

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

Shirley Robinson, Administrative Law Judge

Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

RECEIVED

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SC Court of Appeals

Frances H. Floyd,.....Respondent,

V.

South Carolina Department of Revenue,.....Appellant.

RECORD ON APPEAL

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FEB 11 2016

**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'rs, 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.

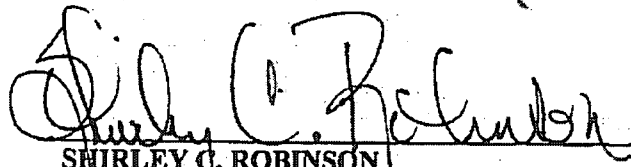
Ravenel v. Dekle, 265 S.C. 364 (1975) (emphasis added).

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.

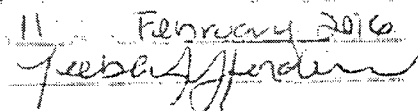
ORDER

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

11 February 2016


Frances H. Floyd,

VS.

Respondent:

**MOTION FOR RECONSIDERATION
UNDER ALC RULE 29(D) AND/OR TO
ALTER OR AMEND UNDER RULE
59(E), SCRPC**

In the present matter, the Petitioner challenged the Department's August 6, 2015, Determination. The Department Determination found that the Petitioner was a resident of South Carolina for the 2008 tax year and, as such, the Petitioner has a tax liability for income earned in 2008. The Petitioner bears the burden of proving she abandoned her

South Carolina domicile and adopted Wyoming as her domicile. The Petitioner must establish this burden by a preponderance of the evidence.¹

At the February 4, 2016, hearing before the ALC, the Petitioner testified that she moved to the State of Wyoming immediately after college and planned to live there indefinitely. The Petitioner further testified she left Wyoming in May 2009 only because of the 2007-2008 economic downturn. The Petitioner claimed she intended for Wyoming to be her place of domicile, having no intention to leave, and therefore does not owe South Carolina income tax for the 2008 tax year. However, the Petitioner's conduct demonstrates that she never adopted Wyoming as her new place of domicile.

During the hearing, the Department offered into evidence all documents and correspondence in its possession relating to the case. The Department's exhibits are replete with requests for the Petitioner to provide documentation that would substantiate her intention to establish Wyoming as her domicile, if that were in fact her true intention. Neither the Petitioner nor her accountant, Mr. Hazelwood ("CPA" or "agent"), offered any documentation to support the assertion that the Petitioner's domicile was anywhere other than South Carolina. Further, the Petitioner offered verbal testimony only, without any additional corroborating evidence to substantiate her position that she had abandoned her South Carolina domicile and established domicile in Wyoming. The Department maintains that when looking at the entirety of the Petitioner's conduct, it is clear she took no steps to abandon her South Carolina domicile or adopt Wyoming as her domicile. Thus, the Petitioner was domiciled in South Carolina in 2008, and this Court should have determined she owed South Carolina income tax for the 2008 tax year.

¹ "Unless otherwise provided by statute, the standard for proof in a contested case is by a preponderance of the evidence." S.C. Code Ann. § 1-23-600(A)(5).

I. The Administrative Law Court Misapplied Ravenel.

In Ravenel, the South Carolina Supreme Court stated “. . . intent is a most important element in determining the domicile of an individual. It is . . . elementary . . . that any expressed intent . . . must be evaluated in the light of [the person’s] conduct which is either consistent or inconsistent with such expressed intent.” Ravenel, 265 S.C. at 379, 218 S.E.2d at 528. (Emphasis added)². Moreover, the Court in Ravenel stated that “a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one.”

The ALC found in its Order that the Petitioner’s conduct was sufficient to establish that she intended to make Wyoming her domicile. (Order, Pg. 5). However, the Petitioner’s intent, when evaluated by her conduct, is belied by the lack of affirmative steps taken to establish Wyoming as her domicile. Per Ravenel, the Petitioner’s intent must be viewed “in the light of his conduct which is either consistent or inconsistent with such expressed intent.” The Petitioner offered nothing to prove she intended to stay in Wyoming indefinitely, except for her uncorroborated testimony. It is uncontroverted that the Petitioner sought work in Wyoming after college. However, the Petitioner’s inaction or avoidance of overt steps to establish domicile in Wyoming is certainly inconsistent with her expressed intent to reside there permanently. An examination of the Petitioner’s inconsistent conduct is required by Ravenel, and should be fully employed here to determine the legitimacy of the Petitioner’s stated intent.

The United States Supreme Court observed the following regarding domicile:

While one’s statements may supply evidence of the intention requisite to establish domicile at a given place of

²The examination of a person’s conduct requires that a court look beyond a taxpayer’s often-self-serving statements of intent and requires an evaluation of objective factors which support or undermine any expressions of intent.

residence, they cannot supply the fact of residence there; and they are of slight weight when they conflict with the fact. This is the more so where, here, the decedent's declarations are shown to have been inspired by the desire to establish a nominal residence for tax purposes, different for his actual residence in fact. In such circumstances the actual fact as to the place of residence and the decedent's real attitude and intention with respect to it as disclosed by his entire course of conduct are the controlling factors in ascertaining his domicile.

(Emphasis added). State of Texas v. State of Florida, 306 U.S. 398 (1939).

As previously stated, the Petitioner did not corroborate her testimony concerning her intention to make Wyoming her domicile with any additional evidence. Per Texas, in the absence of additional evidence to prove her intent, the Petitioner's testimony alone cannot control the outcome of the case and therefore is insufficient to meet her burden of proof. Additionally, the Petitioner's entire course of conduct is revelatory in terms of her real attitude and intention. Looking at the entirety of the Petitioner's conduct, it is clear she took no steps to abandon her South Carolina domicile or adopt Wyoming as her domicile.

Thus in order for the Petitioner to prove she was domiciled in Wyoming, she had to prove that her conduct demonstrated a new domicile. Because the Petitioner took no steps to abandon her South Carolina domicile, her presence in Wyoming is insufficient to establish domicile there, making her intent inconsistent with her conduct. Relying on precedent and the facts in this case, the Petitioner did not abandon her South Carolina domicile and is liable for income tax for the 2008 tax year.

II. ALC Failed To Consider Evidence Relating To The Petitioner's Inaction In Terms Of Establishing Domicile In The State Of Wyoming.

The Petitioner's testimony and alleged intentions alone are not enough to meet her burden of proof. As stated in Jackson v. Commissioner, 1953 WL 10532 Tax Court

(1953), "the rule is well established that bare assertions by a taxpayer as to the amount of his income, or that his return is correct as filed, are not sufficient to overcome the presumption of correctness which attaches to the Commissioner's determinations." (Emphasis added). This is the crux of the Department's Motion. The Petitioner has offered no proof to establish she intended to make Wyoming her permanent home, except for her uncorroborated testimony. The Petitioner and her agent ignored repeated requests from the Department to supply any number of documents that would prove the Petitioner took affirmative steps to make Wyoming her domicile. The Petitioner has offered nothing to further substantiate her claim except for "bare assertions" about establishing domicile in Wyoming.

Additionally, the issue of domicile is not new, nor are the factors necessary for its determination. In Mitchell v. U.S., 88 U.S. 1874, the United States Supreme Court noted that for domicile "[t]o be established it must be proved. Among the circumstances usually relied upon to establish the [intention to remain] are: Declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence; and a place of business."

Jackson and Mitchell taken together illustrate that the establishment of domicile must be accompanied with proof of an intention to remain there for an unlimited time and that proof must be more than a "bare assertion". The Petitioner's mere testimony is neither sufficient to meet her burden to prove she was no longer domiciled in South Carolina nor to overcome her inaction in establishing domicile in Wyoming. The Petitioner's alleged intentions also fail for the same reason: they are unaccompanied by any proof of intent to abandon her South Carolina domicile.

The Petitioner offered no physical evidence to prove she established domicile in Wyoming. To the contrary, the Petitioner testified that during her time in Wyoming, over 12 months, the Petitioner did not get a Wyoming driver's license, register to vote, pay taxes in Wyoming, register her vehicle in Wyoming, and did not purchase real property. While the Petitioner argued that some of these factors either did not apply to her, were inconvenient, or that she was generally unaware of what to do to establish Wyoming as her domicile, the fact remains that she took no affirmative steps to change her domicile from South Carolina to Wyoming.

The fact that the Petitioner had a bank account and rented property while in Wyoming is not determinative of her intent to establish domicile. A bank account can be established without intending to stay permanently in an area. Likewise, the mere use of a local branch of a national bank is not evidence of any desire to adopt domicile in another state. In addition, rent payments are not determinative of intent to establish domicile and does not express permanence any more than transience.

