

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

RUTH ANN BUTLER	)	
and ROBERT L. BUTLER,	)	
	)	
Plaintiffs,	)	TC-MD 050801D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant’s Notices of Tax Assessment, dated June 24, 2005, and June 27, 2005, for tax years 2001 and 2002, respectively.

A trial was held in the Oregon Department of Revenue’s Tualatin, Oregon, field office on April 13, 2006. Gerald Douglas, Attorney at Law, appeared on behalf of Plaintiffs. Ruth Ann Butler (Ruth Ann) and Robert L. Butler (Robert) testified.<sup>1</sup> Scott Schlag (Schlag), Tax Auditor, appeared on behalf of Defendant.

As a preliminary matter, the parties offered their exhibits without objection. The court received Plaintiffs’ Exhibits 1 through 23 and Defendant’s Exhibits A through RR.

Post trial briefs were submitted by Defendant on May 12, 2006, and by Plaintiffs on May 15, 2006. This matter is now ready for decision.

**I. STATEMENT OF FACTS**

Plaintiffs are long time residents of Oregon who have been married 28 years. Plaintiffs testified that they purchased their home in Southeast Portland in 1983, which they continue to

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<sup>1</sup> When referring to a party in a written decision, it is customary for the court to use the last name. However, in this case, the court’s Decision recites facts and references two individuals with the same last name, Butler. To avoid confusion, the court will use the first name of the Butler being referenced.

own and occupy. (Def's Ex J-1.) Robert testified that he has been employed by McKesson Corporation since 1988, working the night shift in the shipping department of a warehouse facility located in Wilsonville, Oregon. Ruth Ann testified that she was employed by Alcatel Submarine Networks, Inc. (ASN) in Portland, Oregon, from 1989 to 2002. She explained how she enjoyed the variety and travel of her job, including a six-month job assignment in England.

In 2001, Ruth Ann was informed that ASN would close its Portland manufacturing facility. She was offered a transfer to Chantilly, Virginia, where she would be the Director of Human Resources for the Operations and Maintenance Services Groups located in North, Central, and South America. (Ptf's Ex 18 at 1.) As Director of Human Resources, Ruth Ann's new responsibilities required her to manage the personnel employed by Global Crossing under the terms of a five-year operation and maintenance contract between ASN and Global Crossing. (Def's Ex P-5.)

When Ruth Ann was offered the transfer opportunity to work in Virginia, Plaintiffs testified that they considered the following: (1) length of time each had been employed at their respective companies; (2) Robert's "stable" employment; (3) the Butler Financial Plan, which Robert testified is "living within or beneath their means" to reach the goal of retiring when Robert reaches the age of 55 years; (4) home ownership in Portland, including a mortgage payoff in 2002; (5) Ruth Ann's career opportunity and guaranteed salary increase of 10 percent at her time of transfer and another 10 percent increase the following year measured against the severance package of one year's salary; and (6) the effect of the separation on their successful marriage. Robert did not look for employment in Virginia nor did he ask his employer to transfer him to its warehouse facility located in Virginia. (Def's Ex Z.) Plaintiffs testified that they

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concluded the right decision was for Ruth Ann to move to Virginia and Robert to stay in Portland. Plaintiffs testified that they planned to re-evaluate the decision after three years.

On September 3, 2001, Ruth Ann moved to Virginia. She testified that it was her intent to “make Virginia her home” and stay in Virginia until her husband retired. Ruth Ann stated that she rented an apartment with more “square footage than her Oregon home” and purchased new furniture and household items with a retail value of more than \$10,000. Ruth Ann testified that she decided to rent an apartment until such time as the mortgage on the Oregon residence was paid off. She testified that her employer paid the expenses incurred to move all her clothes, jewelry, angel collection, and stuffed animal collection. Her employer shipped her car to Virginia where Ruth Ann licensed her car and paid the required sales tax. Ruth Ann obtained a Virginia driver license. Her magazine subscriptions were transferred from the Oregon address to the Virginia address. She joined a health club in Virginia, terminating, rather than transferring, her Oregon membership in 24-Hour Fitness. Ruth Ann testified that she continued to use their Wells Fargo Bank joint checking account, having another set of checks printed with both her name and Robert’s name, and the Virginia address. (Ptf’s Ex 19.) The monthly Wells Fargo bank statement was sent to the Oregon address. Ruth Ann’s salary was directly deposited to the joint Wells Fargo bank account. (Ptf’s Ex 22.) She acquired a credit card in her name only, using the Virginia address as the billing address. The use of that card entitled her to accumulate miles toward travel on United Airlines. She testified that she did not register to vote in Virginia because she only votes in presidential elections. (Def’s Ex DD.) Ruth Ann filed part-year resident income tax returns in Virginia for tax years 2001 and 2002. (Ptf’s Ex 1 and 2.)

