

BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST
OF **HANNIBAL H. MADDEN, JR. and**
JEAN A. MADDEN,
PROTEST TO ASSESSMENT NO. 632793.

NO. 96-08

DECISION AND ORDER

This matter came on for hearing on February 12, 1996 before Gerald B. Richardson, Hearing Officer. Mr. and Mrs. Hannibal H. Madden, Jr. (hereinafter "Taxpayers") represented themselves at the hearing. The Taxation and Revenue Department (hereinafter "Department") was represented by Bruce J. Fort, Special Assistant Attorney General. Based upon the evidence and the arguments presented, **IT IS DECIDED AND ORDERED** as follows:

FINDINGS OF FACT

1. Mr. Madden holds a PhD in physics and was employed as a physicist at Sandia Laboratories in Albuquerque, New Mexico from 1974 to 1987. During those years, Mr. and Mrs. Madden reported and paid New Mexico personal income taxes as New Mexico residents. 2.

In 1987, Mr. Madden voluntarily separated from his position with Sandia Laboratories to take a one year position in Germany. Mr. and Mrs. Madden sold their home in Albuquerque at that time and moved to Germany.

3. At the end of the one year term of Mr. Madden's position in Germany, he had two job offers in the United States, in states other than New Mexico. Mr. Madden also had the option to continue in his position in Germany. The Taxpayer's decided to remain in Germany and Mr. Madden continued to work there until early in 1991.

4. When the Taxpayers moved to Germany, they did not cancel their voter registrations or New Mexico driver's licenses.

5. The Taxpayers re-registered to vote in New Mexico in 1992.
6. The Taxpayers obtained German driver's licenses. Germany did not require that they surrender their New Mexico driver's licenses to obtain German driver's licenses.
7. The Taxpayers did not vote by absentee ballot or otherwise in New Mexico state or national elections during the period of time they were living in Germany.
8. Early in 1991 the funding for Mr. Madden's position in Germany ran out and Mr. Madden became unemployed. The Taxpayers stayed in Germany for several more months exploring the possibility of other jobs in Germany or in Europe. No work materialized for Mr. Madden and so in early July of 1991 the Taxpayers returned to the United States where Mr. Madden continued his search for employment. Upon their return, the Taxpayers traveled and visited relatives in New Mexico and the Washington D.C. area in addition to pursuing job prospects.
9. During the time that the Taxpayer's were residing in Germany and until they obtained an apartment in early 1992, the Taxpayer's maintained a storage locker in New Mexico where they stored household possessions which they chose not to move with them to Germany.
10. At the time of their return to the United States Mr. Madden had family in the Washington D.C. area and a son who lived in Santa Fe. Mrs. Madden's parents lived in Peralta, New Mexico and she had a daughter and granddaughter living in Albuquerque.
11. Upon their return to the United States the Taxpayer's traveled to New Mexico to visit relatives. They purchased a car and registered it in New Mexico and obtained New Mexico driver's licenses. They used the address of Mrs. Madden's parents as their permanent mailing address and as their address on their car registration and driver's licenses.
12. After returning to the United States, Mr. Madden actively sought employment. He applied for three different jobs in New Mexico, as well as for jobs elsewhere, including the National Science Foundation, in Washington, D.C., the University of California, the University of

Southern California and Batelle Northwest in Washington. Mr. Madden was still being considered for positions in Europe as well. Additionally, Mr. and Mrs. Madden spent about one and one-half months in Mississippi to explore setting up a small business with a man living there.

As part of those explorations, they traveled to Detroit to attend a Small Business Administration Conference, staying in Detroit over the Thanksgiving holiday.

13. The Taxpayers returned to New Mexico to spend the Christmas holidays with family in New Mexico.

14. The Taxpayers would have moved anywhere in the world where Mr. Madden could have found appropriate employment in his profession.

15. The Taxpayers were sufficiently discouraged with Mr. Madden's employment prospects that within the first ten days of January, 1992, the Taxpayers rented an apartment in New Mexico and established their household here while Mr. Madden continued his search for employment. His search for employment eventually led to a position in Brazil and the Taxpayers moved to Brazil.

16. During 1991, the Taxpayers earned interest income on money which they had invested. The Taxpayers reported and paid tax to the Internal Revenue Service on that income and used their permanent mailing address in Peralta, New Mexico as the address on their federal return.

17. As a result of a tape-match program with the Internal Revenue Service where a comparison is made between taxes reported and paid to the IRS and the Department, the Department issued Assessment No. 632793 to the Taxpayers on July 18, 1995. The Assessment assessed personal income tax for the 1991 tax year in the amount of \$2,463.74 plus penalty in the amount of \$246.37 and interest in the amount of \$1,231.87.