Moreover, the Petitioner testified she possessed a South Carolina Driver's License during the time she lived in Wyoming. Pursuant to S.C. Code Ann. § 56-1-40 (7) (2006), a person may not be licensed in South Carolina if that person is not a resident of South Carolina. Section 56-1-40(7) states: "For purposes of determining eligibility to obtain or renew a South Carolina driver's license, the term "resident of South Carolina" shall expressly include all persons . . . who present documents indicating their intent to live, work, or study in South Carolina." The fact that the Petitioner, undisputedly a South Carolina domiciliary upon leaving college, kept her South Carolina driver's license and never obtained a Wyoming driver's license, despite her allegation that she intended to stay in Wyoming permanently, is evidence that she did not abandon her South Carolina

domicile. Likewise, the Petitioner testified she did not register her vehicle in Wyoming because she wanted her father to maintain the financial liability of having the vehicle registered to him, in South Carolina. Such demonstrates an unwillingness to abandon South Carolina as her domicile in anticipation of receiving the continued financial benefit of not registering her car in Wyoming.

The Petitioner listed a South Carolina post office box on her 2008 federal Individual Income Tax Return ("Form 1040"), attached as Exhibit B³. The Petitioner listed her parents address on her tax returns while at college. The post office box listed on her 2008 Form 1040 is different from the address listed on Form 1040's for prior tax years. The Department received a letter from the Petitioner's agent in July, 2014, attached as Exhibit C. The Department offered this letter into evidence at the hearing. Among other things, the letter states:

As a consequence of my personal and professional experiences, I recommend to young taxpayers that, regardless of the location of their various permanent residences, for purposes of income tax returns and brokerage account statements, they continue to use the mailing address of a parent until their lives become less fluid.

While the letter explains a young person's use of a parent's address, it fails to explain why a South Carolina post office box would be necessary for the Petitioner, who asserts she fully intended to establish domicile in another state. The post office box is not the address of the Petitioner's parents. The 2008 Form 1040, which lists the post office box, was filed in 2009, a full year after the Petitioner went to Wyoming. Further, the Petitioner alleged an intention to stay in Wyoming, indefinitely. The necessity of a post office box on the advice of the Petitioner's CPA until her life becomes "less fluid" would only be

³The Department offered this exhibit into evidence during the Feb. 4, 2016, hearing as Respondent's Exhibits 10, the Department's case file.

useful if the Petitioner continued to contemplate fluidity in her domicile, which she testified was not the case. Maintaining a post office box in South Carolina is patently inconsistent with the establishment of domicile in Wyoming and actually mitigates toward her preserving domicile in South Carolina. At the least, it is further evidence the Petitioner did not have an intention of abandoning her South Carolina domicile and adopting domicile in Wyoming.

Moreover, Tim Weston, the Department's auditor, testified that the Department accepts many forms of documentation as proof of a change in domicile, such as a driver's license from another state, vehicle registration in another state, voter's registration in another state, or proof of property purchased in another state, among others. Mr. Weston also testified that the Petitioner's submission of any of the requisite forms of documentation would have caused the Department to reassess whether the Petitioner was domiciled in South Carolina. The Department notified the Petitioner and her agent of this in the Proposed Notice of Assessment (Ex. C), a letter from Mr. Weston (Ex. D), and the Department's Determination (Ex. E)⁴. The Department admitted these documents into evidence at the February 4, 2016, hearing.

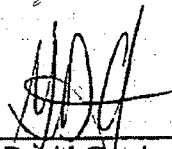
The ALC relied heavily upon the Petitioner's testimony at the hearing in making its determination, as found in its Order. (Order, Pg. 5). While the Petitioner's testimony is worthy of consideration, it should not be the deciding factor, nor carry more weight than that of the Department's offered evidence. The ALC failed to consider the overwhelming weight of both the Department's evidence and the Petitioner's inaction in proving her domicile was anywhere other than South Carolina. Moreover, the Petitioner's uncorroborated testimony and alleged intentions are simply not of greater weight than the

⁴The Department offered these same exhibits into evidence during the Feb. 4, 2016, hearing as Respondent's Exhibits 1, 6 and 9, respectively.

Department's evidence. Therefore, the Petitioner has ultimately failed to meet the requisite burden of proof and the Court should uphold the Department's Determination.

Conclusion

Based on the foregoing, the Department respectfully requests that this Court reconsider its rulings and alter or amend its Order to find that the Petitioner was a South Carolina resident for the 2008 tax year and is thus subject to South Carolina income tax for the 2008 tax year.



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Columbia, South Carolina
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

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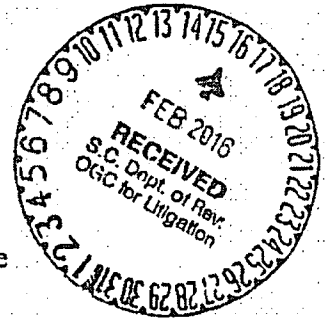
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1. Frances Hunter Floyd, the Petitioner, is a native of Spartanburg, South Carolina. Ms. Floyd lived in Oxford, Mississippi while attending the University of Mississippi. She graduated in December, 2007 with a degree in Studio Arts. Following graduation,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

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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'rs, 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.

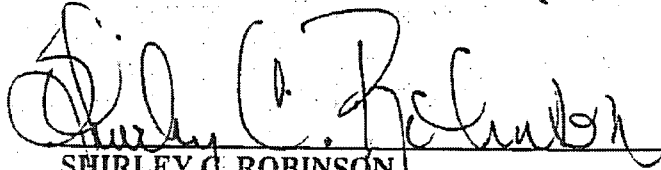
Ravenel v. Dekle, 265 S.C. 364 (1975) (emphasis added).

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

1040

Department of the Treasury - Internal Revenue Service

U.S. Individual Income Tax Return 2008

(99)

IRS Use Only - Do not write or staple in this space.

OMB No. 1545-0074

Label

(See instructions on page 14.)

Use the IRS label. Otherwise, please print or type.

For the year Jan. 1-Dec. 31, 2008, or other tax year beginning		2008, ending		OMB No. 1545-0074
Your first name and initial	Last name	Your social security number		
Frances Hunter	Floyd			
If a joint return, spouse's first name and initial	Last name	Spouse's social security number		
Home address (number and street). If you have a P.O. box, see page 14.		Apt. no.		You must enter your SSN(s) above.
PO Box 1150 A WYOMING RESIDENT				
City, town or post office, state, and ZIP code. If you have a foreign address, see page 14.		29333		Checking a box below will not change your tax or refund.
Drayton SC				

Presidential Election Campaign ☒ Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 14) ☐ You ☐ Spouse

Filing Status ☒ 1 Single ☐ 4 Head of household (with qualifying person). (See page 15.) If the qualifying person is a child but not your dependent, enter this child's name here. ☐ 2 Married filing jointly (even if only one had income) ☐ 3 Married filing separately. Enter spouse's SSN above and full name here. ☐ 5 Qualifying widow(er) with dependent child (see page 16)

Exemptions ☒ 6a Yourself. If someone can claim you as a dependent, do not check box 6a. ☐ 6b Spouse. ☐ 6c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ☒ If a qualifying child for child tax credit (see page 17)	(5) ☐ If a qualifying child for dependent care credit (see page 17)

If more than four dependents, see page 17.

d Total number of exemptions claimed ☐ 1

Income	7	8a	9a	10	11	12	13	14	15a	16a	17	18	19	20a	21	22
Wages, salaries, tips, etc. Attach Form(s) W-2	17,481.															
Taxable interest. Attach Schedule B if required	16,712.															
Tax-exempt interest. Do not include on line 8a																
Ordinary dividends. Attach Schedule B if required			5,638.													
Qualified dividends (see page 21)			5,638.													
Taxable refunds, credits, or offsets of state and local income taxes (see page 22)																
Alimony received																
Business income or (loss). Attach Schedule C or C-EZ																
Capital gain or (loss). Attach Schedule D if required. If not required, check here ☐																
Other gains or (losses). Attach Form 4797																
IRA distributions																
Pensions and annuities																
Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E																
Farm income or (loss). Attach Schedule F																
Unemployment compensation																
Social security benefits																
Other income. List type and amount (see page 28)																
Add the amounts in the far right column for lines 7 through 21. This is your total income																40,156.

Adjusted Gross Income	23	24	25	26	27	28	29	30	31a	32	33	34	35	36	37
Educator expenses (see page 28)															
Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ															
Health savings account deduction. Attach Form 8889															
Moving expenses. Attach Form 3903															
One-half of self-employment tax. Attach Schedule SE															
Self-employed SEP, SIMPLE, and qualified plans															
Self-employed health insurance deduction (see page 29)															
Penalty on early withdrawal of savings															
Alimony paid b Recipient's SSN															
IRA deduction (see page 30)															
Student loan interest deduction (see page 33)															
Tuition and fees deduction. Attach Form 8917															
Domestic production activities deduction. Attach Form 8803															
Add lines 23 through 31a and 32 through 35															16.
Subtract line 36 from line 22. This is your adjusted gross income															40,140.

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 88.

8A1210 2.000

Form 1040 (2008)

JSA
RS

KIF033 M822 07/09/2009 12:44:23 V08-6.4 Floyd, Hunter

12

Exhibit B
ROA 020

08K13240 - 5818

Frances Hunter Floyd

Supplement to Form 1040

Sources of Compensation

Owner- Ship	Description	Total Wages	Federal Withheld	Soc. Sec. Withheld	Medicare Withheld
Wages					
T	Jack Dennis Sports, Inc.	5,713.	420.	354.	83.
T	3 Creek Ranch Golf Club	11,768.	1,156.	730.	171.
Total - wages		17,481.	1,576.	1,084.	254.

