

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
TID #[REDACTED])	Case No. 201500349-I
_____)	

A hearing was held on March 31, 2016 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 2010.

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 2010.
2. The Section reviewed Taxpayers' 2010 return and issued a proposed assessment dated December 31, 2014 disallowing a credit for taxes paid to the State of California of \$[REDACTED].
3. The assessment included statutory interest. No penalties were assessed.
4. Taxpayers had paid tax to California on wage income received by Taxpayer [REDACTED] (Taxpayer) working in California.
5. The Section disallowed the credit because California allows Arizona residents a credit against California taxes for taxes paid to Arizona on California source income.
6. Taxpayers timely protested the assessment stating that Taxpayer worked in California Monday through Friday. Therefore, Taxpayer was at best a part-year resident of Arizona and California. Taxpayer should not have to pay taxes twice.

7. Taxpayer was a bus driver for [REDACTED], California during 2010. Taxpayer spent approximately 240 days during 2010 working and living in California.
8. Taxpayers owned residential property in Arizona.
9. Taxpayer's spouse and child lived in the Arizona residence during 2010.
10. Taxpayers maintained Arizona driver's licenses and car registration.
11. Taxpayers purchased their Arizona residence in 2005 and have lived there since then.
12. Taxpayers filed full-year Arizona resident state income tax returns and paid taxes as residents for tax years 2006 through 2009.
13. Taxpayers listed their Arizona address on both their federal and state income tax returns.
14. Other tax related documents and information returns, including Taxpayer's W-2, showed Taxpayers' Arizona address.

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 2010 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. Arizona income tax booklet for Form 140PY for tax year 2010 stated on page 2:
If you are a part-year resident, you must file Form 140PY, *Part-Year Resident Personal Income Tax Return*. You are a part-year resident if you did either of the following during 2010.
 - _ You moved into Arizona with the intent of becoming a resident.
 - _ You moved out of Arizona with the intent of giving up your Arizona residency.
9. Taxpayers have not shown that Taxpayer changed domicile in 2010 or became a part-year resident in 2010.
10. Taxpayers were Arizona residents for the 2010 tax year for Arizona income tax purposes.
11. 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).
12. Taxpayers were subject to Arizona income tax on all income they received in 2010, including income from California sources.
13. 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.

14. California allows a credit to residents of Arizona for income taxes paid to Arizona. Cal. Rev. & Tax. Code § 18002.
15. A credit for income taxes paid to California may not be allowed to Arizona residents. See, Instructions to Arizona Form 309.
16. 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.
17. The Section’s proposed assessment dated December 31, 2014 of tax and interest for tax year 2010 is upheld.

DISCUSSION

The issues in this protest are whether:

- Taxpayers were residents of Arizona during tax year 2010 and therefore income from sources outside Arizona would be subject to Arizona individual income tax; and
- Taxpayers were entitled to a credit against Arizona income tax for income taxes paid to California on California source income.

Taxpayers were Arizona residents during tax year 2010.

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*.

Taxpayers moved to Arizona in 2005 and became Arizona residents domiciled in Arizona. Taxpayers have filed Arizona resident income tax returns since tax year 2006, including for the year at issue. Taxpayers also maintained their residence in Arizona. Taxpayers used their Arizona address on their state and federal tax returns and tax related documents. Taxpayers retained their Arizona driver's licenses and car registration. The evidence presented does not show that Taxpayer had the intent to abandon his Arizona domicile and establish a new domicile in California for tax year 2010.

Taxpayers argue that at best, Taxpayer was a part-year resident of Arizona and California. A part-year resident is not simply a person who spends a portion of his time in different states during the year. A part-year resident is a person who became an Arizona resident or abandoned his Arizona residency during the tax year. Taxpayer was not a part-year resident in tax year 2010.

Taxpayers were not entitled to a credit for California income taxes paid.

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. Here, California allows a credit to residents of Arizona for income taxes paid to Arizona. Therefore, Taxpayers are not entitled to claim a credit on their Arizona return for income taxes paid to California.¹

The proposed assessment 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

¹ Taxpayers might be able to claim a credit for Arizona income taxes paid in California under Cal. Rev. & Tax. Code § 19311.5 after the Arizona income tax has been paid.

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 December 31, 2014 for tax year 2010 is affirmed.

DATED this 6th day of April, 2016.

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