18. On August 18, 1995, the Taxpayers filed a written protest with the Department protesting Assessment No. 632793.

DISCUSSION

The sole issue to be determined is whether the Taxpayers were residents of New Mexico during 1991 and are therefore liable for the payment of income tax on their income earned during the 1991 tax year. Section 7-2-3 NMSA 1978 imposes an income tax "upon the net income of every resident individual" "Resident" is defined at Section 7-2-2(S) NMSA 1978 to mean: . . .an individual who is domiciled in this state during any part of the taxable year; but any individual who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act;...

Thus, the determination of residency is tied to where a person is domiciled. Generally, physical presence within the state and the intention to make it one's home are the requirements to establish domicile. *Montoya v. Collier*, 85 N.M. 356, 512 P.2d 684 (1973). The Taxpayers' position in this case is that after returning to the United States in July of 1991, they did not have an intention to make any place their home or domicile because they were not settled anywhere and would have moved to any place where Mr. Madden could have found employment. The Taxpayers argue that it was not until they admitted that Mr. Madden's employment prospects were not materializing and they decided to stay in New Mexico, rent an apartment and continue their employment search that they could be considered to have formed the intention to be domiciled in New Mexico. Since this did not occur until early in January of 1992, essentially, the Taxpayers are arguing that they were not domiciled anywhere in 1991.

While I found the Taxpayers to be entirely credible in their assertion that they would have moved anywhere they could have located appropriate employment, their argument that they had no domicile upon returning to the United States and for the rest of 1991 cannot stand in the face of the well settled law of domicile. While, in general, domicile involves an element of intention to

make a place one's home, an overarching aspect of domicile is that everyone must be domiciled

somewhere. As stated in 25 Am. Jur. 2d *Domicil* § 2:

It is a fundamental rule in the law that all persons have a domicile somewhere. This relationship is imposed upon a person by the law at his birth, and while he may change his domicile upon obtaining the requisite capacity, he is not permitted to be without any domicile.

The Department has adopted a regulation to much the same effect. Regulation IT 2:1 (A)

provides:

This section defines a "resident" as an individual who is domiciled in this state on the last day of the taxable year. Every individual has a domicile somewhere and each individual has only one domicile at one time.

This regulation became effective for taxable years beginning on or after January 1, 1993.¹

Although it is not specifically applicable to the tax year at issue herein, it is a correct statement of the common law of domicile and the concepts embodied therein will be applied to this matter.

Since the Taxpayers must be domiciled somewhere at the end of tax year 1991, the question then becomes where they were domiciled.

The evidence heavily supports a conclusion that they were domiciled in New Mexico since they had significant connections to New Mexico.

The strongest evidence of New Mexico residence lies in the fact that in September or October, they registered their car with the New Mexico Motor Vehicle Division and they obtained New Mexico driver's licenses. By statute, these actions are limited to New Mexico residents. In applying for a motor vehicle registration,

¹ The previous version of IT 2:1, which was in effect during the 1991 tax year at issue herein tied residency to where the individual was registered to vote. It is not helpful in this matter, however, because the Taxpayers did not re-register to vote until 1992 and the record is unclear whether their previous registration, which the Taxpayers had not cancelled upon leaving the country, was still in effect when they returned four years later.

owners must provide a "bona fide New Mexico residence address." Section 66-3-4(A)(1) NMSA 1978. Similarly, applicants for New Mexico driver's licenses must provide on the application the "New Mexico residence address of the applicant." Section 66-5-9(A) NMSA 1978. Thus, by applying for New Mexico driver's licenses and by registering their vehicle here, the Taxpayers have declared themselves to be New Mexico residents. Additionally, the Taxpayer's maintained their permanent mailing address in New Mexico, kept their possessions stored in New Mexico, had significant family connections to New Mexico and spent substantial time in New Mexico in 1991 after their return from Germany. It is thus concluded that the Taxpayers were domiciled in and were residents of New Mexico at the end of tax year 1991.

CONCLUSIONS OF LAW

1. The Taxpayers filed a timely, written protest to Assessment No. 632793 pursuant to Section 7-1-24 NMSA 1978 and jurisdiction lies over both the parties and the subject matter of this protest.

2. Every person must have a legal domicile.

3. The Taxpayers were domiciled in New Mexico during the 1991 tax year.

4. The Taxpayers declared themselves to be New Mexico residents by applying to register their motor vehicle in New Mexico and by applying for New Mexico driver's licenses during 1991.

5. The Taxpayers were New Mexico residents at the end of tax

year 1991.

6. As residents of New Mexico at the end of 1991, the Taxpayer's income was subject to New Mexico income taxation for the 1991 tax year.

For the foregoing reasons, the Taxpayers' protest IS HEREBY DENIED.

DONE, this 20th day of February, 1996.