Grand Total	17,481.	1,576.	1,084.	254.
-------------	---------	--------	--------	------

Qualified Dividends

Pship, S Corp. & Estate/Trust Qualified Dividends

T Elizabeth H Floyd Trust fbo Frances	5,638.
Total Pass Through Qualified Dividends	5,638.
Total to 1040, line 9b	5,638.

08K13240 - 32819

Copy B To Be Filed With Employee's FEDERAL Tax Return.		2008 OMB No. 1545-0008	
a Employee's SSN	1 Wages, tips, other comp. 5713.44	2 Federal income tax withheld 419.61	
	3 Social security wages 5713.44	4 Social security tax withheld 354.24	
b Employer ID no. (EIN)	5 Medicare wages and tips 5713.44	6 Medicare tax withheld 82.84	
c Employer's name, address, and ZIP code JACK DENNIS SPORTS INC PO BOX 3369 JACKSON WY 83001			
d Control number			
e Employee's name, address, and ZIP code HUNTER FLOYD 509 MOCKINGBIRD LANE SPARTANBURG SC 29307			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12	
13 Statutory employee	14 Other	12b Code	
Retirement Plan		12c Code	
Third-party sick pay		12d Code	
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement
This information is being furnished to the Internal Revenue Service.

Dept. of the Treasury - IRS

Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return.		2008 OMB No. 1545-0008	
a Employee's SSN	1 Wages, tips, other comp. 5713.44	2 Federal income tax withheld 419.61	
	3 Social security wages 5713.44	4 Social security tax withheld 354.24	
b Employer ID no. (EIN)	5 Medicare wages and tips 5713.44	6 Medicare tax withheld 82.84	
c Employer's name, address, and ZIP code JACK DENNIS SPORTS INC PO BOX 3369 JACKSON WY 83001			
d Control number			
e Employee's name, address, and ZIP code HUNTER FLOYD 509 MOCKINGBIRD LANE SPARTANBURG SC 29307			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12	
13 Statutory employee	14 Other	12b Code	
Retirement Plan		12c Code	
Third-party sick pay		12d Code	
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS

This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Copy C For EMPLOYEE'S RECORDS. (See Notice to Employees).		2008 OMB No. 1545-0008	
a Employee's SSN	1 Wages, tips, other comp. 5713.44	2 Federal income tax withheld 419.61	
	3 Social security wages 5713.44	4 Social security tax withheld 354.24	
b Employer ID no. (EIN)	5 Medicare wages and tips 5713.44	6 Medicare tax withheld 82.84	
c Employer's name, address, and ZIP code JACK DENNIS SPORTS INC PO BOX 3369 JACKSON WY 83001			
d Control number			
e Employee's name, address, and ZIP code HUNTER FLOYD 509 MOCKINGBIRD LANE SPARTANBURG SC 29307			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12	
13 Statutory employee	14 Other	12b Code	
Retirement Plan		12c Code	
Third-party sick pay		12d Code	
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS

Copy 2 To Be Filed With Employee's State, City, or Local Income Tax Return.		2008 OMB No. 1545-0008	
a Employee's SSN	1 Wages, tips, other comp. 5713.44	2 Federal income tax withheld 419.61	
	3 Social security wages 5713.44	4 Social security tax withheld 354.24	
b Employer ID no. (EIN)	5 Medicare wages and tips 5713.44	6 Medicare tax withheld 82.84	
c Employer's name, address, and ZIP code JACK DENNIS SPORTS INC PO BOX 3369 JACKSON WY 83001			
d Control number			
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13 Statutory employee	14 Other	12b Code	
Retirement Plan		12c Code	
Third-party sick pay		12d Code	
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS

JUPPERFI * NTF 0492

ROA 022

08K13240 - 32815

a Control number		OMB No. 1545-0008					
b Employer identification number (EIN)		1 Wages, tips, other compensation		2 Federal income tax withheld			
		5,713.		420.			
c Employer's name, address, and ZIP code		3 Social security wages		4 Social security tax withheld			
Jack Dennis Sports, Inc.		5,713.		354.			
P O Box 3369		5 Medicare wages and tips		6 Medicare tax withheld			
Jackson WY 83001		5,713.		83.			
d Employee's social security number		7 Social security tips		8 Allocated tips			
e Employee's first name and initial Last name Suff.		9 Advance EIC payment		10 Dependent care benefits			
Frances Hunter Floyd		11 Nonqualified plans		12a See instructions for box 12			
PO Box 1150		13 Statutory employee Retirement plan Third-party sick pay		12b			
Drayton SC 29333		☐ ☐ ☐		12c			
		14 Other		12d			
f Employee's address and ZIP code							
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
SC						19 Local income tax	
						20 Locality name	

Form **W-2** Wage and Tax Statement
 Copy C - For EMPLOYEE'S RECORDS (see Notice to Employee on back of Copy B.)

2008

Department of the Treasury-Internal Revenue Service

Safe, accurate, IRS e-file FASTI Use

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2008 W-2 and EARNINGS SUMMARY



Safe, accurate, FAST! Use **ADP** Visit the IRS Web Site at www.irs.gov/efile

Employee Reference Copy
W-2 Wage and Tax Statement 2008

Control Number 100364 49/RTU Dept 010 Corp T Employer use only 52

Employer's name, address, and ZIP code 003403884
3 CREEK RANCH GOLF CLUB
2800 RANCH HOUSE CIRCLE
JACKSON WY 83001

Batch #00927

Employer's name, address, and ZIP code
FRANCES FLOYD
PO BOX 9275
JACKSON, WY 83002

1	Wages, tips, other comp.	2	Federal income tax withheld
11767.63		1155.87	
3	Social security wages	4	Social security tax withheld
11767.63		729.59	
5	Medicare wages and tips	6	Medicare tax withheld
11767.63		170.63	
7	Social security tips	8	Allocated tips
9	Advance EIC payment	10	Dependent care benefits
11	Nonqualified plans	12a	See instructions for box 12
14	Other	12b	
		12c	
		12d	
		13	Stat emp./Ret. plan/3rd party sick pay
15	State	16	State wages, tips, etc.
WY			
17	State income tax	18	Local wages, tips, etc.
19	Local income tax	20	Locality name

This blue Earnings Summary section is included with your W-2 to help describe portions in more detail. The reverse side includes general information that you may also find helpful.

1. The following information reflects your final 2008 pay stub plus any adjustments submitted by your employer.

Gross Pay	11767.63	Social Security Tax Withheld	729.59	WY State Income Tax	
Fed. Income Tax Withheld	1155.87	Medicare Tax Withheld	170.63	Box 17 of W-2	
Box 2 of W-2		Box 4 of W-2		Box 18 of W-2	

2. Your Gross Pay was adjusted as follows to produce your W-2 Statement:

Wages, tips, other Compensation	11767.63	Social Security Wages	11767.63	Medicare Wages	11767.63	WY State Wages, Tips, Etc.	11767.63
Box 1 of W-2		Box 3 of W-2		Box 5 of W-2		Box 16 of W-2	
Gross Pay	11767.63	Reported W-2 Wages	11767.63				

3. Employee W-4 Profile. To change your Employee W-4 Profile information, file a new W-4 with your payroll dept.

FRANCES FLOYD
PO BOX 9275
JACKSON, WY 83002

Social Security Number:
Taxable Marital Status: SINGLE
Exemptions/Allowances:
FEDERAL: 1
STATE: No State Income Tax

© 2008 ADP, INC.

Fold and Detach Here

1 Wages, tips, other comp.	11767.63	2 Federal income tax withheld	1155.87
3 Social security wages	11767.63	4 Social security tax withheld	729.59
5 Medicare wages and tips	11767.63	6 Medicare tax withheld	170.63

Control number 100364 49/RTU Dept 010 Corp T Employer use only 52
Employer's name, address, and ZIP code 003403884
3 CREEK RANCH GOLF CLUB
2800 RANCH HOUSE CIRCLE
JACKSON WY 83001

7	Social security tips	8	Allocated tips
9	Advance EIC payment	10	Dependent care benefits
11	Nonqualified plans	12a	See instructions for box 12
14	Other	12b	
		12c	
		12d	
		13	Stat emp./Ret. plan/3rd party sick pay

Employer's name, address and ZIP code
FRANCES FLOYD
PO BOX 9275
JACKSON, WY 83002

15	State	16	State wages, tips, etc.
WY			
17	State income tax	18	Local wages, tips, etc.
19	Local income tax	20	Locality name

Federal Filing Copy
W-2 Wage and Tax Statement 2008
Copy 2 to be filed with employee's Federal Income Tax Return.

