

**STATE OF ARKANSAS  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
OFFICE OF HEARINGS & APPEALS  
ADMINISTRATIVE DECISION**

**IN THE MATTER OF** [REDACTED]

**INDIVIDUAL INCOME TAX  
ASSESSMENT**

**ACCT. NO.:** [REDACTED]

**DOCKET NO.:** 17-402 (2014)

[REDACTED] ([REDACTED])<sup>1</sup>

**TODD EVANS, ADMINISTRATIVE LAW JUDGE  
APPEARANCES**

This case is before the Office of Hearings and Appeals upon a written protest dated January 10, 2017, submitted by [REDACTED], the Taxpayer. The Taxpayer protested an assessment of Individual Income Tax made by the Department of Finance and Administration (“Department”).

A hearing was held on May 19, 2017, at 9:00 a.m., in Little Rock, Arkansas. The Department was represented by Michael Wehrle, Attorney at Law, Office of Revenue Legal Counsel (“Department’s Representative”). Present for the Department was Ben Johns, Tax Auditor – Individual Income Tax Section. The Taxpayer appeared at the hearing and represented herself. Present for the Taxpayer were [REDACTED] (Boyfriend), [REDACTED] (Stepfather), and [REDACTED] (Mother).

After the hearing, the record remained open for the Taxpayer to submit an additional page of her [REDACTED] Income Tax Return that was requested by the Department’s Representative. This document was submitted on May 25, 2017, and the matter was submitted for a decision.

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<sup>1</sup> This amount represents [REDACTED] (tax), [REDACTED] (penalties), and [REDACTED] (interest).

## **ISSUES**

Whether the Taxpayer was a resident of the State of Arkansas for income tax purposes during the 2014 tax year. Yes.

Whether the assessment of several penalties and interest is appropriate. Yes, in part.

### **FINDINGS OF FACT/CONTENTIONS OF THE PARTIES**

The Department's Representative provides the following relevant facts in his Answers to Information Request, stating in part:

The taxpayer filed an [REDACTED] individual income tax return with the [REDACTED] Department of Revenue for the 2014 tax year. The "Schedule NR (Part year/Nonresident)" box on the front page of the [REDACTED] return is checked. The taxpayer has not filed an Arkansas income tax return for the 2014 tax year.

Due to the nature of the taxpayer's employment, she worked outside the state of Arkansas for extended periods of time during the 2014 tax year. However, the taxpayer maintained and did not abandon her Arkansas domicile in 2014. This determination is supported by the following facts:

- a. The taxpayer held an Arkansas driver's license throughout 2014. Exhibit B.
- b. The taxpayer had a motor vehicle registered in Arkansas throughout 2014. Exhibit C.
- c. 2014 Pulaski County Personal Property Assessment. Exhibit D.

Under *DFA Individual Income Tax Rules* 1.26-51-102(9) and 2.26-51-10 2(9), the taxpayer was a resident of this state for Arkansas income tax purposes throughout the 2014 tax year. The Proposed and Final Assessments issued to the taxpayer should therefore be sustained. Exhibit E. An Auditor's Report is marked as Exhibit F.

The Auditor testified that he reviewed the Taxpayer's Account in this matter. He explained that the Taxpayer was a nonfiler for the 2014 tax year, though she filed a federal return using an Arkansas address. Due to the lack of income information from the Taxpayer, the assessment was completed utilizing

her federal return data. The Taxpayer did provide a copy of her 2014 [REDACTED] [REDACTED] income tax return (showing income tax paid to [REDACTED]) which the Auditor stated would entitle her to an income tax credit for income taxes paid to another state if provided with her 2014 Arkansas income tax return claiming that tax credit.<sup>2</sup> He explained the basis for his conclusion that the Taxpayer was an Arkansas Resident. Specifically, he noted that the Taxpayer possessed an Arkansas driver's license since 1997 (including the 2014 tax year); her vehicle was titled and registered<sup>3</sup> in Arkansas before and during 2014; and she assessed her vehicle in Pulaski County, Arkansas during the 2014 tax year. An underestimate penalty was assessed since she failed to make estimated payments and tax was due for the tax year. He also stated that the failure to file and failure to pay penalties were assessed based on the nonfiling and nonpayment of the tax liability.

