



IN THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA

APR 16 2024

  
Clara Davis, Tax Tribunal Administrator

KEITH L. MACEY,

Petitioner,

v.

FRANK M. O'CONNELL, in his official  
capacity as COMMISSIONER, GEORGIA  
DEPARTMENT OF REVENUE,

Respondent.

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Docket Nos. 2225864, 2422852, 2422856

**DECISION**

**I. INTRODUCTION**

A trial for this matter was held before the Georgia Tax Tribunal on February 23, 2024. Ron Stay, Esq. appeared on behalf of the Georgia Department of Revenue, (hereafter “Respondent” or “the Department”), and Mr. Keith L. Macy (“Petitioner”) represented himself *pro se*. The issue in this case is whether Petitioner ceased to be a Georgia resident for income tax purposes for tax years 2015 through 2019 (the “tax years” or the “assessment period”). Having carefully read and considered all of the evidence in the record, including witness testimony, Respondent’s State Tax Executions for tax years 2015, 2016, and 2017 are **AFFIRMED**; Respondent’s Official Assessment and Demand for Payment for tax year 2018 is **AFFIRMED** in part and **REVERSED** in part; Respondent’s Official Assessment and Demand for Payment for tax year 2019 is **REVERSED**.

**II. FINDINGS OF FACT**

1.

Petitioner has owned a home in Georgia at 6903 Spreadlong Oaks (the “Georgia residential

property”) since 1995. From 1995 to 2008, Petitioner worked at the General Motors, Doraville, Georgia plant. In 2008, the Doraville plant closed, and Petitioner left Georgia to take a position with General Motors in Lake Orion, Michigan. Petitioner worked in Michigan for approximately one year until that plant was scheduled to be closed. Despite his attempts to do so, Petitioner was not able to sell his Georgia residential property upon moving to Michigan. Petitioner claimed the homestead exemption on the Georgia residential property in 1995.<sup>1</sup> The homestead exemption remained on the property throughout the assessment period. (Petitioner’s Exhibit A; Respondent’s Exhibit 9).

2.

In the fall of 2009, Petitioner took a position in Kansas City, Kansas at the General Motors, Fairfax assembly plant. Petitioner worked at the Kansas City plant for approximately five years until the fall of 2014. While working in Kansas, Petitioner lived in Missouri. (Petitioner’s Exhibit A).

3.

While Petitioner was living in Michigan and Missouri, from 2008 to 2014, Petitioner’s youngest daughter lived in the Georgia residential property with his daughter’s mother. In 2014, Petitioner’s oldest daughter moved into the Georgia residential property and resided there throughout the remainder of the assessment period. (Testimony of Petitioner).

4.

Petitioner filed state income tax returns in the state of Georgia for tax years 2008 through 2012. Petitioner filed a nonresident state income tax return in the state of Kansas for tax year 2013. All of Petitioner’s state income tax returns during this time period, as well as his Federal income

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<sup>1</sup> The homestead exemption renews automatically every year unless expressly removed.

tax returns through tax year 2017, listed the Georgia residential property as Petitioner's home address. (Respondent's Exhibits 11 through 20).

5.

During the fall of 2014, Petitioner moved from Missouri to Tennessee after accepting a promotional position with the General Motors, Spring Hill assembly plant. (Petitioner's Exhibit A.)

6.

While living in Tennessee, Petitioner signed rental agreements as a tenant with two different apartment complexes. Petitioner purchased and registered two vehicles in Tennessee in 2014. Petitioner provided a Tennessee address to his employer during the assessment period, which was reflected on his form W-2 for each tax year (2015-2019). Petitioner transferred his medical records and obtained a primary care physician in Tennessee. (Petitioner's Exhibit D; Petitioner's Exhibit E; Petitioner's Exhibit G.)

7.

It is undisputed that Petitioner was domiciled in Georgia prior to 2012. It is also undisputed that Petitioner did not reside in Georgia for more than 183 days or part days during any of the tax years of the assessment period. During the assessment period, Petitioner returned to Georgia to visit his daughters or for special occasions approximately ten times per year. (Testimony of Petitioner.)

8.