1 Wages, tips, other comp.	11767.63	2 Federal income tax withheld	1155.87
3 Social security wages	11767.63	4 Social security tax withheld	729.59
5 Medicare wages and tips	11767.63	6 Medicare tax withheld	170.63

Control number 100364 49/RTU Dept 010 Corp T Employer use only 52
Employer's name, address, and ZIP code 003403884
3 CREEK RANCH GOLF CLUB
2800 RANCH HOUSE CIRCLE
JACKSON WY 83001

7	Social security tips	8	Allocated tips
9	Advance EIC payment	10	Dependent care benefits
11	Nonqualified plans	12a	See instructions for box 12
14	Other	12b	
		12c	
		12d	
		13	Stat emp./Ret. plan/3rd party sick pay

Employer's name, address and ZIP code
FRANCES FLOYD
PO BOX 9275
JACKSON, WY 83002

15	State	16	State wages, tips, etc.
WY			
17	State income tax	18	Local wages, tips, etc.
19	Local income tax	20	Locality name

WY State Filing Copy
W-2 Wage and Tax Statement 2008
Copy 2 to be filed with employee's State Income Tax Return.

1 Wages, tips, other comp.	11767.63	2 Federal income tax withheld	1155.87
3 Social security wages	11767.63	4 Social security tax withheld	729.59
5 Medicare wages and tips	11767.63	6 Medicare tax withheld	170.63

Control number 100364 49/RTU Dept 010 Corp T Employer use only 52
Employer's name, address, and ZIP code 003403884
3 CREEK RANCH GOLF CLUB
2800 RANCH HOUSE CIRCLE
JACKSON WY 83001

7	Social security tips	8	Allocated tips
9	Advance EIC payment	10	Dependent care benefits
11	Nonqualified plans	12a	See instructions for box 12
14	Other	12b	
		12c	
		12d	
		13	Stat emp./Ret. plan/3rd party sick pay

Employer's name, address and ZIP code
FRANCES FLOYD
PO BOX 9275
JACKSON, WY 83002

15	State	16	State wages, tips, etc.
WY			
17	State income tax	18	Local wages, tips, etc.
19	Local income tax	20	Locality name

WY State Filing Copy
W-2 Wage and Tax Statement 2008
Copy 2 to be filed with employee's State Income Tax Return.

a Control number		OMB No. 1545-0008		This information is being furnished to the Internal Revenue Service. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.			
b Employer identification number (EIN)				1 Wages, tips, other compensation	2 Federal income tax withheld		
				11,768.	1,156.		
c Employer's name, address, and ZIP code				3 Social security wages	4 Social security tax withheld		
3 Creek Ranch Golf Club				11,768.	730.		
2800 Ranch House Circle				5 Medicare wages and tips	6 Medicare tax withheld		
Jackson WY 83001				11,768.	171.		
d Employee's social security number				7 Social security tips	8 Allocated tips		
				9 Advance EIC payment	10 Dependent care benefits		
e Employee's first name and initial		Last name		Suff.		11 Nonqualified plans	12a See instructions for box 12
Frances Hunter Floyd						12b	
PO Box 1150						12c	
Drayton		SC 29333				12d	
f Employee's address and ZIP code				13 Statutory employee ☐ Retirement plan ☐ Third-party sick pay ☐		12e	
				14 Other		12f	
						12g	
						12h	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	
						19 Local income tax	
						20 Locality name	

Form **W-2** Wage and Tax Statement
Copy G - For EMPLOYEE'S RECORDS (see Notice to Employee on back of Copy B.)

2008

Department of the Treasury—Internal Revenue Service

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Internal Revenue Service
United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Account Transcript

Request Date: 06-23-2014
Response Date: 06-23-2014
Tracking Number: 100202236475

FORM NUMBER: 1040
TAX PERIOD: Dec. 31, 2008

TAXPAYER IDENTIFICATION NUMBER:

8

FRANCES HUNTER FLOYD
28 PIEDMONT AVE
CHARLESTON, SC 29403-3336-287

IRS DATA RCVD FROM TAXPAYER

<<<<POWER OF ATTORNEY/TAX INFORMATION AUTHORIZATION (POA/TIA) ON FILE>>>>

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	0.00	
ACCRUED INTEREST:	0.00	AS OF: Aug. 03, 2009
ACCRUED PENALTY:	0.00	AS OF: Aug. 03, 2009

ACCOUNT BALANCE PLUS ACCRUALS (this is not a payoff amount):	0.00
---	------

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:	01
FILING STATUS:	Single
ADJUSTED GROSS INCOME:	40,140.00
TAXABLE INCOME:	31,190.00
TAX PER RETURN:	3,435.00
SE TAXABLE INCOME TAXPAYER:	0.00
SE TAXABLE INCOME SPOUSE:	0.00
TOTAL-SELF-EMPLOYMENT TAX:	0.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER)	Jul. 08, 2009
PROCESSING DATE	Jul. 27, 2009

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed	20092808	07-27-2009	\$3,435.00
n/a	30221-190-00352-9			
806	W-2 or 1099 withholding		04-15-2009	-\$1,576.00
460	Extension of time to file ext. Date 10-15-2009		04-15-2009	\$0.00
460	Extension of time to file ext. Date 10-15-2009		04-15-2009	\$0.00
670	Payment		04-15-2009	-\$1,259.00
766	Tax relief credit		04-15-2009	-\$600.00
960	Appointed representative		07-14-2009	\$0.00

This Product Contains Sensitive Taxpayer Data

08K13240 - 32831

1350



SOUTH CAROLINA DEPARTMENT OF REVENUE
PROPOSED ASSESSMENT FOR
FAILURE TO FILE for Period 2008

1-331

(Rev. 8/19/13)
3401

Page 1 of 1

III IIT NOA FILE ENF
 FRANCES FLOYD

28 PIEDMONT AVE.
 CHARLESTON, SC 29403-3336

Notice Date: 08-02-2014
 Taxpayer SSN: XXX-XX-0008
 Spouse's SSN:
 Document Number: 83000321-2
 Period Covered: 2008
 Proposed Assessment: \$2,167.50
 Response Due Date: 07/02/2014
 Tax Type: INDIVIDUAL INCOME TAX

The South Carolina Department of Revenue has received information regarding your income for the year 2008. It has been determined that you have a filing requirement for South Carolina for the tax period 01/01/2008 thru 12/31/2008 and failed to file an Individual Income tax return. The "Proposed Assessment Detail" found on Page 3 explains how the tax has been calculated.

If you agree with this notice...

You can simply pay the proposed assessment amount listed on page 3. Mail your check or money order along with the Payment Coupon below.

If you disagree with this notice, but agree that a return is due...

Complete a tax return for the period listed and mail it with the Response Form at the bottom of page 2. Blank forms are available from several sources (see Page 2 - "What Type of Assistance is Available"). If you are adjusting any of the income tax items please attach a statement explaining the change. Also see the appeal procedures on page 4.

If you disagree with this notice...

If you believe that you have filed this return or that you were not required to file a return for this year, please respond in writing, include the reasons you were not required to file or any pertinent documentation that would prove that you filed. If a payment was made with your return include a copy of your canceled check (front and back). Mail this and all documentation with the Response Form at the bottom of Page 2. Also see page 2 for "What Type of Assistance is Available" and appeal procedures on page 4.

CUT HERE AND RETURN THE COUPON BELOW IN THE ENVELOPE PROVIDED

MAIL TO: South Carolina Department of Revenue P O BOX 11249 Columbia SC 29211-1249

FRANCES FLOYD

Please check the appropriate boxes.

- ☐ Submit payment
 I am paying the following amount:

\$

Write your Document Number on your check or money order.

Make check or money order payable to: SC Department of Revenue

- ☐ Address or phone number change
 See reverse side.

Notice Date: 08-02-2014
 Taxpayer SSN: XXX-XX-0008
 Spouse's SSN:
 Document Number: 83000321-2
 Period Covered: 2008
 Proposed Assessment: \$2,167.50
 Response Due Date: 07/02/2014
 Tax Type: INDIVIDUAL INCOME TAX

Payment

34011510 830003212 2008 00000216750

Form 028

Taxpayer Name:

FRANCES FLOYD

Notice Date:

08/02/2014

Taxpayer SSN:

XXX-XX-0000

Spouse's SSN:

Document Number: 830003212

Period Covered:

2008

Proposed Assessment: \$2,167.50

Response Due Date: 07/02/2014

Tax Type: INDIVIDUAL INCOME TAX

Proposed Assessment Detail for Audit Period 01/01/2008 to 12/31/2008

1. Federal Taxable Income		1.	31,100.00
2. SC Adjustments		2.	.00
3. SC Adjusted Taxable Income		3.	31,100.00
4. SC Tax (from table)		4.	1,727.00
Payments			
Estimated Withholding	471.00		
Payment with Extension	.00		
Estimated Payments	.00	5.	471.00
6. Tax Due		6.	1,256.00
7. Penalty 628.00	Declaration Penalty 38.23	7.	666.23
8. Interest		8.	245.27
9. Total Amount Due		9.	\$2,167.50

TOTAL AMOUNT DUE: \$2,167.50**COMMENTS**

The withholding amount shown has been estimated. If you do not agree with this proposed assessment you must provide documentation for the actual amount withheld. All known credits have been applied before calculating your tax due.

Any information from the IRS is received and used pursuant to an exchange agreement between the IRS and the state of South Carolina authorized under title 26, United States Code section 6103(d).