The Taxpayer testified that, during part of the 2014 tax year, she worked for [REDACTED] (a national realty management company) that managed properties in [REDACTED], Arkansas before 2014. Her company, however, left [REDACTED], Arkansas after losing a significant contract. She decided to continue working for [REDACTED] and moved to another region with managed properties in hopes of eventually becoming a corporate employee in [REDACTED]. [REDACTED] made her move to [REDACTED] on October 11, 2013. Her company

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<sup>2</sup> He asserted that he would be willing to adjust the assessment to add the tax credit if a 2014 Arkansas income tax return was filed by the Taxpayer; however, the Taxpayer did not want to file an Arkansas income tax return at the time of hearing because she considered herself to be a nonresident.

<sup>3</sup> During her testimony, the Taxpayer explained that she renewed her license plate while moving to [REDACTED] from [REDACTED], did not know her new [REDACTED] address at that time, and could not have transferred her license plate to [REDACTED] before its expiration.

sent her to [REDACTED] to manage other properties on May 1, 2014. Before Thanksgiving Day in 2014, [REDACTED] lost its contract in [REDACTED] and, rather than move again, the Taxpayer began working for [REDACTED]. In April 2015, the Taxpayer returned to [REDACTED], Arkansas. The Taxpayer asserted that she had no intention of returning to Arkansas when she moved to [REDACTED]. She stated that she did not transfer her motor vehicle registration and driver's license because her employment location was so uncertain. The Taxpayer is not a registered voter anywhere, is a native Arkansan, and married her ex-husband in Arkansas. She filed her [REDACTED] return as a part-year resident of the state not as a nonresident.<sup>4</sup>

Her Boyfriend testified that he has been a [REDACTED] for twenty-six (26) years. He stated the Taxpayer has never lived with him in Arkansas. He explained that the Taxpayer utilized his address as a mailing address to have a single, stable address for her business records. He described the failure to transfer her car registration and driver's license to her new states of residence as an oversight. He asserted that the Taxpayer did not have an intent to evade taxes that were lawfully due.

Her Mother and Step-Father testified that the assessment process was confusing for the Taxpayer (in that she did not live or work in Arkansas and could

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<sup>4</sup> The Taxpayer provided U-Haul records, payroll records, and employment records that supported her recitation of events during the relevant periods. The Taxpayer also submitted bank records to demonstrate that she primarily lived and made purchases of food, utilities, etc. in [REDACTED] and [REDACTED] except for a few trips to Arkansas to visit her parents and boyfriend and to attend a funeral. While even more bank records were offered to further prove that fact, the Department's Representative stipulated that the additional bank records would comport with the Taxpayer's description of those records, and thus, further records were not submitted and copied into the record because it was unnecessary. It should be noted that the bank records did utilize Arkansas mailing addresses (first her old Arkansas apartment and then her boyfriend's residence).

not understand why Arkansas was assessing her). They confirmed that her employment causes her to move frequently.

After a general discussion of the governing law, an analysis with legal conclusions shall follow.

## **CONCLUSIONS OF LAW**

### **Standard of Proof**

Ark. Code Ann. § 26-18-313(c) (Supp. 2015) provides, in pertinent part, as follows:

The burden of proof applied to matters of fact and evidence, whether placed on the taxpayer or the state in controversies regarding the application of a state tax law shall be by preponderance of the evidence.

A preponderance of the evidence means the greater weight of the evidence.

*Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985). In *Edmisten v. Bull Shoals Landing*, 2014 Ark. 89, at 12-13, 432 S.W.3d 25, 33, the Arkansas Supreme Court explained:

A preponderance of the evidence is “not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

The Department bears the burden of proving that the tax law applies to an item or service sought to be taxed, and a taxpayer bears the burden of proving entitlement to a tax exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(d) (Supp. 2015). Statutes imposing a tax or providing a tax exemption, deduction, or credit must be reasonably and strictly construed in limitation of their application, giving the words their plain and ordinary meaning. Ark. Code

Ann. § 26-18-313(a), (b), and (e) (Supp. 2015). If a well-founded doubt exists with respect to the application of a statute imposing a tax or providing a tax exemption, deduction, or credit, the doubt must be resolved against the application of the tax, exemption, deduction, or credit. Ark. Code Ann. § 26-18-313(f)(2) (Supp. 2015).