Voting records for Petitioner indicate that Petitioner voted in Georgia for the 2010 General Election, the 2012 Special Election, the 2014 General Special Election, and the 2016 General Special Election. (Respondent's Exhibit 8.)

9.

Petitioner obtained a Tennessee driver's license on August 8<sup>th</sup>, 2018, after his Georgia driver's license expired. Petitioner registered to vote in Tennessee on October 9<sup>th</sup>, 2018. (Respondent's Exhibit 7).

10.

Petitioner resigned from General Motors in December of 2018. After resigning, Petitioner applied for job opportunities in Tennessee and other states outside of Georgia. In 2020, Petitioner moved back to Georgia and into his Georgia residential property to work for an aeronautics manufacturing facility. (Petitioner's Exhibit A.)

11.

On April 5, 2022, the Department issued Official Assessments and Demands for Payment for tax years 2018 and 2019 to Petitioner, in the amounts of \$13,373.81 and \$20,245.71, respectively. (Letter ID L1879753520.)

12.

On October 10, 2023, the Department issued a Notice of State Tax Execution for tax years 2015, 2016, and 2017 to Petitioner, in the amount of \$65,143.36. (Letter ID L1935389808.)

13.

Petitioner filed three separate Petitions with this Tribunal. The first, Docket No. 2225864, was filed on May 3, 2022, challenging Official Assessments and Demands for Payment for tax years 2018 and 2019. The second, Docket No. 2422852, was filed on December 20, 2023, challenging a Notice of Pending State Tax Execution for tax years 2013,<sup>2</sup> 2018, and 2019. The third, Docket No. 2422856, was filed on December 20, 2023, challenging a Notice of State Tax

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<sup>2</sup> The Department's assessment for tax year 2013 was withdrawn prior to the commencement of the trial.



Execution for tax years 2015, 2016, and 2017. Because Docket Nos. 2422852 and 2422856 were docketed on December 20, 2023, the remand period had not yet expired and answers had not yet become due under this Court's Standing Order dated January 25, 2013. By consent motion of the parties, approved by this Court immediately prior to the commencement of the trial, it was ordered that the remand period be terminated early in Docket Nos. 2422852 and 2422856, that answers of general denial be entered into the record on behalf of the Department, and that all three Petitions be consolidated.

### III. CONCLUSIONS OF LAW

In all proceedings before the Georgia Tax Tribunal, the standard of review is *de novo*, and the evidence presented is not limited to the evidence considered by the Department. Ga. Comp. R. & Regs. 616-1-3-.11(a). Under *de novo* review, the Tribunal is required to make an "independent determination of the issues." See United States v. First City Nat'l Bank of Houston, 386 U.S. 361, 368 (1967); see also Marc J. Fleury & Nathalie Mason-Fleury v. Comm'r, TAX-IIT-1532748 & 1552226 (Ga. Tax Tribunal 2015).

Taxpayers who are domiciled in, or who are legal residents of the state of Georgia, for income tax purposes, are subject to taxation by this state on all income earned, regardless of source.

See O.C.G.A. §§ 48-7-20, 48-7-27. Under O.C.G.A. § 48-7-1(10)(A), "resident" is defined as:

- (i) Every individual who is a legal resident of this state on income tax day;
- (ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and
- (iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

Further, under Georgia law, once an individual becomes a Georgia resident for tax purposes, the taxpayer continues to be taxable in Georgia for income tax purposes until the taxpayer “shows to the satisfaction of the commissioner [of the Georgia Department of Revenue] that he or she has become a legal resident or domiciliary of another state.”<sup>3</sup> O.C.G.A. § 48-7-1(10)(B); see also Ga. Comp. R. & Regs. 560-7-3-.02(1)(a). Essentially, what this means is that there is a presumption of continued legal residency under Georgia law.

Once one has established a domicile in Georgia, a new domicile cannot be acquired simply by moving to a new place. See Williams v. Williams, 191 Ga. 437, 438 (1940); see also Marc J. Fleury & Nathalie Mason-Fleury v. Comm’r, TAX-IIT-1532748 & 1552226 (Ga. Tax Tribunal 2015). On the contrary, to establish a new domicile, a person must (a) abandon the old domicile and (b) move to another place with (c) the present intent to remain there permanently or indefinitely.<sup>4</sup> Id. at 9. What it takes to abandon a Georgia domicile is not explicitly defined in the income tax section of the Georgia code. Thus, to determine whether or not Petitioner has abandoned his Georgia domicile, the Tribunal must conduct a factual analysis taking into consideration the totality of the circumstances, including not only Petitioner’s stated intent, but also his affirmative actions regarding the abandonment of his Georgia domicile.

