

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

NANCY M. CATON,)	
)	
Plaintiff,)	TC-MD 040044F
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiff appeals Defendant’s Conference Decision Letter denying her “special-case Oregon resident” status for her 1999 amended tax return.

I. STATEMENT OF FACTS

Parked in Georgia the last three years, Plaintiff has traveled and lived in a 34 foot Southwind Class A motor home since July 1, 1995. (Ptf’s Ltr of Apr 19, 2004, at 4 [hereinafter, Ptf’s Ltr at 4].) Plaintiff’s daughter lived with her in 1999. (Ptf’s Ltr at 5; Def’s Conf Dec of Dec 3, 2004 at 4 [hereinafter, Def’s Conf Dec at 4].) The self-contained motor home has a bathroom and a complete kitchen including a microwave, refrigerator, gas stove, freezer and built-in coffee maker. Other amenities include a water heater, furnace, two air conditioners, generator, fresh water tank, propane tank, and holding tanks for both black and gray water. Every 10 to 14 days Plaintiff replenishes water and fuel and dumps waste. Plaintiff sleeps on a queen size bed with two night stands nearby. She watches one of her two televisions or movies using her DVD/VCR player. She works on her computer, printing or scanning documents. (Ptf’s Ltr at 3.)

Plaintiff last lived in Oregon in 1985 when she moved to Walla Walla, Washington with her husband, Ron Caton. (Def’s Conf Dec at 1; Ptf’s Ltr at 4.) In 1988 the couple moved to

Sunnyvale, California. The couple purchased the motor home in 1994, planning to travel after Ron Caton's planned retirement on December 31, 1996. In July 1995, they moved into the motor home, disposing of their belongings to test their compatibility in a smaller space. Tragically, Ron Caton died in November 1996. (Ptf's Ltr at 4, 5.) As a result, Plaintiff parked her motor home on her son's property in Washington and paid him \$300 rent per month from November 1996 to March 1998. (Def's Conf Dec at 1.) Plaintiff's bank is located in Washington, as are her primary physicians. (*Id* at 2.) She also has items in storage in Washington. (Ptf's Ltr at 7.) Plaintiff claims that her domicile is Washington because she never re-established domicile in Oregon. (*Id* at 2-3, 6.)

Plaintiff continuously maintained an Oregon driver license and registered her car and motor home in Oregon. (Ptf's Ltr at 7; Def's Conf Dec at 1.) Plaintiff is registered to vote in Oregon and has voted several times since 1985. Plaintiff used her sister-in-law's Portland, Oregon, address for her drivers license, vehicle registration, and voter registration. (Ptf's Ltr at 7; Def's Conf Dec at 1.)

II. ISSUES

There are two issues before the court. The first is whether Plaintiff was domiciled in Oregon. The second issue is, if Plaintiff was domiciled in Oregon, was she a nonresident domiciliary.

III. ANALYSIS

An Oregon resident is "An individual who is domiciled in this state * * *." ORS 316.027(1)(a)(A).¹ Domicile, in turn, is defined as "the place an individual considers to be the individual's true, fixed, permanent home. * * * A person can only have one domicile at a given time." OAR 150-316.027(1) (1)(a). Once established, a person's domicile "continues

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

* * * until the person demonstrates an intent to abandon it, to acquire a new domicile, and actually resides in the new domicile.” *Id.*

Place “suggests the requirement of a location.” *Dept. of Rev. v. Glass*, 15 OTR 117, 123 (2000) *aff’d* 333 Or 1 (2001). The *Glass* court further held “the legislature’s use of the words ‘place’ and ‘elsewhere’ indicates an intent that the abode have a fixed location.” *Id.*

“[T]he statutory scheme [of ORS 316.027] gives more importance to a permanent place of abode than to an individual's presence in the state. If a nondomiciliary does not maintain a permanent place of abode in Oregon, that person can spend 365 days a year in Oregon and pay no income tax. Conversely, **if a person domiciled in Oregon maintains no permanent place of abode in Oregon or elsewhere, they will be subject to tax in Oregon even though they never spent a single day in Oregon during the tax year.**”

Glass, 15 OTR at 122 (emphasis added).

Glass was a long-haul truck driver whose truck route was entirely outside Oregon. *Id.* at 118. He lived in a unit attached to the back of his truck. The unit was four feet by eight feet by nine feet. The unit contained a bunk bed, refrigerator, and small closet. *Id.* Glass used bathroom facilities at truck stops, ate every meal at a restaurant, and stayed in a motel 12 to 13 times a year. *Id.* He had an Oregon driver license and registration for his car, his parents and siblings lived in Oregon, and he used his parents’ Oregon mailing address for important papers. *Id.* Glass received unemployment benefits from Oregon. *Id.* at 120. He was not registered to vote anywhere. *Id.* at 118.

