 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.” Section 87-2-102(2) and (4), MCA. The resident hunting and fishing licenses obtained by Mark Sinnard during the years in question clearly required him to expressly agree that he was a resident.

Further, the Sinnards represented themselves as residing in Montana on their Federal income tax returns each year at issue, and in 2010 they made those same representations to the State of Montana when they completed a residency questionnaire for the DOR stating that they had regarded Montana as their residence since 2005. Joan Sinnard claims she failed to understand the terms used in the questionnaire but her statements about their residency were clear, simple and unequivocal. She clearly stated that they did not intend to be Singapore residents and regarded Montana as their residence during the years at issue. We find their representations indicate intent to be Montana citizens.

The Sinnards also obtained Montana driver’s licenses in 2004 and maintained those licenses while in Singapore, an act typical of those intending to reside here rather than vacation here, and they do own two pieces of real property in the state, so their physical connection to the state is also clear.

The Sinnards now claim that they established residency in Singapore which would be considered inconsistent with residency in Montana during the

years in question. The facts, however, indicate strong and continuous ties with Montana, most notably the fact that they voted here in 2008, four years after they claim to have established residency in Singapore. “The controlling factor in determining a person's domicile is his intent. One's domicile, generally, is that place where he intends to be. The determination of his intent, however, is not dependent upon what he says at a particular time, since his intent may be more satisfactorily shown by what is done than by what is said.” *Roberts v. Lakin*, 340 Md. 147, 153, 665 A.2d 1024, 1027 (1995). “Self-serving declarations of the party. . . have but little weight in a suit of this kind.” *Elwert v. Elwert*, 196 Ore. 256, 248 P. 2d 847 (1952). In this case, the Sinnards’ actions indicate that they regarded themselves as Montana residents.

During the time they claim to be residents of Singapore, they also visited the state annually, maintained their Montana driver’s licenses and represented themselves on at least three separate occasions as Montana residents on their hunting and fishing license applications. They obtained Singapore driver’s licenses and participated in local schools and churches while there, but the facts demonstrate they made no effort to make Singapore their permanent home. According to their own statements, they regarded Singapore as a temporary assignment similar in duration to the other temporary assignments from 3M, generally of two or three years duration, and throughout their stay regarded Montana as their residence, and surrendered other prior U.S. residences, selling their Texas property and relinquishing their Texas driver’s licenses. We find their actions terminating their residency elsewhere but maintaining their property and connections to Montana during their temporary stay in Singapore are strong indications of their intent to be Montana residents.

The Montana tax residency statute is clear: 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. There is no relevant statutory exemption in this matter. The evidence shows the Sinnards claimed a residence within Montana for several purposes. Further, the evidence is sufficient that the residency requirements are clearly stated for those who apply for voter registration and hunting/fishing licenses that we find it to be the intent of the Sinnards to be residents of Montana as demonstrated by their filing those applications with the state of Montana.

We conclude the statute is controlling and find that the Sinnards are residents of Montana. While it is unfortunate that they neglected to pay income tax, their residency required that they do so.

Order

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the Taxpayers' appeal and complaint be denied and the tax, interest, and penalties, as assessed by the Department, are properly due and owing.

DATED this 1st day of August, 2012.

BY ORDER OF THE
STATE TAX APPEAL BOARD


KAREN E. POWELL, Chairwoman

(S E A L)


SAMANTHA SANCHEZ, Member


KELLY FLAHERTY SETTLE, 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

I certify that on this 1st day of August, 2012, 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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