**a) Petitioner did not Establish a Domicile in either Michigan or Missouri prior to the beginning of the Assessment Period**

Pursuant to O.C.G.A. § 48-7-1(10)(B), once an individual becomes a Georgia resident for

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<sup>3</sup> In accordance with Petitioner F-1 v. Comm’r, the terms “legal resident,” and “domiciliary” are synonymous terms that can be used interchangeably. Petitioner F-1 v. Comm’r, TAX-IIT-134974 (Ga. Tax Tribunal 2015).

<sup>4</sup> Although one may have many homes, one may only have one domicile, which is the place where he or she intends to remain. Fleury at 10, see also Avery v. Bower, 170 Ga. 202, 204 (1930). Intent to remain indefinitely in one’s place of actual residence establishes domicile, even if one has “a floating intention to return [to some earlier residence] or to move somewhere else at some future period.” Black v. Black, 292 Ga. 691, 693 n.3 (2013) (quoting Campbell v. Campbell, 231 Ga. 214, 215 (1973)).

tax purposes, the taxpayer continues to be taxable in Georgia for income tax purposes until the taxpayer “shows to the satisfaction of the commissioner [of the Georgia Department of Revenue] that he or she has become a legal resident or domiciliary of another state.” O.C.G.A. § 48-7-1(10)(B); see also Ga. Comp. R. & Regs. 560-7-3-.02(1)(a). A new domicile cannot be acquired simply by moving to a new place. See Williams, 191 Ga. 437; see also Fleury v. Comm’r, TAX-IIT-1532748 & 1552226 at 9.

By filing state income tax returns in the state of Georgia for tax years 2008 through 2012, listing the Georgia residential property as his home on the returns, and claiming a status of “full year resident” of Georgia, Petitioner has made a voluntary declaration that he intended to remain a Georgia resident through at least tax year 2012. In 2013, Petitioner filed a state income tax return for the state of Kansas and listed his residency status as a nonresident with his state of residence being Georgia. In response to his residency status on his returns, Petitioner stated at the trial that his returns were self-prepared and prepared incorrectly. Petitioner stated further that he erroneously thought he needed to be a Georgia resident in order for his daughters to retain their medical insurance in the state of Georgia.

While Petitioner appears to have been operating under the assumption of an honest mistaken belief, Petitioner himself stated that he acted with the intent of continuing his Georgia residency through at least tax year 2013. Additionally, voting records indicate that Petitioner voted in Georgia for the 2010 General Election, the 2012 Special Election, and the 2014 General Special Election further evidencing Petitioner’s intent to remain a Georgia resident. Thus, Petitioner remained a Georgia resident throughout the period of time that he was residing in both Michigan and Missouri.



**b) Abandonment of an Old Domicile and Establishment of a New Domicile are Events that Occur Simultaneously**

The crux of this case turns on whether Petitioner took a sufficient number of actions consistent with his testimony at trial that he intended to abandon his Georgia domicile while he was residing and working in Tennessee. As stated previously, to determine whether or not Petitioner has abandoned his Georgia domicile, the Tribunal must conduct a factual analysis taking into consideration the totality of the circumstances, including not only Petitioner's stated intent, but also his affirmative actions regarding the abandonment of his Georgia domicile. To establish a new domicile, a person must (a) abandon the old domicile and (b) move to another place with (c) the present intent to remain there permanently or indefinitely. Fleury v. Comm'r, TAX-IIT-1532748 & 1552226 at 9. Naturally it follows that the abandonment of the old domicile and the establishment of the new domicile are events that occur simultaneously.