The court stated that “[w]hile [Glass’s] contacts are not very substantial, they are significant because of the lack of contacts with any other state.” *Id.* at 120. There was “[n]o doubt [Glass] was domiciled in Oregon” because he never abandoned Oregon as his domicile. *Id.* Glass satisfied the first and third requirements of ORS 316.027(1)(a)(A) because he did not have a permanent abode in Oregon or spend more than 30 days a year in Oregon. *Glass*, 15 OTR at 120-21. Glass did not satisfy the second requirement. Glass’s truck did not constitute a

“permanent place of abode ” elsewhere. *Id.* at 123. Glass may have maintained “the same form or type of abode but that abode [was] mobile and change[d] location.” *Id.* at 122. While sympathetic,² the court held Glass was an Oregon resident. *Id.* at 123.

Similarly, Plaintiff did not establish a domicile other than Oregon. She did not satisfy the three requirements of OAR 150-316.027(2). First, Plaintiff did not abandon Oregon as her domicile. During the years Plaintiff claims not to be domiciled in Oregon, she was a registered Oregon voter, and voted several times. Voter registration requires the voter to swear to Oregon residency.³ Plaintiff’s claim that she was not domiciled in Oregon is inconsistent with being a registered Oregon voter. Second, Plaintiff did not show an intent to acquire a new domicile because “[f]ailure to perform the duties and avail oneself of the privilege of a citizen in the community of one’s new residence constitutes significant facts pointing to no change in domicile.” *Elwert v. Elwert*, 196 Or 256, 269 (1952). The failure “to secure such licenses as are ordinarily required of residents by the state of his new ‘home,’” such as “automobile licenses, [and] licenses to operate motor vehicles,” is evidence that the individual’s domicile has not changed. *Id.* Plaintiff maintained an Oregon driver license⁴ and vehicle registration⁵ The court does not need to consider if Plaintiff satisfied the third requirement.

² The court expressed its sympathy by noting;

“[i]t does not seem fair that a taxpayer who lives and works in a truck operating entirely outside Oregon (except on rare occasions) should be required to pay Oregon personal income taxes * * *. [T]he legislature may have assumed that all abodes have a fixed location, which, as noted above, is not necessarily the case. However, if the legislature makes assumptions that are not correct, it is up to the legislature to change the law. The court’s function is not to correct the statutes, but to construe them.”

Glass, 15 OTR at 123.

³ *See* ORS 247.035 (setting forth the requirements of voter registration).

⁴ As set forth in ORS 807.062(1), “[u]nless specifically provided by law, in order to be eligible for a driver license or permit issued by this state a person must be domiciled in or resident of this state.”

⁵ Similarly, a person must be domiciled in Oregon to register a vehicle in Oregon. ORS 803.360.

An individual domiciled in Oregon may qualify for nonresident treatment if “the individual: (i) [m]aintains no permanent place of abode in this state; (ii) [d]oes maintain a permanent place of abode elsewhere; and (iii) [s]pends in the aggregate not more than 30 days in the taxable year in this state.” ORS 316.027(1)(a)(A).

As an Oregon domiciliary, Plaintiff must prove all three factors of ORS 316.027(1)(a)(A) to qualify for nonresident treatment and exemption from Oregon income tax. Plaintiff, similar to Glass, has satisfied the first and third requirements. She did not maintain a permanent place of abode in Oregon and spent less than thirty days in Oregon in 1999. Plaintiff does not satisfy the second requirement. She did not prove she maintained a “permanent place of abode elsewhere.” Plaintiff’s motor home is self-contained with bathroom and kitchen facilities, and all the amenities one expects to find in a home. It is more of a home than a four feet by eight feet by nine feet unit attached to a truck cab. But it is still transient. Plaintiff’s self-contained motor home is not a “fixed location” as required by ORS 316.027. Plaintiff’s motor home may be her permanent abode, but its location is not.

IV. CONCLUSION

Plaintiff was domiciled in Oregon in 1999. Nor was she a nonresident domiciliary. Plaintiff failed to establish “a permanent place of abode elsewhere” as required by ORS 316.027(1)(a)(A)(ii). Now, therefore,

IT IS ADJUDGED that Plaintiff’s appeal is denied.

Dated this _____ day of September 2004.

SALLY L. KIMSEY
MAGISTRATE.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY KIMSEY ON SEPTEMBER 8, 2004 . THE COURT FILED THIS DOCUMENT ON SEPTEMBER 8, 2004.

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.