2008 Federal 1040

31,100

830003212 2008 00000215750



State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

April 29, 2015

FRANCES H. FLOYD
28 PIEDMONT AVE
CHARLESTON, SC 29403

PNOA Date: October 7, 2014
Respond by Date: May 29, 2015

RE: 2008 SC Individual Income Taxes

Dear Ms. Floyd:

The Department of Revenue issued you a proposed assessment for the above referenced tax year(s) on the above indicated date. Your CPA/tax professional submitted information stating that he advises young adults who establish permanent residence in distance places to use the mailing address of a parent, for Income Tax purposes, until their lives become less fluid.

I sent Mr. Haselwood a letter dated October 14, 2014 a letter requesting that you submit documents showing that you established residency in Wyoming such as a Driver's License, Voter Registration Card or Vehicle Registration. These are some of the steps one will take when moving to another state to establish permanent residence instead of temporary work residence.

The Department's position on legal residency for income tax purposes is supported by numerous court cases where the end result is always that "once legal residency is established in one state, it is maintained until a new one is established in another state", and also that "intent to change domicile, the most important aspect, is displayed through actions".

Furthermore, as a resident of SC, all of your income, from whatever source derived, is taxable to the state, regardless of where it was earned (see SC Code of Law Section 12-6-2220 (6)).

Since you timely appealed this proposed assessment, you may request a conference with the Taxpayer and Business Services Division, by telephone or in person, to discuss your reasons for appealing. Should you desire such a conference, you must notify me in writing within 30 days of this letter. Your notification should also include a phone number where you can be reached for purposes of the telephonic conference. Mail your request to my attention at the following address:

Filing Enforcement Unit
Post Office Box 11249
Columbia, SC 29211-1249

Once the Department receives your request, it will notify you of the conference date and time. In the event you wish to withdraw your appeal, please sign and date the statement below and send this letter back to us in the enclosed envelope.

I wish to withdraw my appeal: _____

Taxpayer's signature (both signatures if joint)

Date _____

If you fail to respond within 30 days, your appeal will be forwarded to the Office of General Counsel for Litigation for the issuance of a Final Agency Determination.

Sincerely,

Timothy Weston
Auditor II
Filing Enforcement
South Carolina Department of Revenue

Cc: Shaneika Holmes, Filing Enforcement Supervisor
Lewis W. Haselwood, Jr.

DEPARTMENT DETERMINATION

Taxpayer:

Frances H. Floyd
28 Piedmont Avenue
Charleston, SC 29403-3336

Period Involved:

2008 Individual Income Tax

Matter in Dispute:

1. Was Frances H. Floyd (the "Taxpayer") a South Carolina resident for the 2008 tax year?

Amount in Dispute:

Tax	\$1727.00
Interest	358.22
Penalty	918.36
Total	\$3,003.58

Determination:

1. Taxpayer was a South Carolina resident for the 2008 period.

Relevant Facts:

1. Taxpayer is a native of Spartanburg, South Carolina.
2. In 2004, Taxpayer left South Carolina to attend college in Oxford, Mississippi. She graduated in December of 2007. During her three years in Oxford, she filed South Carolina tax returns for periods 2005 to 2007.
3. In December of 2007, Taxpayer left Oxford, Mississippi and moved to Jackson, Wyoming, where she worked in the resort industry. She was employed at Jack Dennis Sports, Inc. and 3 Creek Ranch Golf Club. She earned wages in Wyoming until May of 2009.
4. On Taxpayer's 2008 W-2 from Jack Dennis Sports, Inc., Taxpayer provided a Spartanburg, South Carolina address. Line 1 of her 2008 Form 1040 lists a Drayton, South Carolina address. Above the South Carolina mailing address, Taxpayer wrote "a Wyoming Resident."

5. Upon leaving Wyoming in May of 2009, Taxpayer returned to South Carolina.
6. On June 6, 2014, the South Carolina Department of Revenue (the "Department") issued the Taxpayer a Proposed Notice of Assessment for the 2008 Income Tax year, notifying Taxpayer that she failed to file a South Carolina income tax return for the 2008 period.
7. On July 29, 2014, the Department received an appeal from Lewis W. Haselwood, a CPA representing Taxpayer. Mr. Haselwood stated that Taxpayer established residency in Wyoming because she lived and worked in Wyoming during the 2008 period. He also stated that he advised Taxpayer to use the mailing address of a parent for income tax purposes until her residency became less fluid. Taxpayer's parents have a Spartanburg, South Carolina mailing address.
8. On September 16, 2014, the Department issued a Notice of Assessment. On September 22, 2014, the Department received a second appeal letter from Taxpayer.
9. On October 9, 2014, the Department removed the Assessment and sent a letter to Mr. Haselwood requesting that Taxpayer provide copies of a Wyoming driver's license and voter registration to prove intent to establish domicile in Wyoming. Taxpayer did not provide any of these documents, nor did Mr. Haselwood provide them on her behalf.
10. On April 29, 2015, the Department sent Taxpayer a letter inviting her to an appeal conference to discuss her reasons for appealing. The Taxpayer did not respond to this letter.

Analysis:

- I. **Taxpayer was domiciled in South Carolina for the 2008 period, requiring her to file a South Carolina tax return for that period.**

For the tax period in dispute, Taxpayer was domiciled in South Carolina. While she lived and worked in Jackson, Wyoming, she failed to establish domicile in Wyoming.

The Taxpayer argues that she was not a resident of South Carolina in 2008, and therefore, should not be liable for South Carolina income taxes. Applicable statutory authority and case law demonstrate the Taxpayer was a South Carolina resident in 2008, and therefore, subject to South Carolina income taxes.

S.C. Code Ann. § 12-6-510(A) (2014) of the South Carolina Income Tax Act imposes a tax on the South Carolina taxable income of individuals, estates, and certain other entities. For residents, S.C. Code Ann. § 12-6-560 (2014) indicates how this taxable income is to be determined. More specifically, such section states, "[a] resident

individual's South Carolina gross income, adjusted gross income, and taxable income is computed as determined under the Internal Revenue Code” Pursuant to such Code, taxable income is simply gross income minus certain deductions and exclusions (see I.R.C. § 63). In the instant situation, the Taxpayer's income is taxable under § 12-6-510(A) if it comes within the definition of “gross income” at I.R.C. § 61. That definition defines “gross income” to include: “(a) . . . all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items[.]”

The issue then becomes whether the Taxpayer is a South Carolina resident individual. S.C. Code Ann. § 12-6-30(2) (2014) defines “resident individual” as “an individual domiciled in this State.” The statute does not define “domicile.” The South Carolina Supreme Court, however, assigned the following meaning to the term: “. . . 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, 379, 218 S.E.2d 521, 528 (1975). The Court further stated that a person may have several residences or dwelling places, but may only have one domicile at a particular time, and such person maintains his domicile until he establishes a new one. Id.

In addressing domicile, the Supreme Court in Ravenel stated: “. . . intent is a most important element in determining the domicile of an individual. It is . . . elementary . . . that any expressed intent . . . must be evaluated in the light of [the person's] conduct which is either consistent or inconsistent with such expressed intent.” Ravenel, 265 S.C. at 379, 218 S.E.2d at 528. That is, intent is manifested through actions. In the instant matter, examination of the facts indicates the Taxpayer intended to be a South Carolina resident, and in fact, was a South Carolina resident in 2008. Moreover, the Taxpayer has not submitted evidence establishing any alternate domicile.

Here, Taxpayer failed to furnish documentation proving that she established domicile in Wyoming. It is undisputed that she resided and earned wages in Wyoming for the 2008 period, but she has provided no proof that she established domicile in Jackson, Wyoming. She failed to provide a Wyoming driver's license, voter identification, or vehicle registration that would indicate her intent to forgo South Carolina domicile and remain indefinitely in Wyoming. In addition, the Taxpayer retained her South Carolina driver's license during her time in Wyoming. Without this documentary evidence, Taxpayer has not shown that she lost her South Carolina domicile and gained Wyoming domicile.

Furthermore, the facts in this matter demonstrate that the Taxpayer was a South Carolina resident in 2008. The Taxpayer filed her 2008 federal income tax return using her South Carolina address. Moreover, the Taxpayer used her South Carolina address on her W-2s for the 2008 tax year. As our Supreme Court recognized in Ravenel, intent is the most important element in determining domicile. That intent is manifested through actions. In the present matter, the Taxpayer returned to South Carolina in 2009. Her return to this state proves that her departure to Wyoming was temporary, and that South Carolina was

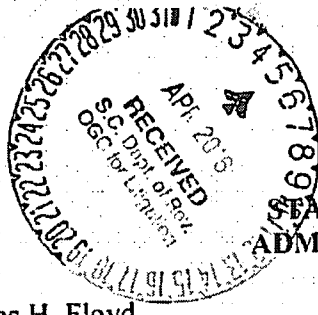
where she intended to return. Therefore, the Taxpayer was a resident of South Carolina and required to file a South Carolina income tax return as a resident for 2008.

Because Taxpayer was domiciled in South Carolina for the 2008 period, she is required to file a South Carolina tax return and pay South Carolina income taxes, pursuant to S.C. Code Ann. §§ 12-6-510(A), 12-6-30(2) (2014).

Conclusion:

For the foregoing reasons, Frances H. Floyd was a resident of South Carolina during the 2008 tax period and owes \$3,003.58 in taxes, penalties, and interest.

