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SC Court of Appeals

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Frances H. Floyd,)
)
 Petitioner,)
)
 vs.)
)
 South Carolina Department of Revenue,)
)
 Respondent.)

Docket No.: 15-ALJ-17-0458-CC

FINAL DECISION AND ORDER

APPEARANCES: For the Petitioner: Frances H. Floyd, Pro Se
 For the Respondent: G. David Crocker, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) for a final decision and order following a contested case hearing requested by Frances H. Floyd (“Petitioner”). Petitioner challenges a Department Determination issued by the South Carolina Department of Revenue (“Respondent” or “the Department”) on August 6, 2015 which found that Petitioner was a South Carolina resident for the 2008 tax year. Specifically, the Department determined that because Petitioner was a resident of South Carolina for the 2008 tax year, the income Petitioner earned in 2008 is taxable to South Carolina. Based upon its calculations, the Department assessed Petitioner \$3,0003.58 in taxes, penalties and interest for the 2008 tax year.¹

On September 21, 2015, Petitioner filed a Request for a Contested Case Hearing with the ALC. Following notice to the parties, a hearing on the matter was held on February 4, 2016, at the South Carolina Administrative Law Court in Columbia, South Carolina.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and closely passing upon their credibility, and taking into consideration the burden of persuasion by the parties, the

¹ At the contested case hearing, the Department clarified that interest continued to accrue following the issuance of the Department Determination. As of the date of the hearing, the Department was seeking taxes, penalties and interest from Petitioner totaling \$3,086.23.

Court makes the following findings of fact by a preponderance of the evidence:

1. Frances Hunter Floyd, the Petitioner, is a native of Spartanburg, South Carolina. Ms. Floyd lived in Oxford, Mississippi while attending the University of Mississippi. She graduated in December, 2007 with a degree in Studio Arts. Following graduation, Ms. Floyd moved to Jackson Hole, Wyoming.

2. Ms. Floyd testified that she didn't want to return to South Carolina after graduating, and moved to Jackson Hole, Wyoming because of the environment and she had friends who lived there. Prior to college and while attending college, Ms. Floyd assisted her mother who is an event planner in Spartanburg. Because of her background in event planning, Ms. Floyd stated that she searched for employment in that area. However, to have income while she searched for an event planning job, Ms. Floyd worked in the local resort industry. She testified that she worked hospitality jobs during the winter and summer seasons, specifically with Jack Dennis Sports, Inc. and 3 Creek Ranch Golf Club. By 2009, Ms. Floyd stated that she realized that the recession had greatly affected the events planning industry in Jackson Hole, Wyoming and that she was not going to be able to start her career there, nor could she afford to live in that area on her seasonal earnings. Ms. Floyd testified that her mother suggested she apply for special event jobs in emerging markets in Charleston, South Carolina and Atlanta, Georgia.

3. Ms. Floyd explained that in the spring of 2009, she was invited to a friend's wedding in Charleston, South Carolina. Upon the advice of, and with assistance from, her mother, Ms. Floyd stated she met with the owner of Gathering Events, an events planning company in Charleston, and was later offered full-time employment. In May of 2009, Ms. Floyd moved from Jackson Hole, Wyoming to Charleston, South Carolina to begin her career with Gathering Events. She worked for the company for two years doing weddings and floral designs, and has since been hired as the Director of Special Events for a Charleston magazine. Ms. Floyd now lives exclusively in South Carolina.

4. Timothy Weston, an Auditor in the Department's Filing Enforcement Unit, also testified at the hearing. Mr. Weston stated he was assigned the task of auditing Ms. Floyd's tax filings because some of her federal tax forms showed both South Carolina and Wyoming addresses. In addition, some of the information that was shown on the 2008 federal return triggered an investigation into Ms. Floyd's state filing requirements. Mr. Weston explained that Wyoming does not collect state income taxes, and therefore, any income earned in Wyoming by a South

Carolina resident is taxable to South Carolina. Following his review of Ms. Floyd's file, Mr. Weston determined that she was a South Carolina resident, and although she earned income in Wyoming in 2008 and 2009, the 2008 tax year is the only year Ms. Floyd would have a filing requirement because her 2009 income did not meet the threshold for mandatory filing.

5. On June 6, 2014, the Department issued Ms. Floyd a Proposed Notice of Assessment for the 2008 tax year. The Notice informed Ms. Floyd that she failed to file a South Carolina income tax return for the 2008 tax period. On July 29, 2014, the Department received a response from Lewis W. Haselwood, Jr., a certified public accountant ("CPA"), on behalf of Ms. Floyd. Mr. Haselwood asserted that Ms. Floyd did not have an income tax reporting obligation to South Carolina in 2008 because during that time, Ms. Floyd lived and worked in Wyoming. In addition, Mr. Haselwood explained that based on his personal and professional experiences, he advises young taxpayers, regardless of the location of their permanent residence, to use the mailing address of a parent on income tax returns. His rationale for giving this advice is because oftentimes young people's living arrangements and lives tend to be very fluid, and having one address where important documents can be mailed is ideal. In Ms. Floyd's case, the address shown on her 2008 federal return is her father's address in Spartanburg County, South Carolina.