There have been two cases before this Court that have dealt with the issue of the abandonment of a Georgia domicile. In those cases, Petitioner F-1 and Fleury, both Petitioners alleged that they had established domicile in other countries. In Petitioner F-1, the court determined that the taxpayers in question had not made the United Kingdom their legal residence based on four factors:

- A. The petitioners' residence in the United Kingdom was temporary and tied to a tour of employment that had a specific end date at which point their visas would expire unless he renewed his position.
- B. The Petitioners did not seek "permanent residence permits," in the U.K.
- C. The Petitioners did not obtain driver's licenses in the U.K.
- D. The Petitioners did not pay income taxes in the U.K. because they were not permanent residents and therefore not subject to British income taxes.

Petitioner F-1 v. Comm'r, TAX-IIT-134974 at 8-9.



In Fleury, the court ruled in favor of taxpayers who moved to Spain from Georgia, determining that legal residence had been established there, based on the following factors:

- A. The Petitioners' living arrangement was not tied to employment, but based on familial roots in Spain. Moreover, they were not limited by visas.
- B. There is no evidence that the Petitioners and their children, as EU citizens, needed any additional permit to remain in Spain indefinitely.
- C. Mr. Fleury obtained a driver's license in Spain and bought a car there.
- D. The Petitioners obtained tax identification numbers and paid income tax in Spain.

Fleury v. Comm'r, TAX-IIT-1532748 & 1552226 at 11.

In this case, Petitioner alleges that he has established domicile in another state – Tennessee – rather than another country. While two of the factors, factor B) obtaining a permanent resident permit, and factor D) the payment of income taxes in the new jurisdiction<sup>5</sup> are not directly applicable to the instant case, factor A) residence in the new jurisdiction being tied to a tour of employment with a specific end date, as well as factor C) obtaining a driver's license in the new jurisdiction, were critical pieces of evidence that helped the court reach its decisions in those respective cases and are directly applicable to the instant case.

In the fall of 2014, Petitioner moved to Tennessee after accepting a promotional position with the General Motors, Springhill assembly plant. Unlike the petitioners in the Petitioner F-1 case, in this matter Petitioner's residence in Tennessee was not tied to a tour of employment with a specific end date. Upon moving to Tennessee, Petitioner signed rental agreements as a tenant for two different apartment complexes, Petitioner purchased and registered two vehicles in Tennessee, Petitioner transferred his medical records and obtained a primary care physician in Tennessee, and Petitioner began providing a Tennessee address to his employer rather than the Georgia residential

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<sup>5</sup> Tennessee does not have a state income tax on salaries, wages, bonuses, or any other type of work income.

property address as his “home” address which was reflected on his form W-2’s for the tax years of the assessment period.<sup>6</sup> These actions provide strong evidence that Petitioner established domicile in Tennessee when he moved there in the fall of 2014.<sup>7</sup>

On the other hand, unlike the petitioners in the Fleury case, in this matter Petitioner did not obtain a Tennessee driver’s license upon moving to Tennessee as is required for those intending to establish residency there.<sup>8</sup> Further, Petitioner, again, voted in Georgia, this time for the 2016 General Special Election. Georgia voting statutes are clear in stating that only legal residents of Georgia may vote in elections in this state:

- (a) No person shall vote in any primary or election held in this state unless such person shall be: . . .
- (2) A citizen of this state and of the United States;  
. . .
- (4) A resident of this state and of the county or municipality in which he or she seeks to vote.

O.C.G.A. § 21-2-216(a). The same section provides that one cannot remain a Georgia voter “longer than such person shall retain the qualifications under which such person registered.” O.C.G.A. § 21-2-216(d). Additionally, “[i]f a person removes to another state with the intention of making it such person’s residence, such person shall be considered to have lost such person’s residence in this state.” O.C.G.A. § 21-2-217(a)(4). By voting in Georgia during tax year 2016, a right exclusive to Georgia residents, Petitioner made an affirmative representation that he was a Georgia resident.

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<sup>6</sup> This action is significant. Petitioner previously provided the Georgia residential property address to his employer when he worked in both Michigan and Kansas.

<sup>7</sup> Additionally, Petitioner provided multiple witnesses that testified on his behalf stating that Petitioner did in fact move out of the state of Georgia and that while he retained the Georgia residential property, he had not expressed an intention to return to Georgia after initially leaving in 2008. The witnesses testified to this lack of intent by confirming that Petitioner conducted job searches which ranged many different states including California, Ohio, Texas, and North Carolina.