Ruth Ann testified that during 2001 she traveled extensively. She logged over 100,000 miles on United Airlines, 100,000 miles on American Airlines, and additional miles on other

airlines. Ruth Ann's passport expired in 2001; she renewed it and obtained a visa for travel to Brazil, using the Virginia address as her home address. (Ptf's Ex 15-3.) When she was required to travel to the west coast, Ruth Ann testified that she would spend a Saturday night in their Portland home if it was "financially beneficial" to the company, stating that the airfare was usually less if there was a Saturday night stay over.

Ruth Ann testified that in the summer of 2002 her employment status changed. ASN's largest customer, Global Crossing, filed for bankruptcy protection and ASN's parent company, Alcatel USA, absorbed the human resource function, eliminating Ruth Ann's position. Ruth Ann's final paycheck was dated January 3, 2003. For the last three months of 2002, Ruth Ann teleworked from Portland Oregon. Electric service in her apartment was discontinued as of September 25, 2002. (Def's Ex JJ.) Ruth Ann testified that all her belongings, including the new furniture she purchased in 2001, were moved to Oregon and the furniture was placed in storage.

Ruth Ann testified that after she was advised of her pending layoff she tried to find employment in Virginia, Oregon, and southwestern United States. She testified that in September 2002 the "economy in Virginia was pretty poor." Ruth Ann stated that she was unable to find a job that paid a salary large enough to cover her apartment rent and car payment, and maintain the "Butler Financial Plan." She testified that she sought employment with the National Headquarters of the American Red Cross. Ruth Ann testified that it took her 13 months to find a job. She is currently working in Oregon for her third employer since being laid off from ASN, working three weeks at one job and seven months at another. While she was unemployed, Ruth Ann testified that she filed an "interstate employment claim" and received unemployment from the state of Oregon.

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After an audit of Plaintiffs' records, Schlag concluded that Ruth Ann never intended to change her domicile from Oregon to Virginia. At trial, Schlag took the court through its "time line" of events, referencing numerous exhibits. (Def's Ex RR1-2.) Schlag testified that, in his opinion, Ruth Ann moved to Virginia only "for financial reasons." All her ties to Virginia "revolved around her job." He recited the following in support of his conclusion. Plaintiffs (1) have registered five cars in Oregon; (2) filed joint federal income tax returns using the Oregon address; and (3) maintained joint checking accounts with a Portland address. (Def's Exs C1-4; F1-4; and K1-5.) In addition, Ruth Ann received unemployment income from Oregon in tax year 2002. A credit card in her name only was used to charge numerous expenses in Oregon during 2001 and 2002. (Def's Ex NN1-69.)

Schlag testified that Ruth Ann had established ties to Oregon and none to Virginia. (Def's Ex H.) He testified that before Ruth Ann left Oregon she was an Oregon resident and, when she lived in Virginia, she continued to return to Oregon because her "personal life was still here [Oregon]." According to the testimony of Plaintiffs, Ruth Ann's parents and Robert's mother live in Oregon. Schlag testified that in response to the following question, "what are you using the property [in Oregon]for now?", Ruth Ann wrote "I live here." (Def's G-2.) When discussing housing in Virginia, Schlag stated that Ruth Ann's apartment was located 11 minutes (6.8 miles) from her office close to Interstate 66 and the airport. (Def's Ex V.) He questioned why she chose that location rather than a residential neighborhood.

There is no dispute that Ruth Ann was domiciled in Oregon prior to September 2001 or that she has been domiciled in Oregon since October 2002.