August 6, 2015



FILED

MAR 21 2016

SC ADMIN. LAW COURT

Frances H. Floyd,	)	Docket No.: 15-ALJ-17-0458-CC
	)	
Petitioner,	)	
vs.	)	
	)	ORDER DENYING MOTION
South Carolina Department of Revenue,	)	FOR RECONSIDERATION
	)	
Respondent.	)	
	)	

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") pursuant to a contested case hearing requested by Frances H. Floyd ("Petitioner") challenging a Department Determination issued by the South Carolina Department of Revenue ("Respondent" or "the Department") on August 6, 2015. In its determination, the Department found that Petitioner was a South Carolina resident for the 2008 tax year, and as such, Petitioner has a tax liability for income she earned in 2008. A hearing on the matter took place before this Court on February 4, 2016. On February 11, 2016, the Court issued a Final Decision and Order reversing the Department Determination. Thereafter, on February 22, 2016, the Department filed a motion requesting that the Court reconsider, alter, or amend its Final Decision and Order. A response in opposition to the Department's motion was filed by Petitioner on March 3, 2016.

The Department alleges in its motion that this Court incorrectly applied the domicile standard and did not sufficiently consider Petitioner's inaction in its decision. Specifically, the Department argues this Court did not give sufficient weight to Petitioner's inaction on matters such as obtaining a driver's license, voter registration, or vehicle registration in the state of Wyoming. All of which the Department contends evinces Petitioner did not have the requisite intent to become a Wyoming resident and was still domiciled in South Carolina for the tax year in dispute. Respondent also contends Petitioner's 2008 Form 1040 reflected a South Carolina address, which is further evidence, per Respondent, that Petitioner was a South Carolina resident. It is Respondent's contention that Petitioner's testimony regarding her conduct is not sufficient evidence of her intent. More specifically, Respondent believes the Court should have required Petitioner's testimony be corroborated by documented evidence of her efforts to change her residence from South Carolina to Wyoming.

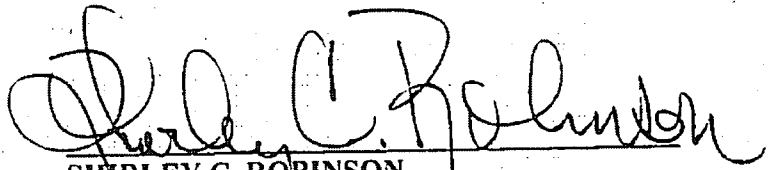
The domicile standard is outlined by the South Carolina Supreme Court in Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d 521 (1975). In that case, the Court defined domicile as “the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” Id., 265 S.C. at 379, 218 S.E.2d at 528 (quoting Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965)). The Court further stated, “intent 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.” Id. In addition, “the act and intent as to domicil[e], and not the duration of residence, are the determining factors.” Holden v. Cribb, 349 S.C. 132, 140, 561 S.E.2d 634, 639 (Ct. App. 2002) (internal quotations and citation omitted). Also, see State of Texas v. State of Florida, 306 U.S. 398, 425, 59 S.Ct. 563, 576 (1939) (a case amongst several states in the United States Supreme Court’s original jurisdiction deciding residency and domicile of a wealthy decedent for estate tax purposes).

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) (citation omitted). 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) (citations omitted); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990) (citing Thompson v. Brunson, 283 S.C. 221, 321 S.E.2d 622 (Ct. App. 1984)). The standard of proof in a contested case is a preponderance of the evidence unless otherwise specified. S.C. Code Ann. § 1-23-600(A)(5) (Supp. 2015); Anonymous v. State Bd. of Med. Exam’rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1988) (citation omitted). “A ‘preponderance of the evidence’ is evidence which convinces as to its truth.” Gorecki v. Gorecki, 387 S.C. 626, 633, 693 S.E.2d 419 (Ct. App. 2010) (citing DuBose v. DuBose, 259 S.C. 418 424, 192 S.E.2d 329, 331 (1972)). Furthermore, because this Court hears a contested case de novo as the fact-finder, it is not bound by the Department’s determination. See Engaging & Guarding Laurens County’s Environment (EAGLE) v. S.C. Dept. of Health & Envtl. Control, 407 S.C. 334, 344, 755 S.E.2d 444, 449 (2014) (citations omitted).

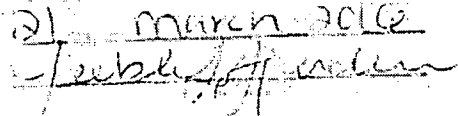
After applying the above stated domicile standard to the evidence presented, this Court found that Petitioner demonstrated the necessary intent and conduct to be a domiciliary of Wyoming for the time in question. Although the Department would prefer more tangible evidence in the form of a driver's license, vehicle or voter registration, I find Petitioner's credible testimony as to her intent upon moving to Wyoming, as well as her efforts to remain in the State after moving, are sufficient to satisfy the domicile standard. Arguments raised in Respondent's motion were raised during the contested hearing, and have been addressed by this Court, and Respondent has brought to light nothing that causes the Court to change its final decision in this matter.

THEREFORE, IT IS HEREBY ORDERED that the Department's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
South Carolina Administrative Law Judge

March 21, 2016
Columbia, South Carolina

21 March 2016


STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 15-ALJ-17-0458-CC

Frances H. Floyd,

Petitioner,

v.

South Carolina Department of
Revenue,

Respondent.

ADMINISTRATIVE HEARING

Thursday, February 4, 2016
10:08 a.m. - 11:01 a.m.

The hearing before the Honorable Shirley C. Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 4th day of February, 2016 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

ROA 039

APPEARANCES

G. David Crocker, Esquire
 South Carolina Department of Revenue
 300-A Outlet Boulevard
 Columbia, South Carolina 29211-9979
 Attorney for the SCDOR

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EXHIBITS

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(The original exhibits were retained by Judge Robinson.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 THE COURT: Okay. We've got everyone here and we're
2 ready. Okay, Ms. Floyd, are you ready?

3 MS. FLOYD: Yes, ma'am.

4 THE COURT: Okay. Mr. Kirk, are you ready, Mr.
5 Crocker?

6 MR. CROCKER: Yes, Your Honor.

7 THE COURT: Okay. Well, we'll get started. This is
8 the --it's docket number 15-ALJ-17-0458 and the
9 Petitioner in this case is Frances H. Floyd and
10 -- versus the Department of Revenue. We've got
11 Ms. Floyd, who is appearing pro se?

12 MS. FLOYD: Yes, ma'am.

13 THE COURT: Okay. Mr. Floyd, you do understand that
14 you do have the right to be represented by
15 legal counsel in this matter?

16 MS. FLOYD: Yes, ma'am.

17 THE COURT: And we've got the department being
18 represented by David Crocker?

19 MR. CROCKER: Yes, Your Honor.

20 THE COURT: Okay. And the issue in the case is Ms.
21 Floyd filed this request for contested hearing
22 to -- because she's objecting to the
23 department's assessment of a -- a tax and
24 penalties in the amount of \$3,003.58.

25 MS. FLOYD: Correct.



1 THE COURT: If I -- if there's nothing for me to
2 address pre-hearing, we'll begin by hearing
3 brief opening statements beginning with you,
4 Ms. Floyd, as the Petitioner.

5 MS. FLOYD: Okay. Do I need to take the stand or I
6 stay here?

7 THE COURT: No, no, no. Okay. Let me explain.

8 MS. FLOYD: Okay.

9 THE COURT: The opening statement is just for you to
10 in summary form, tell me what you intend to
11 show this Court as you present your case. You
12 don't have to do an opening statement. You can
13 just pass on that and -- but I will hear your
14 full testimony once you've been sworn and take
15 the witness stand.

16 MS. FLOYD: I think I will just pass on the opening
17 statement.

18 THE COURT: Okay. Mr. Crocker?

19 MR. CROCKER: Your Honor, this is a preliminary
20 matter. I'd like to submit the department's
21 case file to the Court and also just -- if
22 that's acceptable?

23 THE COURT: Yes.

24 MR. CROCKER: And also just make a note to with the
25 updated interest the total now is \$3,086.23.



1 THE COURT: Okay. Ms. Floyd, you don't have -- I'm
2 assuming you don't have any objection to the
3 department submitting it's file?

4 MS. FLOYD: No, ma'am.

5 THE COURT: Okay. Thank you. It's admitted, Mr.
6 Crocker.

7 (Respondent's Exhibit Number Ten was admitted into
8 evidence.)

