

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

DERYL A. CHRISTIANSEN,)	
)	
Plaintiff,)	TC-MD 040195F
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals the denial of personal income tax refunds and assessment of taxes for tax years 2001 and 2002. The issue before the court is whether Plaintiff was domiciled in Oregon during the years in question. A telephone hearing was held Monday, August 9, 2004. Plaintiff represented himself *pro se*. Serene Fung, Auditor, represented Defendant Department of Revenue (the department).

I. STATEMENT OF FACTS

Plaintiff grew up in Sweet Home, Oregon. His parents still live in Oregon. He has driven a truck 15 years for J.B. Hunt. The first eight and one half years he drove throughout the entire United States, except Alaska and Hawai‘i. More recently, he spends six days per week driving a route between Seattle, Washington, and Hermiston, Oregon. Of the 550 mile round trip, only 20 miles are in Oregon.

Plaintiff does not maintain a home in Oregon; he uses his parent’s address in Oregon as his mailing address. He does maintain an Oregon Driver License that is current through 2007. His personal vehicles are registered in Oregon. Two of the vehicles do not run; a third, a 1998 Harley-Davidson motorcycle, has been driven only 5,000 miles. Plaintiff lives in his truck; it is equipped with a Sealy mattress, color television, and microwave. When he has time off, he stays with his sister in Washington. Although he visits his parents in Oregon (staying there four nights

in 2003), as well as delivering cargo in Oregon for his employer, he spends limited time in the state.

II. ANALYSIS

The question before the court is Plaintiff's domicile. It has long been established that every person has "at all times one domicil, and no person has more than one domicil at a time." *Zimmerman v. Zimmerman*, 175 Or 585, 591, 155 P2d 293 (1945) (holding that the plaintiff's intent to establish domicile in Oregon was not supported by actual conduct). A person can have more than one residence, however, as the term is synonymous with "abode" or "dwelling place." *Ramsey v. Dept. of Rev.*, 7 OTR 478, 481 (1978) (holding that plaintiffs were nonresident domiciliaries because their only connection with Oregon was intent to maintain domicile, ownership of residential property, and receipt of rents). Under ORS 316.037(1)(a),¹ the State of Oregon may tax a person's income earned outside the state if that person was a "resident of this state" at the time that the income was earned.

Oregon's legislature has made residency the determining factor in identifying a person's domicile, and has done so by defining the term "resident" partially by reference to "domicile." *See dela Rosa v. Dept. of Rev.*, 313 Or 284, 289, 832 P2d 1228 (1992) (holding that the plaintiff was a resident domiciled in Oregon because he maintained a permanent abode in Oregon and not elsewhere). The applicable statute provides as follows:

"(a) 'Resident' or 'resident of this state' means:

"(A) An individual who is domiciled in this state unless the individual:

"(i) Maintains no permanent place of abode in this state;

"(ii) Does maintain a permanent place of abode elsewhere; and

"(iii) Spends in the aggregate not more than 30 days in the taxable year in this state; or

¹ All references are to Oregon Revised Statutes (ORS) are to 1999, as there were no substantive changes in the 2001 edition to the applicable statutes.

“(B) An individual who is not domiciled in this state but maintains a permanent place of abode in this state and spends in the aggregate more than 200 days of the taxable year in this state unless the individual proves that the individual is in the state only for a temporary or transitory purpose.”

ORS 316.027(1)(a).

Under that statute, the income of state residents will be taxed if they fall under one of two circumstances: (1) if they are domiciled in Oregon and do not meet the three requirements of the exception identified in subsection (1)(a)(A); or (2) if they are not domiciled in Oregon but have a permanent residence in Oregon and spend more than 200 days in the state, per subsection (1)(a)(B). For Plaintiff to prevail in his appeal, he must either demonstrate that, although he is a domiciliary of Oregon, he has satisfied the three requirements for the exception listed in subsection (1)(a)(A), or that he is no longer a domiciliary of Oregon and meets the two additional requirements of subsection (1)(a)(B).

The case at hand is remarkably similar to a case brought before the Supreme Court of Oregon in 2001. *See Dept. of Rev. v. Glass*, 333 Or 1, 35 P3d 325 (2001). In the *Glass* case, the taxpayer was a truck driver who worked for an out-of-state trucking company and lived in his truck. He visited his parents in Glide, Oregon for about two weeks each year and used their address as his mailing address. That taxpayer was not registered to vote anywhere and had no bank accounts in Oregon. However, because he had grown up in Oregon and never established a permanent place of abode elsewhere, the Supreme Court found him to be domiciled in the State of Oregon.

This court sees no reason to rule differently in the case at hand. Having grown up in Oregon, Plaintiff was originally domiciled in Oregon. He has not established a permanent home in another state, therefore has neither qualified as a nonresident domiciliary of Oregon nor changed his domicile to another state. *See* ORS 316.027(1)(a)(A)(ii) and 316.027(1)(a)(B).

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III. CONCLUSION

Plaintiff is a hardworking individual who has only limited contacts with Oregon. Unfortunately for him, however, the Oregon Supreme Court has already spoken in a situation nearly identical to his. Living in a truck is not a permanent place of abode. But for the *Glass* precedent, the result could be different. Plaintiff's appeal is denied for the reasons stated above. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this ____ day of October 2004.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY OCTOBER 29, 2004. THE COURT FILED THIS DOCUMENT OCTOBER 29, 2004. THIS DOCUMENT WAS ENTERED NOVEMBER 1, 2004.