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## II. ANALYSIS

Oregon imposes a state income tax on every resident of this state and every nonresident with Oregon-source income. *See* ORS 316.037(1), (3).<sup>2</sup> Oregon defines a resident as “an individual who is domiciled in this state.” ORS 316.027(1)(a)(A).<sup>3</sup> Residency is statutorily equated with domicile. Domicile is a common-law concept composed of two components: (1) “a fixed habitation or abode in a particular place” and (2) “an intention to remain there permanently or indefinitely.” *de la Rosa v. Dept. of Rev.*, 313 Or 284, 289, 832 P2d 1228 (1992) (citing *Elwert v. Elwert*, 196 Or 256, 265, 248 P2d 847 (1952) (internal quotations omitted)). Although an individual can have more than one residence, he can have “but only one domicile.” *Ramsey v. Dept. of Rev.*, 7 OTR 478, 481 (1978); *see also Zimmerman v. Zimmerman*, 175 Or 585, 591, 155 P2d 293 (1945). In this case before the court, Ruth Ann had multiple residences during tax years 2001 and 2002; she jointly owned a home in Portland, Oregon, with her husband, Robert, and she rented an apartment in Virginia.

The determination of an individual’s domicile is based on intent supported by facts and circumstances rather than merely the statements of the individual, which can be self-serving. *See de la Rosa*, 313 Or at 289-90; *Hudspeth v. Dept. of Revenue.*, 4 OTR 296, 298 (1971). Case

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to year 2001.

<sup>3</sup> “Resident” is defined by statute, in relevant part, as:

“(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

“(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.”

law is helpful to the extent that the facts of a cited case mirror the actions taken by the individual in the case before the court.

The question before the court is whether Ruth Ann Butler changed her domicile from Oregon to Virginia in September 2001. This court has held that “three elements are necessary” to change one’s domicile: “(1) the person must establish a residence in another place; (2) form an intent to abandon the old domicile; and (3) intend to acquire a new domicile.” *White v. Dept. of Rev.*, 14 OTR 319, 321 (1998), citing *Reed’s Will*, 48 Or 500, 87 P 763 (1906). The evidence supports the conclusion that Ruth Ann established a residence in Virginia when she rented an apartment. “However, the court must determine whether” Ruth Ann “formed an intent to abandon [her] old domicile and to a acquire a new one.” *Id.*

Considering first whether Ruth Ann intended to abandon Oregon as her domicile, the court looks at the relationship Ruth Ann continued to maintain with Oregon during the tax years at issue. While in Virginia, Ruth Ann retained an ownership interest in a fully furnished home in Portland, Oregon. She moved only personal items, such as clothing and an angel collection, to Virginia, leaving behind personal and joint records and other memorabilia. While in Virginia, Ruth Ann continued to retain ownership interests in joint Oregon bank accounts. She shared one Oregon joint checking account with Robert, and monthly bank statements were sent to the Portland address. She retained ownership in vehicles registered in Oregon and maintained her voter registration in Oregon. Frequently, Ruth Ann returned to Oregon as evidenced by her purchases, including personal services such as medical and hair styling, charged to a credit card issued in her name only.

In reviewing the “intent or mental state-of-mind from the person’s conduct, \* \* \* the court may reasonably look first to the question of whether the individual did return to his place of domicile.” *White*, 14 OTR at 321-22. Defendant, through the exercise of its rule-making

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authority, states that a domicile is “the place a person intends to return to after absence.”

OAR 150-316.027(1)(a).<sup>4</sup> In this case, after receiving notice in July 2002 that her employment would be terminated, Ruth Ann returned to Oregon, spending many consecutive days in the state. She filed for and received unemployment compensation from the state of Oregon. Even though Ruth Ann testified that she looked for employment in Virginia and southwestern United States, no evidence was introduced to identify the companies contacted. Considering her position as a human resource executive and the time spent in Oregon, the court finds Ruth Ann’s lack of documentation and inability to recall the names of those she contacted, except the National Headquarters of the American Red Cross, puzzling and unpersuasive with respect to her job search outside of Oregon.

Ruth Ann’s ties to Virginia were solely contingent on her employment status. At the time she accepted the position in Virginia, Ruth Ann knew that her corporate responsibilities were tied to a contract between her employer and its largest customer that had less than three years remaining on the original 60 month term. With her employment tied to a contract with a third party, Ruth Ann’s status was more temporary than indefinite or permanent. Once that employment opportunity terminated, Ruth Ann returned to Oregon. The fact that after being laid off Ruth Ann held no long term employment outside of Oregon supports the conclusion that she never abandoned Oregon as her domicile.