9 MR. CROCKER: Thank you, Your Honor.

10 THE COURT: Uh-huh. Are you ready for opening now?

11 THE COURT: Yes, I am.

12 MR. CROCKER: Okay. Thank you very much.

13 OPENING STATEMENT BY MR. CROCKER: May it please the
14 Court, South Carolina Code annotated 12-6-
15 510(A) of the South Carolina Income Tax Act
16 imposes a tax on South Carolina taxable income
17 of individuals, estates, and certain other
18 entities. For residents, South Carolina Code
19 annotated 12-6-560 indicates how this taxable
20 income is to be determined. More specifically,
21 the section states a residence individual -- a
22 resident individual of South Carolina gross
23 income, adjusted gross income, taxable income
24 is computed as determined under the Internal
25 Revenue Code. Pursuant to that code, taxable



1 income is simply gross income minus certain
2 deductions and exclusions. In the instance
3 situation, the Petitioner's income is taxable
4 under 12-6-510(A) if it comes under the
5 definition of gross income. That definition
6 defines gross income to include all income from
7 what -- whatever source derived, including but
8 not limited to the following items and (1) of
9 that says compensation for services including
10 fees, commissions, fringe benefits, and similar
11 items. The issue here then becomes whether the
12 Petitioner is a South Carolina resident
13 individual for the 2008 tax year. South
14 Carolina Code 12-6-30(2) defines resident
15 individual as an individual domiciled in this
16 state and while the statute doesn't define
17 domicile, the South Carolina Supreme Court did
18 assign the following meaning to the term. The
19 place where a person has his or her true fixed
20 and permanent home and principal establishment
21 to which he has, whenever he's absent, an
22 intention to return. That's in Ravenel, which
23 is -- cite is 265 South Carolina or correction,
24 265 S.C. 364. The Court further stated that a
25 person may have several residences or dwelling



1 places, but may only have one domicile at a
2 particular time and such person maintains his
3 domicile until he establishes a new one. And
4 address and domicile the Supreme Court in
5 Ravenel stated intent is -- is the most
6 important element in determining the domicile
7 of an individual. If it's elementary, then an
8 expressed intent must be evaluated in light of
9 the person's conduct, which is either
10 consistent or inconsistent with such expressed
11 intent and that is intent is man -- is
12 obviously manifested through actions, which is
13 what we'll -- we'll look at here today. In the
14 instant matter, examination of the facts
15 indicates that the Petitioner intended to be a
16 South Carolina resident and in fact was a South
17 Carolina resident for 2008. Moreover, the
18 Petitioner has not submitted any evidence to
19 the department establishing any alternate
20 domicile. For the tax period in dispute, the
21 Petitioner was domiciled in South Carolina and
22 while she may have lived and worked in Jackson,
23 Wyoming, she failed to establish a domicile
24 there. The Petitioner argues or at least
25 argued to the department that she wasn't a



1 resident of South Carolina in 2008 and
2 therefore should not be liable for South
3 Carolina income taxes. Applicable statutory
4 authority in case law demonstrates the
5 Petitioner was a South Carolina resident in
6 2008 and therefore is subject to South Carolina
7 income taxes. Here, the Petitioner has failed
8 to furnish the department with any
9 documentation proving that she had established
10 domicile in Wyoming and while it's undisputed
11 that she resided and earned wages in Wyoming
12 for the 2008 period, she is yet to provide
13 anything to the department to prove that she
14 intended to change her domicile. Furthermore,
15 the facts in this matter demonstrate the
16 Petitioner, again, was a South Carolina
17 resident in 2008, she filed her 2008 federal
18 income tax return using her South Carolina
19 address, and the Petitioner used her South
20 Carolina address on her W2 2008 tax year, and
21 as the Supreme Court recognized in Ravenel,
22 intent is the most important element in
23 determining domicile and that intent can be
24 manifested through various actions, but the
25 present matter, the Petitioner returned to



1 South Carolina in 2008. Her return to the
2 state proves that her departure to Wyoming was
3 temporary and that the -- and South Carolina
4 was where she intended to return. And because
5 she was domiciled in South Carolina for the
6 2008 period, she is required to file South
7 Carolina tax and pay South Carolina income
8 taxes pursuant to Code Sections 12-6-510(A),
9 12-6-30(2). The department intends to show
10 this, everything that was stated here including
11 the -- the Petitioner's intentions by calling
12 Mr. Tim Weston, who is a department auditor,
13 and the department will prove today that the
14 Petitioner did nothing to establish domicile
15 and did nothing to show that there was any
16 intent, other than to return to South Carolina.
17 We would ask that you uphold the department's
18 determination and affirm the department's
19 assessment of \$3086.23. Thank you.

20 **THE COURT:** Ms. Floyd, if you're ready to present
21 your case, you can -- I'm assuming that you are
22 the sole witness in this case?

23 **MS. FLOYD:** Correct.

24 **THE COURT:** Okay. If you'll come forward and just
25 bring any documents that you intend to refer to



1 or ---

2 MS. FLOYD: Okay.

3 THE COURT: --- anything that you would like to have
4 the Court admit as an exhibit in this case.

5 MS. FLOYD: Yes, ma'am.

6 THE COURT: Before you take your seat, face the
7 court reporter, raise your right hand, and
8 she'll swear you.

9 MADAME COURT REPORTER: Do you solemnly swear that
10 the testimony you're about to give in this
11 matter is the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 MS. FLOYD: I do.

14 MADAME COURT REPORTER: State your name.

15 MS. FLOYD: Frances Hunter Floyd.

16 THE COURT: Ms. Floyd, I'm ready to hear your
17 testimony.

18 FRANCES H. FLOYD, having been duly sworn, testifies:
19 as follows:

20 MS. FLOYD - DIRECT TESTIMONY: Okay. I guess it was
21 2007 of -- December 2007, I graduated from the
22 University of Mississippi ready to get out of
23 the South with the intention of staying out of
24 the South. I moved to Jackson Hole, Wyoming
25 where I worked for the Hospitality Group. I



1 worked seasonal jobs. I was on the mountain
2 working at Jack Dennis Forest, which is an
3 outdoor rental sports for the mountain for the
4 winter season, I guess it was January through
5 May. When that seasonal job was over, I then
6 went to Three Creek Ranch Golf Course, which
7 was another summer seasonal job. In that time,
8 well, I'll back up a little bit. I graduated
9 with a studio art degree. I have a -- a
10 history of events in my family. My mother is
11 an event designer and I grew up kind of doing
12 freelance work with her. While out in Jackson
13 doing the -- the la-di-da, day-to-day jobs out
14 there that weren't true careers that I knew at
15 the age of 23. I think I was, you know, kind
16 of over the just getting by and having a little
17 too much fun out there too, to be honest, and
18 realized I needed to figure out a career. So
19 in that, I realized that there was a small --
20 a small world of events and weddings out in
21 Jackson Hole and they were a niche kind of
22 boutique event market. So I was like well
23 maybe I could tack into that. I don't have --
24 I guess on paper, I don't really have event
25 documentation of showing that I worked and did



1 successful events because I was never formally
2 hired, I just did them with my mother. So I
3 intended on doing events out there and in the
4 time of the recession hitting, you know,
5 opportunities were slow. Jackson Hole, a
6 boutique resort, weddings and other high-end
7 events were few and far between. There was one
8 sole event planner out in -- in Jackson and I
9 reached out to her a few times and I was like
10 I will -- I will clean your vases, your flower
11 vases, I'll you know sweep your shop up and she
12 was like honestly, we're so slim right now, I
13 can't even take you on. I can't even -- I
14 don't even need you as, you know, an -- an
15 unpaid helper at that. So I was like, okay, so
16 it seemed like the events were out here, not
17 only event's world, but the recreational,
18 golfing world that I was in at that time or the
19 mountain skiing world were kind of a low time,
20 which means, jobs were harder to find. While
21 out there, I did hear of job opportunities in
22 Atlanta, Georgia and job -- job opportunities
23 in Charleston, South Carolina. I'm from
24 Spartanburg, South Carolina. My parents are
25 still in Spartanburg, South Carolina. Through



1 my parents, my -- my parents' close friends,
2 their daughter was married in Charleston, South
3 Carolina under a company, Gathering Events, and
4 they made a call and they're like would you be
5 interested, I have a dear friend who is in
6 Wyoming, she's having trouble finding work, she
7 would be interested in leaving the mountain
8 town, although she intended to stay there,
9 which was my true and honest intent, but I
10 couldn't afford to be there any longer. And I
11 didn't -- like I was saying, I didn't want to
12 wait tables, I kind of wanted to find my --
13 find my path and -- and really dig into it and
14 see if events was my true career and my true
15 path. In that, this family said they -- they
16 got -- they had Gathering Events reach out to
17 my -- my parents and with my mother's history
18 in events, mom reached out to me and she was
19 like they, you know, it might be worth -- while
20 you're in Charleston for a friend's wedding --
21 I was in Charleston, flew from Wyoming there to
22 attend a wedding, it might be worth going by
23 and talking to this company there and seeing
24 what they can do. Low and behold, we hit it
25 off. Once I flew back to Wyoming, we carried



1 on conversation with Gathering Events in
2 Charleston. Wrapping up the winter season, I
3 guess it was 2009 at that point, and again jobs
4 were harder and fewer and far between and that
5 was the summer of 2009, which everyone knows is
6 the -- the good one, I kind of reassessed
7 everything and Atlanta didn't seem as appealing
8 to me and the events job in Atlanta wasn't
9 exciting to me either, so I figured, you know
10 what, let's do this, let's make the leap and
11 against wanting to leave a beautiful mountain
12 town where I was happy and wanted to stay and,
13 you know, was with someone there and wanted to
14 remain and get married and have the family and
15 have the beautiful little, you know, one tree
16 wonderland out there. It just wasn't -- I
17 couldn't, honestly couldn't afford to do it and
18 it was just time to kind of grow up a little
19 bit and -- and pursue a career that I thought
20 I had a passion for and indeed, I do, which is
21 still my career today. So I guess it was -- it
22 was just after Easter of 2009, I moved directly
23 to Charleston, South Carolina and started
24 working internships with Gathering Events, who
25 then employed me, I guess, for about a year-



1 and-a-half, nearly two years, where I did event
2 design, weddings, floral design, was trained in
3 everything in the event's world. I later left
4 -- left Gathering to then specialize in floral
5 design for weddings, so I was a floral designer
6 for high-end events and weddings in Charleston,
7 South Carolina, the number one wedding city in
8 the town of -- in the state other than Las
9 Vegas, which I don't think that really counts,
10 but so -- so from there I did floral design and
11 then from floral design, I moved to Garden &
12 Gun Magazine where I am the visual and creative
13 director for brand development and special
14 events. So now I run all the special events
15 for the magazine. So that's kind of my life in
16 a nutshell from there. I think I just wanted
17 to prove that I was there with the intention of
18 staying there and it still sounds lovely to me
19 to go back there and maybe in years time I can
20 because I have a ground that I can start my own
21 company out there. At the time then, there
22 just wasn't anything to facilitate what I
23 needed to do in order, again, to grow up. So
24 I guess that's kind of all I have for that.