6. Mr. Weston testified that after reviewing Mr. Haselwood's letter, the Department issued a Notice of Assessment on September 16, 2014 assessing Ms. Floyd a monetary amount which included taxes, penalties and interest. A second letter from Mr. Haselwood was received by the Department on September 22, 2014 appealing the Notice of Assessment. Following the appeal, the Department removed the Assessment and sent a letter to Mr. Haselwood requesting that Ms. Floyd provide the Department with a copy of her Wyoming driver's license, Wyoming voter registration card or vehicle registration as proof she was a permanent resident of Wyoming in the 2008 tax year. The proof was to be provided to the Department by November 14, 2014. There was no response to the Department's request. Subsequently, on April 29, 2015, the Department mailed Ms. Floyd a letter stating she could request an appeal conference to discuss the matter with Department personnel. Again, Ms. Floyd did not respond. The final Department Determination was issued on August 6, 2015.

7. In rebuttal, Ms. Floyd testified that when she moved to Wyoming after college, she truly intended on starting a life and career there. However, because of the recession, she was forced to look for work elsewhere. Ms. Floyd also stated she did not get a Wyoming driver's

license because she wasn't aware that she was required to since her South Carolina license wasn't up for renewal, and her vehicle was registered in her father's name. In addition, Ms. Floyd explained that she never registered to vote in South Carolina or Wyoming, and while she didn't own property in Wyoming, she paid rent, earned wages, and had a bank account. Ms. Floyd asserts she considered herself a permanent resident of Wyoming in 2008.

LAW

Based upon the foregoing Findings of Fact, the Court concludes the following as a matter of law:

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to sections 1-23-310 et seq. of the South Carolina Code (Supp. 2015), section 1-23-600(B) of the South Carolina Code (Supp. 2015), and section 12-60-450(E)(3) of the South Carolina Code (2014).

The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness' demeanor and veracity and to evaluate the credibility of his testimony. See, e.g., Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990). The standard of proof in administrative proceedings is a preponderance of the evidence unless otherwise specified. Anonymous v. State Bd. of Med. Exam'rd, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988).

Pursuant to the South Carolina Income Tax Act, "a tax is imposed on the South Carolina taxable income of individuals, estates, and trusts and any other entity except those taxed or exempted..." See S.C. Code Ann. § 12-6-510 (2014 & Supp. 2015). Section 12-6-560 of the South Carolina Code (2014) states:

A resident individual's South Carolina gross income, adjusted gross income, and taxable income is computed as determined under the Internal Revenue Code with the modifications provided in Article 9 of this chapter and subject to allocation and apportionment as provided in Article 17 of this chapter.

Here, the Department asserts Ms. Floyd was a resident of South Carolina during the 2008 tax year, and as such was required to file a 2008 South Carolina tax return, and pay taxes on her Wyoming earnings. S.C. Code Ann. §12-6-30(2) (2014) defines "Resident individual" to mean "an individual *domiciled* in this State." (emphasis added). The Tax Act does not define domicile,

therefore this Court must decide whether Ms. Floyd was domiciled in South Carolina or Wyoming in 2008.

The South Carolina Supreme Court has defined domicile as “the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d. 521 (1975), quoting Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965). In Ravenel, the Court stated:

[I]ntent is a most important element in determining the domicile of any individual. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his *conduct* which is either consistent or inconsistent with such expressed intent. Other elementary propositions which require no citation of authority are that a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment.

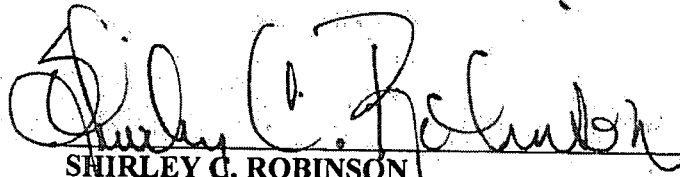
Ravenel v. Dekle, 265 S.C. 364 (1975) (emphasis added).

I find that the credible evidence and testimony in this case supports a finding that in 2008 Petitioner’s conduct shows that she intended for her domicile to be the State of Wyoming. Specifically, the Petitioner had no intention of returning to South Carolina after graduating college, and intended her move to Wyoming to be permanent. Although the Petitioner filed South Carolina tax returns for years prior to 2008 and for subsequent years after moving back to this State. No credible evidence was presented by the Department to dispute the Petitioner’s testimony of her intent.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that the Department Determination finding that Petitioner was a South Carolina resident for the 2008 tax year subject to South Carolina income tax is **REVERSED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

February 11, 2016
Columbia, South Carolina

APPROPRIATE OFFICIALS
I hereby certify that the foregoing is a true and correct copy of the original as filed with the Department of Social Services, Columbia, South Carolina.
This 11 day of February, 2016
