

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Income Tax

LEROY N. BUELT,)
)
 Plaintiff,) No. 001196F
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiff appealed from a Notice of Assessment issued by defendant. This appeal involves plaintiff's personal income tax return for tax year 1997. A telephone trial was held on March 21, 2001. LeRoy Buelte appeared for himself. Belinda Deglow appeared for defendant. The primary issue to be determined at trial was whether LeRoy Buelte was domiciled in Oregon during the entire year in question. As a secondary issue, plaintiff argues that any interest owing should be calculated from the date the deficiency was determined, not from the date the taxes were originally due.

STATEMENT OF FACTS

Plaintiff is a teacher. Prior to June 1996, he taught in the Beaverton School District. In June 1996, he accepted a position teaching eighth grade at a junior high school in Saipan. Saipan is an island and part of the Commonwealth of the Northern Mariana Islands. The Northern Mariana Islands are a possession of the United States. His contract for the Saipan position was for two years. As allowed by his contract with the Beaverton School District, plaintiff obtained a leave of absence from his Beaverton position. In preparing to move to Saipan, plaintiff gave up his apartment, sold his car and most of his

personal possessions. Plaintiff testified that the only possessions that he did not sell were his books. He took his books with him to Saipan.

Plaintiff submitted materials from two friends. The first was a letter from a friend of six years, Sarah Rios Lopez. In her letter Ms. Lopez stated that “there was no determination as to if or when Lee would be returning to the states.” (Ltr from Sarah Lopez, dated Feb. 13, 2001.) The second was an e-mail from a friend of 22 years, Sandra McCollum. In her e-mail Ms. McCollum stated that “I therefore, in all honesty, can say when LeRoy left Oregon, he did not intend to return.” (E-mail from Sandra McCollum, dated Feb. 21, 2001.)

He started his new position during the week ending June 22, 1996.¹ Local taxes were withheld from his pay.² He rented an apartment starting on June 22, 1996. He rented a post office box. He purchased a car because there was no public transportation. He did not register to vote, although he testified that he could have registered. He testified that there were no elections while he was there.³ Within a month of arriving in Saipan, he opened an account at the Bank of Guam. While he did not close his Oregon credit union account, he kept a minimal amount in the account. He had an outstanding loan with the credit union. Each month he would write a check

¹Plaintiff submitted his pay stubs into evidence. The period ending June 22, 1996, shows 40 hours worked.

²These local taxes were the NMTIT (Territory) tax and the CNMI (Commonwealth) tax. In 1996, \$486.93 was withheld for the Territory tax and \$819.79 for the Commonwealth tax. In 1997, \$906.11 was withheld for the Territory tax and \$1,160.76 for the Commonwealth tax.

³There was no testimony from either side as to whether plaintiff voted in the 1996 United States presidential election.

from his account at the Bank of Guam and deposit it in his credit union account to pay the monthly loan payment.

Ms. Deglow testified that she checked Department of Motor Vehicles records.⁴ According to her testimony, those records showed that plaintiff renewed his driver license in July 1996, after he moved to Saipan. Plaintiff testified that he could not remember if he renewed his license after he moved to Saipan. He did testify that he never surrendered his Oregon driver license and used it while living in Saipan. When asked what other people living in Saipan did, plaintiff testified that “locals got” a Saipan driver license.

Plaintiff ultimately decided that he would not stay in Saipan. He looked for other positions. He traveled to Kyongju, Pusan, and Seoul, South Korea, Toyko, Japan and Hong Kong, looking for a suitable position. He was unsuccessful in his search. In May 1997, he notified the Beaverton School District that he would return to his teaching position. He returned to Oregon in August 1997.

When he filed his Oregon income tax return for 1997, plaintiff filed as a part-year resident. He also claimed his Saipan living expenses as educational expenses. The large amount of claimed deductions gave rise to an audit by defendant. Defendant disallowed the claimed deductions and determined that plaintiff was a full year resident of Oregon in 1997. Defendant issued a Notice of Tax Assessment on November 21, 2000. The assessment included interest from the original due date of the return, April 15, 1998.

At the trial, the parties agreed that to the extent that plaintiff provides copies of any local tax returns filed in Saipan, plaintiff may receive a credit for the local taxes paid.

COURT'S ANALYSIS

⁴While the court finds Ms. Deglow's testimony credible, it would have been helpful to the court to have some documentary evidence of the license renewal.

Domicile

Oregon imposes an income tax on the taxable income of all of its residents. ORS 316.027(1)(a) (1997) defines resident as:

" 'Resident' or 'resident of this state' means:

“(a) An individual who is domiciled in this state unless the individual:

“(A) Maintains no permanent place of abode in this state;

“(B) Does maintain a permanent place of abode elsewhere; and

“(C) Spends in the aggregate not more than 30 days in the taxable year in this state[.]”