In her own words, Ruth Ann wrote that she “had personal ties to Oregon.” (Ptf’s Ltr at #14, May 15, 2006.) There is no evidence that Ruth Ann had similar “personal ties” in Virginia. (*Id.*) The result was that, when her employment was terminated, Oregon was the place to which she returned, much like an individual in the military who at the end of a tour-of-duty returns

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<sup>4</sup> All references to the Oregon Administrative Rules (OAR) are to 2001.



home to the state in which he or she enlisted. In *White*, the court concluded that based on a frequent pattern of visiting Oregon “one could have predicted that when Mr. White’s tour-of-duty was over he would return to Oregon.” *White*, 14 OTR at 323. *See also dela Rosa* at 291(holding that the “taxpayer demonstrated a pattern of returning to Oregon from his various places of employment.”).

Ruth Ann’s actions do not necessarily show a conscious decision to declare Virginia as her domicile. For example, ASN transported Ruth Ann’s car to Virginia. To comply with the Virginia state laws, Ruth Ann licensed her car, paid sales tax and obtained a Virginia driver license. In contrast, she did not register to vote in Virginia, a voluntary act rather than an act mandated by the laws of the state. There is evidence that, while maintaining her residence in Virginia, Ruth Ann continued to look to Oregon for financial, medical, and other personal services, making conscious decisions to maintain her personal ties to Oregon. *See generally White* at 322-23 (stating that “actions which require the individual to make a conscious decision and declare their status” are “stronger evidence of the person’s choice or state-of-mind.” ).

It is helpful to consider the first required element, specifically, an intent to abandon domicile in Oregon, in relation to Ruth Ann’s intent to establish a new domicile in Virginia. In contrast to Oregon where she owned property, Ruth Ann rented an apartment in Virginia, creating a short-term contract obligation. Plaintiffs testified that, in reaching the mutual decision that Ruth Ann accept the employment opportunity in Virginia, they agreed Ruth Ann would move to Virginia, and Robert would continue to work in Portland and live in their jointly owned residence in Portland. Plaintiffs testified that in three years they would reconsider their decision. It is obvious that the parties did not intend to “stay apart permanently.” *See White* at 322. Even though Plaintiffs testified that Robert might sell the Portland home and move to Virginia, there was no testimony or evidence showing that Robert ever traveled to Virginia. In contrast, Ruth

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Ann frequently stayed in their Oregon residence for “Saturday night stay overs” while traveling for business. It was Ruth Ann who came to Portland “to meet Robert and we then went onto other destinations.” (Ptf’s Ltr at #1, May 15, 2006.) Further, Ruth Ann testified that in 2001 she traveled extensively, accumulating more than 200,000 miles on various airlines. Ruth Ann’s 2001 travel status creates doubt that she established a permanent domicile in Virginia.

The court finds that the preponderance of the evidence does not support Plaintiffs’ contention that Ruth Ann abandoned her Oregon domicile in 2001. The court notes that Ruth Ann testified and stated that it was her “intent to permanently relocate to Virginia.” (Ptf’s Ltr at #6, May 15, 2006.) Relocation to a state with the primary goal of working in that state does not necessarily meet the statutory requirements of domicile, as the court explained in this Decision.

Having concluded that Ruth Ann was a domiciliary of Oregon in tax years 2001 and 2002, Ruth Ann may not be a *resident* if she meets all the requirements of ORS 316.027(1)(a). One of those requirements is that Ruth Ann not have spent more than 30 days in the taxable year in this state. The evidence shows that Ruth Ann spent more than 30 days in each taxable year in Oregon; therefore, she does not meet all the elements of the exception to Oregon residence set forth in ORS 316.027(1)(a)(A),(B).

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### III. CONCLUSION

After carefully considering all the testimony and evidence, the court finds that Ruth Ann Butler did not abandon her domicile in Oregon during 2001 and was a domiciliary of Oregon in tax years 2001 and 2002. Now, therefore,

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

Dated this \_\_\_\_\_ day of July 2006.

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JILL A. TANNER  
PRESIDING 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 Presiding Magistrate Jill A. Tanner on July 18, 2006. The Court filed and entered this document on July 18, 2006.***