

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
UTI # [REDACTED])	Case No. 201200224-I
_____)	

A hearing was held on December 6, 2012 in the matter of the protest of [REDACTED] (Taxpayers) to an assessment of income tax and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2006.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayers filed a resident Arizona state income tax return with the state of Arizona for tax year 2006.
2. The Section reviewed Taxpayers' 2006 return and issued an assessment dated October 14, 2010 including in Taxpayers' Arizona income \$[REDACTED] of interest income taxable to Arizona and disallowed a credit for taxes paid to the State of [REDACTED] of \$[REDACTED].
3. The assessment included statutory interest. No penalties were assessed.
4. Taxpayers had paid tax to [REDACTED] on income received from the sale of property in [REDACTED].
5. The Section disallowed the credit because [REDACTED] allows Arizona residents a credit against [REDACTED] taxes for taxes paid to Arizona on [REDACTED] source income.
6. Taxpayers timely protested the assessment stating that the Arizona return was filed in error and Taxpayers will be filing an amended return as residents of the

State of [REDACTED]. Taxpayers did not protest the interest income that was included in the assessment.

7. Taxpayer [REDACTED] (Taxpayer) was a full-time [REDACTED] for a [REDACTED] [REDACTED] in 2006. He was initially hired in [REDACTED] on a [REDACTED] contract.
8. Taxpayer spent most of 2006 working in [REDACTED].
9. Taxpayers owned residential property in both Arizona and [REDACTED].
10. Taxpayers received mail at both their Arizona home and at their [REDACTED] home.
11. Taxpayers maintained Arizona driver's licenses and car registration.
12. Taxpayers filed full-year Arizona resident state income tax returns and paid taxes as residents for years 2002 through 2011.
13. Taxpayers listed their Arizona address on both their federal and state income tax returns.
14. Documents such as bank statements, pension statements, partnership and dividend distributions and income reporting documents from Taxpayer's employer showed Taxpayers' Arizona address.
15. Taxpayer testified he filed an Arizona return for convenience because as a [REDACTED] he did not know what the future would bring and it was easier to keep matters as they were instead of taking steps such as getting a driver's license and registering to vote in the states where he worked.

CONCLUSIONS OF LAW

1. The presumption is that an assessment of additional income tax is correct. *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
2. For tax years prior to 2004 Taxpayers were Arizona residents and had their domicile in Arizona.

3. Once a domicile is established it is presumed to continue until a change in domicile has been shown. *Jizmejjan v. Jizmejjan*, 16 Ariz.App. 270, 492 P.2d 1208 (1972).
4. A person cannot have more than one domicile at a time. *Clark v. Clark*, 71 Ariz. 194, 225 P.2d 486 (1950).
5. The burden of proof is on the party asserting that an earlier domicile has been abandoned for a new domicile. *Jizmejjan v. Jizmejjan, supra*.
6. A new residence or domicile is acquired only by the concurrence of an intention to establish a new domicile and acts evidencing that intention. *Kauzlarich v. Board of Trustees*, 78 Ariz. 267, 278 P.2d 888 (1955); Department Income Tax Procedure (ITP) 92-1.
7. A change of domicile requires an intent to abandon the former domicile and remain at the new. *DeWitt v. McFarland*, 112 Ariz. 33, 537 P.2d 20 (1975).
8. Taxpayers have not shown that they changed domicile either in 2004 when Taxpayer was hired by [REDACTED] or in 2006.
9. Taxpayers were Arizona residents for the 2006 tax year for Arizona income tax purposes.
10. A resident of Arizona is subject to income tax on all of his taxable income wherever derived. Arizona Revised Statutes (A.R.S.) § 43-102(A)(4).
11. Taxpayers were subject to Arizona income tax on all income they received in 2006, including income from [REDACTED] sources.
12. A.R.S. § 43-1071 allows a taxpayer to claim credit for income taxes paid to another state on income that is also taxable by Arizona unless the other state allows residents of Arizona a credit against the other state's income tax for taxes paid to Arizona.
13. A credit for taxes paid to [REDACTED] may not be allowed to Arizona residents. See, Instructions to Arizona Form 309.