It is clear that before June 1996 and after August 1997, Mr. Buelt was domiciled in Oregon. He contends that selling all his possessions, moving to and working in Saipan, and opening a bank account are sufficient to constitute a change in domicile.

A person may have only one domicile at a time. *Davis v. Dept. of Rev.*, 13 OTR 260, 264 (1995) (citing *Zimmerman v. Zimmerman*, 175 Or 585, 591, 155 P2d 293 (1945)). Once domicile is established in a particular place it remains until a new domicile is established. To change domicile, "an individual must not only establish a residence in the new place but have an intention to abandon the old domicile and acquire a new one." *Davis*, 13 OTR at 264 (citing *In Re Noyes' Estate*, 182 Or 1, 185 P2d 555 (1947)). See also *White v. Dept. of Rev.*, 14 OTR 319, 321 (1998).

The facts in this case are somewhat similar to the facts in *Bianche v. Dept. of Rev.*, No. 4367, 1999 WL 417281 (OR Tax) (June 10, 1999). In *Bianche*, plaintiff decided to leave Oregon for “a new life.” *Id.* at *2. He drove to Alaska with his son. He got a job, rented an apartment, opened a bank account, attended church, surrendered his Oregon driver license and obtained an Alaska driver license. His son started school. Plaintiff’s son

was unhappy and wanted to return to Oregon. Not wanting to lose his son, plaintiff returned to Oregon. *Id.* at *1. The court found that plaintiff,

“* * * took most of the steps one would expect of a person in his circumstances to establish domicile in Alaska. He rented an apartment, became employed, registered his son in school, obtained a driver license, opened a bank account, and attended church. **Nothing in the facts suggests that taxpayer viewed his move to Alaska as temporary or contingent.**”

Id. at *2 (emphasis added).

The court concluded that plaintiff was domiciled in Alaska during the time he was there.

The steps that plaintiff took are similar to the steps plaintiff took in *Bianche*. As noted above, the plaintiff in *Bianche* got a job, rented an apartment, opened a bank account, attended church, surrendered his Oregon driver license, obtained an Alaska driver license, and his son started school. The plaintiff in *Bianche* cut his ties with Oregon.

Plaintiff in the present case obtained a job, rented an apartment and opened a bank account. However, he did not register to vote or surrender his Oregon driver license. He testified that “locals got” Saipan driver licenses. It appears to the court that plaintiff never viewed himself as a “local.” Additionally, he may have renewed his Oregon driver license while he was living in Saipan. An Oregon driver license requires an Oregon address. When plaintiff initially filed his 1997 Oregon income tax return, he claimed his Saipan living expenses as educational expenses. This suggests to the court that plaintiff did not view his living situation in Saipan as “a permanent place of abode.” See ORS 316.027(1)(a)(B).

Perhaps most important, plaintiff took a leave of absence from his teaching position in the Beaverton School District. The parties agree that plaintiff had a right under the terms of his contract with the district to take a leave of absence. That is not the issue. The issue

is whether plaintiff intended to permanently leave Oregon when he moved to Saipan. Because the court can not look inside plaintiff's head to determine his intent, it must look to objective manifestations of that intent. Plaintiff's act of obtaining a leave of absence suggests to the court that plaintiff viewed his move to Saipan as contingent. This is in direct contrast to the situation in *Bianche*. Plaintiff did not cut his ties with Oregon.

Interest Calculation

Plaintiff argues that interest should be calculated from the date the deficiency was determined, not the original due date of the return. However, in a case involving an estimated tax payment, the Regular Division of this court held that "[t]he only issue is whether plaintiff underpaid the estimated tax. If so, then he had use of the money which should have been paid to defendant as an estimated payment. It is the use of that tax money for which interest is charged." *Kramert v. Dept. of Rev.*, 11 OTR 420, 421 (1990). Similarly, plaintiff in the present case had use of the amount assessed as a deficiency from the date it was originally due until it was paid.

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CONCLUSION

Plaintiff took many of the steps necessary to abandon his Oregon domicile. Unfortunately, he did not take enough steps. Because Saipan is a possession of the United States, to the extent plaintiff provides copies of any local tax returns filed in Saipan, plaintiff may receive a credit for the local taxes paid. See OAR 150-316.082(1)-(A) (1) and (4)(d). Defendant properly calculated interest from the original due date of the return. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that plaintiff was domiciled in Oregon during all of 1997.

IT IS FURTHER ADJUDGED AND DECREED that to the extent plaintiff provides copies of any local tax returns filed in Saipan, defendant shall recalculate the 1997 deficiency so that plaintiff receives a credit for the local taxes paid. Defendant shall calculate any interest owed on any overpayment and shall promptly pay any moneys owed to plaintiff.

IT IS FURTHER ADJUDGED AND DECREED that defendant properly calculated interest from the original due date of the return.

Dated this _____ day of April, 2001.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON APRIL 4, 2001. THE COURT FILED THIS DOCUMENT ON APRIL 4, 2001.