## **Assessment**

### **A. Tax Assessment**

Ark. Code Ann. § 26-51-201 (Supp. 2015) imposes the Arkansas individual income tax upon, and with respect to, the entire income of every resident, individual, trust, or estate. The tax is levied, collected, and paid annually upon the entire net income of the individual. Ark. Code Ann. § 26-51-102(2) (Repl. 2012) defines the term “taxpayer” to include any individual, fiduciary, or corporation subject to the Arkansas income tax. Ark. Code Ann. § 26-51-102(3) (Repl. 2012) defines the term “individual” as a natural person. For the purpose of tax imposition, the term “Resident” is defined at Ark. Code Ann. § 26-51-102 (Repl. 2012) as follows:

(14) “Resident” means natural persons and includes, for the purpose of determining liability for the tax imposed by this act upon or with reference to the income of any taxable year, **any person domiciled in the State of Arkansas and any other person who maintains a permanent place of abode within this state and spends in the aggregate more than six (6) months of the taxable year within this state[.]** [Emphasis added].

Regulation 2.26-51-102(9) defines a “resident” and provides, in pertinent part, as follows:

a) any person domiciled in the state of Arkansas. Domicile is comprised of an act coupled with an intent. A domicile is acquired

by (1) physical presence at a place coinciding with (2) the state of mind (that is, intent) of regarding the place as a permanent home. A domicile arises instantaneously when these two facts occur. Every person must have one domicile but can have no more than one domicile, regardless of how many residences a person may have at any given time. **A domicile, once established, continues until a new domicile of choice is legally established. An established domicile does not end by lack of physical presence alone nor by mental intent alone. The old domicile must be abandoned with the intention not to return to it. If one moves to a new location but intends to stay there only for a limited period of time (no matter how long), the domicile does not become the new location but rather remains unchanged.**

...

c) In situations where it is not clear if the requirements of either domicile (a) or place of abode (b) have been met, a residency determination can only be made after thoroughly reviewing the facts on a case by case basis. When reviewing the facts, the Supreme Court of Arkansas has held that we are not bound to accept a taxpayer's claims of intent when the circumstances point to a contrary conclusion. Furthermore, when acts are inconsistent with a taxpayer's declarations, the acts will control, and our conclusions regarding residency should be based on the facts and circumstances proved. The following factors should be reviewed in making a residency determination:

- Address used on federal income tax returns;
- Address used on telephone, utility and commercial documents;
- Address used on voter registration;
- Address used on drivers license, hunting and fishing license;
- Address used on motor vehicle, boat and trailer registration;
- Address used on real and personal property tax documents;
- Address used on county and other tax assessments;
- Address on governmental documents, such as military records. With respect to military records, the Leave and Earning Statement is a very important document;
- If the Taxpayer has a spouse, the spouse's address on such things as drivers license, voter registration, vehicle registration, etc. should be checked out;

- Employer and withholding information, nature of Taxpayer's employment (traveling salesperson, etc.);
- Location of Taxpayer. How often and for how long does Taxpayer reside at the location;
- Location of immediate family, such as spouse and children;
- Length of time in Arkansas of Taxpayer and immediate family;
- Community affiliations, such as club memberships, church, bank accounts, etc.;
- Absence of factors in other states. [Emphasis supplied].