<sup>8</sup> New residents to Tennessee who hold a valid driver’s license from another state must obtain a Tennessee driver’s license no later than thirty (30) days after establishing residency. See Tenn. Code Ann. § 55-50-304(5)(A).

When weighed against the other actions Petitioner took towards abandoning his Georgia domicile and establishing a Tennessee domicile, the act of voting stands out as significant. Petitioner's failure to obtain a Tennessee driver's license also stands out as significant. Simply put, Petitioner's actions were ambiguous at best and severely undercut his argument that he abandoned his Georgia domicile and established domicile in Tennessee in the fall of 2014 when he moved there. Thus, this Court finds that Petitioner did not abandon his Georgia domicile, nor did he establish domicile in Tennessee upon his initial move to Tennessee in the fall of 2014.

Additional evidence provided by Respondent that Petitioner did not abandon his Georgia domicile included Petitioner's driving record and vehicle registration information, transactions in the state of Georgia on Petitioner's bank statements, and Petitioner's claiming of the homestead exemption on his Georgia residential property throughout the assessment period. Petitioner provided good explanations to each of these points at the trial and in post-trial briefs. Regarding the vehicles that Petitioner registered in Georgia, he stated that they were not driven by him, but were instead driven by his adult daughter, who resided in Georgia during the assessment period. Similarly, in response to bank statement transactions that showed frequent transactions in the state of Georgia during the period of time when Petitioner was living in Tennessee, Petitioner stated that the bank account was a joint account that was used by his adult daughter who was living in Georgia during the assessment period. Given the context provided by Petitioner, the Court does not find these pieces of evidence to be particularly persuasive in showing that Petitioner did not abandon his Georgia domicile.

Regarding the homestead exemption, Petitioner argued that because the homestead exemption renews annually and automatically, Petitioner's act of claiming the homestead exemption in 1995 when his Georgia residential property was purchased should not reflect his



intent twenty (20) years later in 2015 when the assessment period began. It is clear under Georgia law that one who claims the homestead exemption is representing to the state that they are a legal resident of Georgia. See O.C.G.A. § 48-5-40(3). However, given the amount of time between when the homestead exemption was initially claimed in 1995 and the assessment period in this case, Petitioner's claiming of the homestead exemption is more of an omission or failure to act, rather than an affirmative declaration of his intended domicile as argued by Respondent.

**c) Petitioner Abandoned his Georgia Domicile and Established Domicile in Tennessee in Either August or October of 2018**

Respondent argues that Petitioner has not presented any evidence that demonstrates an intent to abandon his Georgia domicile for any of the tax years in question. This Court disagrees. On August 8<sup>th</sup>, 2018, Petitioner obtained a Tennessee driver's license. Also, and as stated previously, Petitioner's residence in Tennessee was not tied to a tour of employment with a specific end date. These pieces of evidence show an intent to abandon a Georgia domicile consistent with the holdings of the Petitioner F-1 and Fleury decisions. When viewed in concert with the actions taken by Petitioner upon initially moving to Tennessee, a compelling case is made that Petitioner abandoned his Georgia Domicile and established domicile in Tennessee. Moreover, Petitioner registered to vote in Tennessee on October 9<sup>th</sup>, 2018, further evidencing his intent to abandon his Georgia domicile. Thus, based on the totality of the circumstances, this Court finds that Petitioner abandoned his Georgia domicile and established domicile in Tennessee on August 8<sup>th</sup>, 2018.

**CONCLUSION**

In accordance with the Findings of Fact and Conclusions of Law, Respondent's State Tax Executions for tax years 2015, 2016, and 2017 are **AFFIRMED**; Respondent's Official

Assessment and Demand for Payment for tax year 2018 is **AFFIRMED** in part, apportioned to the extent of the 219/365 days that Petitioner was a Georgia resident, and **REVERSED** in part, apportioned to the extent of 146/365 days that Petitioner was not a Georgia resident; Respondent's Official Assessment and Demand for Payment for tax year 2019 is **REVERSED**.

**SO ORDERED**, this 16<sup>th</sup> day of April, 2024.



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**LAWRENCE E. O'NEAL, JR.**  
**CHIEF JUDGE**  
**GEORGIA TAX TRIBUNAL**