14. A.R.S. § 42-1123(C) provides that if the tax “or any portion of the tax is not paid” when due “the department shall collect, as a part of the tax, interest on the unpaid amount” until the tax has been paid.
15. The Section’s assessment dated October 14, 2010 of tax and interest for tax year 2006 was proper.

DISCUSSION

The issue in this protest is whether Taxpayers were nonresidents of Arizona during tax year 2006 and therefore income from sources outside Arizona would not be subject to Arizona individual income tax. Taxpayers maintain that they were [REDACTED] residents during tax year 2006.

There is substantial authority in Arizona concerning the determination of residency status. Once a domicile is established, it is presumed to continue until a change in domicile has been shown. *Jizmejjan v. Jizmejjan, supra*. A person cannot have more than one domicile at a time. *Clark v. Clark, supra*. A new residence or domicile is acquired only by the concurrence of an intention to abandon the former domicile and establish a new domicile where they will remain for an indefinite period of time and acts evidencing that intention. *Kauzlarich v. Board of Trustees, supra; DeWitt v. McFarland, supra*. The burden of proof is on the party asserting that an earlier domicile has been abandoned for a new domicile. *Jizmejjan v. Jizmejjan, supra*.

Prior to 2004 (the year Taxpayer [REDACTED] was hired by [REDACTED]), Taxpayers were Arizona residents domiciled in Arizona and filed Arizona resident income tax returns. The question therefore is whether Taxpayers demonstrated that they abandoned their Arizona domicile at the beginning of either tax year 2004 or tax year 2006 and established a new domicile in [REDACTED]. Based on the record, Taxpayers did not abandon their Arizona domicile prior to tax year 2006 or at any time during tax year 2006 and did not establish a new domicile in [REDACTED].

The evidence presented in this case establishes that Taxpayers were domiciled in Arizona prior to tax year 2004. In 2004 Taxpayer [REDACTED] was hired as [REDACTED] by [REDACTED]. Taxpayers purchased a home in [REDACTED] and spent a bulk of the time in [REDACTED].

Taxpayers also maintained their residence in Arizona. Taxpayers continued to file Arizona resident income tax returns and used their Arizona address on their state and federal tax returns. Taxpayers retained their Arizona driver's licenses and car registration. Taxpayer [REDACTED] testified that they filed an Arizona return and retained their Arizona driver's licenses and car registration for convenience because, as [REDACTED], [REDACTED] did not know what the future would bring. It was easier to keep matters as they were instead of taking steps such as getting a driver's license and registering to vote in the states where he worked at the time. The evidence presented does not show that Taxpayers had the intent to abandon their Arizona domicile and establish a new domicile in [REDACTED] for tax year 2006.

ITP 92-1 supports the conclusion that Taxpayers did not abandon their Arizona domicile and establish a [REDACTED] domicile during either 2004 or 2006. The procedure is clear when it states that a new residence or domicile can be acquired only by the concurrence of an intention to establish a new residence or domicile, abandoning the old one and acts evidencing such an intention. The evidence presented indicates that Taxpayers did not consider the issue of residency until after they were contacted by the Department regarding the 2006 tax year.

The proposed assessment also included interest. A.R.S. § 42-1123(C) provides that if the tax "or any portion of the tax is not paid" when due "the department shall collect, as a part of the tax, interest on the unpaid amount" until the tax has been paid. For Arizona purposes, therefore, interest is a part of the tax and generally may not be abated unless the tax to which it relates is found not to be due for whatever reason. The imposition of interest in this case was proper.

Based on the foregoing, the Section's proposed assessment dated October 14, 2010 for tax year 2006 is affirmed.

DATED this 10th day of January, 2013.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing mailed to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section