Taxpayers may have more than one (1) residence but they can only have one (1) domicile. *Leathers v. Warmack*, 341 Ark. 609, 19 S.W.3d 27 (2000) and Ark. Code Ann. § 7-5-201(b)(2) (Supp. 2013). The burden of proving a change of domicile is on the party asserting the change in domicile. *National Wire Fabric Corporation v. Nelson*, 563 F. Supp. 303 (D.C. Ark., 1983) and *Steward v. Steward*, 16 Ark. App. 164, 698 S.W.2d 516 (1985) (citing *Hart v. Hart*, 223 Ark. 376, 265 S.W.2d 950 (1954)). In *Warmack, supra*, the Arkansas Supreme Court addressed the weight to be given to acts that conflicted with statements regarding intent to abandon a domicile and stated, in part:

The intent to abandon one's domicile and take up another must be ascertained from all the facts and circumstances of the particular case. *Morris v. Garmon*, 285 Ark. 259, 686 S.W.2d 396 (1985). The factfinder is not bound to accept claims of intent when the circumstances point to a contrary conclusion; they cannot prevail unless borne out by acts. *Charisse v. Eldred*, 252 Ark. 101, 477 S.W.2d 480 (1972). 'When acts are inconsistent with a person's declarations, the acts will control, and declarations must yield to the conclusions to be drawn from the facts and circumstances proved.'

*Id.*, 341 Ark. at 618-619, 19 S.W.3d at 34.

Here, the record establishes that, prior to October 2013, the Taxpayer was domiciled in the State of Arkansas and was an Arkansas resident. Though the Taxpayer rented a Uhaul truck and moved her furniture outside the State and worked outside the State, the Taxpayer retained several significant connections with the State. Specifically, she retained her Arkansas driver's license and Arkansas vehicle registration. Additionally, she continued to assess and pay property taxes on her personal property in Pulaski County, Arkansas. These activities are indicative of a continuing domicile within the State of Arkansas. To counter this evidence, the Taxpayer demonstrated that she filed a 2014 [REDACTED] [REDACTED] "Part Year/Nonresident" income tax return utilizing an Arkansas mailing address, received a tax refund from [REDACTED] that was deposited into her US Bank checking account that utilized an Arkansas mailing address, rented a Uhaul to move furniture from Arkansas in October 2013 and to return to Arkansas in April 2015, worked for companies located outside the State of Arkansas during 2014, and made most of her purchases outside the State of Arkansas during 2014. She further asserted in her protest and at the administrative hearing that an Arkansas mailing address was utilized on her business records and tax returns during the relevant tax year because she was constantly relocating for work and her Boyfriend allowed her to utilize his address. She insisted that she never resided at the Arkansas mailing address. Through additional records and testimony at the administrative hearing, the Taxpayer established that she primarily lived and worked outside the State; however, she did not demonstrate that she abandoned her domicile in Arkansas.

The record shows that the Taxpayer was domiciled in Arkansas prior to October 2013. Thus, the burden is on the Taxpayer to prove that she changed her domicile to another state before or during the 2014 tax year. The Taxpayer has not shown that she changed her domicile to another state before or during the 2014 tax year by a preponderance of the evidence due to the substantial ties that she retained with Arkansas after her move, specifically her Arkansas driver's license, vehicle registration, property tax assessments, and utilization of an Arkansas mailing address on all her business and tax records. Additionally, as stated above, the Arkansas Supreme Court has stated that acts must control over expressions of intent when a contradiction arises. The record shows that the Taxpayer was a domiciliary and resident of the State of Arkansas during the 2014 tax year.

Since this conclusion is clearly supported by the evidence presented, a consideration of the factors under Regulation 2.26-51-102(9)(c) is unnecessary. However, even if that analysis was pursued, she would still be considered an Arkansas resident due to the utilization of an Arkansas address on most of her business and tax records, her Arkansas driver's license, her motor vehicle registration, and property tax records. It is simply not shown by a preponderance of the evidence that the Taxpayer abandoned her domicile in Arkansas. The Department's assessment of income tax for the 2014 tax year is sustained.

#### **B. Underestimate Penalty**

An underestimate penalty was assessed for the 2014 tax year. Ark. Code Ann. § 26-18-208(6) (Repl. 2012) discusses the underestimate penalty and states as follows, in relevant part:

- (i) If a taxpayer fails to make a declaration of estimated tax and pay on any quarterly due date the equivalent to at least ninety percent (90%) of the amount actually due, there shall be added a penalty of ten percent (10%) per annum to the amount of the underestimate.
- (ii) The ten percent (10%) per annum penalty shall be applied on a quarterly basis.
- (iii) A taxpayer who has an uneven income may compute the ten percent (10%) penalty on an annualized basis.

In 2014, the Taxpayer had a tax liability of more than one thousand dollars and the outstanding tax balance exceeded ten percent (10%) of the total tax due for that period. None of the exceptions listed in that subsection would apply to the Taxpayer's return for this period. Consequently, the underpayment penalty is sustained for the 2014 tax period.

### **C. Failure to Failure to File and Failure to Pay Penalties**

With respect to the failure to file penalty, Ark. Code Ann. § 26-18-208(1) (Repl. 2012) provides as follows:

In the case of a taxpayer's failure to file any return required by any state tax law on or before the date prescribed determined with regard to any extension of time for filing the return, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be added to the amount required to be shown as tax on the return five percent (5%) of the amount of the tax if the failure is not more than one (1) month, with an additional five percent (5%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate . . . .

With respect to the failure to pay penalty, Ark. Code Ann. § 26-18-208(2)(B) (Repl. 2012) provides as follows:

In case of failure to pay the amount shown as tax on any individual income tax return required to be filed, on or before the date prescribed for payment of the tax, unless it is shown that the failure to pay is due to reasonable cause and not to willful neglect, there shall be added to the amount shown as tax on the return one percent (1%) of the amount of the tax if the failure is for not more than one (1) month, with an additional one

percent (1%) for each additional month or fraction of a month during which the failure continues, not to exceed thirty-five percent (35%) in the aggregate . . . .

Further, Ark. Code Ann. § 26-18-208(3)(B) (Repl. 2012)

With respect to any individual income tax return, the amount of the addition under subdivision (1) of this section shall be increased by the amount of the addition under subdivision (2)(B) of this section for any month or fraction of a month to which an addition to tax applies under both subdivision (1) and (2)(B) of this section, not to exceed thirty-five percent (35%) in the aggregate; . . . .

While it is concluded above that the Taxpayer did not sufficiently prove that she abandoned her domicile in Arkansas during her employment in [REDACTED] [REDACTED] and [REDACTED] the Taxpayer did present significant evidence and testimony in support of her earnest belief that she did not qualify as an Arkansas Resident and sufficiently changed her domicile to [REDACTED] and [REDACTED]. A preponderance of the evidence supports a finding that the Taxpayer's failure to file and pay her tax liability was due to reasonable cause and not willful neglect based on the record and the complexity of the issues involved. Consequently, the assessment of the failure to pay penalty and the failure to file penalty are not sustained for the 2014 tax year.

#### **D. Interest**

Interest must be assessed on the sustained tax delinquencies for use of the states' tax dollars. Ark. Code Ann. § 26-18-508 (Repl. 2012).

### **DECISION AND ORDER**

The assessment is sustained after the removal of the failure to pay and failure to file penalties. The file is to be returned to the appropriate section of the

Department for further proceedings in accordance with this Administrative Decision and applicable law. Pursuant to Ark. Code Ann. § 26-18-405 (Supp. 2015), unless the Taxpayer requests in writing within twenty (20) days of the mailing of this decision that the Commissioner of Revenues revise the decision of the Administrative Law Judge, this Administrative Decision shall be effective and become the action of the agency. The revision request may be mailed to the Assistant Commissioner of Revenues, P.O. Box 1272, Rm. 2440, Little Rock, Arkansas 72203. A revision request may also be faxed to the Assistant Commissioner of Revenues at (501) 683-1161 or emailed to [revision@dfa.arkansas.gov](mailto:revision@dfa.arkansas.gov). The Commissioner of Revenues, within twenty (20) days of the mailing of this Administrative Decision, may revise the decision regardless of whether the Taxpayer has requested a revision. The Taxpayer may seek relief from the final decision of the Administrative Law Judge or the Commissioner of Revenues on a final assessment by following the procedure set forth in Ark. Code Ann. § 26-18-406 (Supp. 2015).

OFFICE OF HEARINGS & APPEALS



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TODD EVANS  
ADMINISTRATIVE LAW JUDGE

DATED: May 26, 2017