25 THE COURT: Mr. Crocker?



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1 MR. CROCKER: Yes, Your Honor, thank you.

2 MS. FLOYD - CROSS EXAMINATION BY MR. CROCKER:

3 Q: How long did you live in Wyoming?

4 A: I moved to Wyoming New Year's Day of 2007, was
5 there for the full year of 2008, and left the
6 day after Easter of 2009, so about a year-and-
7 a-half, I'd say, a little over a year-and-a-
8 half.

9 Q: And since you came back to South Carolina, have
10 you resided exclusively in South Carolina?

11 A: Correct.

12 Q: Okay. So despite the bad economy, did -- while
13 you were in Wyoming, did you obtain a Wyoming
14 Driver's License?

15 A: I did not.

16 Q: Did you register to vote in Wyoming?

17 A: I did not.

18 Q: Did you file your 2008 taxes as a South
19 Carolina resident?

20 A: I imagine my CPA did -- or no, he didn't. Our
21 family CPA, Lewis Hazelwood, handles all those
22 matters because I didn't -- I wasn't living
23 here and I was essentially domiciled in the
24 State of Wyoming, he didn't see the -- I guess,
25 that I needed to do it in the State of South



1 Carolina, and again, if I'm allowed to go back
2 and say, I -- I never knew I was supposed to
3 get a driver's license and my driver's license
4 wasn't set to expire, so I kind of just didn't
5 even know it was necessary.

6 Q: Did you file your 2009 taxes as a South
7 Carolina resident?

8 A: Again, I believe my CPA probably did, both of
9 -- yes.

10 Q: And you said that you were going to -- you
11 moved to Wyoming to determine your career path?

12 A: Correct, to ---

13 Q: Because -- or go ahead. I'm sorry.

14 A: Yes, to -- to -- excuse me. To work for
15 myself, to make my own money, but then to
16 realize and I did very quickly that I'm not --
17 I needed something bigger and I'm ready to have
18 a career. So it was, you know, working at a
19 snowboarding shop and working the ski rental
20 and working at a golf course and easy day-to-
21 day jobs that weren't true career paths for me.
22 So that was the point, was to get out -- get
23 away from family in South Carolina. I was in
24 Mississippi for five years, to get out of
25 Mississippi, to get out of the South and -- and



1 move on and see what else the world had to
2 offer, pretty much.

3 Q: But the purpose of you going out there was to
4 determine what you were going to do next?

5 A: No, no, it was there to see if they had the
6 events -- the events capacity out there knowing
7 that it was in South Carolina. I know that it
8 is in Atlanta, and it, I guess, was essentially
9 in Mississippi. I wanted to see if it was a
10 little different out there and if they had the
11 capacity to -- to fulfill what I wanted to --
12 to then be.

13 Q: Career wise?

14 A: Career wise, correct.

15 Q: Okay. I don't have any further questions, Your
16 Honor.

17 THE COURT: Ms. Floyd, let me ask you. Where did
18 you file your 2008 taxes? State taxes. Did
19 you file state taxes in Wyoming?

20 MS. FLOYD: I -- I'm honestly not sure. Our CPA
21 does all that. I'm guessing Wyoming. Sorry.

22 THE COURT: Okay. Thank you.

23 MS. FLOYD: Okay.

24 THE COURT: And Ms. Floyd that's -- you are your
25 sole witness, is that correct?



1 MS. FLOYD: Yes, ma'am.

2 THE COURT: Okay. So I assume that's the extent of
3 your case?

4 MS. FLOYD: Yes, ma'am.

5 THE COURT: Mr. Crocker, I'm ready to hear from the
6 department.

7 MR. CROCKER: Right. Thank you, Your Honor. We
8 just have one witness as well. We'd like to
9 call Mr. Tim Weston to the stand.

10 THE COURT: Okay. Mr. Weston. Mr. Weston, if you
11 will face the court reporter and raise your
12 right hand, she will swear you.

13 MADAME COURT REPORTER: Do you solemnly swear that
14 the testimony you're about to give in this
15 matter is the truth, the whole truth, and
16 nothing but the truth, so help you God?

17 MR. WESTON: I do.

18 MADAME COURT REPORTER: State your name for the
19 record.

20 MR. WESTON: Timothy Weston.

21 TIMOTHY WESTON, having been duly sworn, testifies as
22 follows:

23 MR. WESTON - DIRECT EXAMINATION BY MR. CROCKER:

24 Q: Okay. Mr. Weston, where are you currently
25 employed?



1 A: South Carolina Department of Revenue, Filing
2 Enforcement Department.

3 Q: And how long have you worked for the Department
4 of Revenue?

5 A: A little over seven years.

6 Q: Okay. And again, what's your current job
7 title?

8 A: Filing Enforcement Auditor A, I mean, excuse
9 me, Auditor C.

10 Q: What's the difference between A and C?

11 A: A is when you're first starting out. I've been
12 in the department a little over four years and
13 we get a little more difficult cases.

14 Q: Okay.

15 A: As an Auditor C.

16 Q: Along those same lines then, what -- can you
17 explain to the Court what that position and
18 what those duties entail, like what are you
19 responsible for in terms of that position?

20 A: Well, we review non-filing cases to determine
21 if they have -- if they have a filing
22 requirement with South Carolina and we also
23 audit federal and state returns and we do
24 certain federal projects.

25 Q: Now are you familiar with the -- the taxpayer,



1 the Petitioner, in this case, Frances Hunter
2 Floyd?

3 A: Yes.

4 Q: And how are you aware of the Petitioner?

5 A: I was given Ms. Hunter's case to review to see
6 if she had a filing requirement with the State
7 of South Carolina.

8 Q: Now in your capacity as an employee of the
9 department, what work, if any, have you done,
10 specifically you, on -- on this file?

11 A: When I reviewed the case, there was some W2
12 addressed to South Carolina, there was interest
13 income addressed to South Carolina, and there
14 was some W2 addressed to Wyoming. I reviewed
15 the statutes. Wyoming does not have a state
16 income tax, therefore, all W2 wages would be
17 taxable to South Carolina.

18 Q: Okay. And -- and I hate to make you quantify
19 this, but in a percentage, how much work did
20 you do on this file?

21 A: I never really quantified it. Well, after the
22 initial review, I saw the only year that was
23 not filed that had a filing requirement was
24 2008, so I reviewed years 2008 and 2009. In
25 2009, she did not have a filing requirement.



1 because her income earnings was less than the
2 standard deductions.

3 Q: Sure. Let -- let me take a step back and I
4 just meant in terms of the work that was done
5 on this file. Did you do the majority of the
6 work on the file?

7 A: Yes.

8 Q: Okay. Was there anybody else that helped you?

9 A: No.

10 Q: Okay. All right. And just again, if you don't
11 mind, I think this is where you got started,
12 but could you explain to the Court how this
13 matter originated, kind of -- kind of from
14 start to finish?

15 A: Well, the IRS sent documents of individuals who
16 filed with an address of South Carolina, so
17 that we can review to see if they filed a state
18 return. If their federal return was filed, but
19 the state return was not, so then we look to
20 see if that person had a filing requirement
21 with the state and from the information I had,
22 she had a filing requirement with South
23 Carolina.

24 Q: Okay. And with permission of the Court, I'm
25 going to hand you what's been marked as



1 Respondent's Exhibit One. Do you recognize
2 that document?

3 A: Yes.

4 Q: And what is that?

5 A: This is a proposed assessment contacting the
6 taxpayer giving them our assessment for the
7 year and saying -- giving them an opportunity
8 to respond to say, you know, because if they
9 had filed in another state, say they filed in
10 another state or if they don't believe that
11 they have a filing requirement, to state that
12 and send in supporting document as to why they
13 should not be filing with South Carolina.

14 Q: Okay. Who is that document addressed to?

15 A: Frances Floyd.

16 Q: Okay. And what tax periods are at issue there?

17 A: 2008.

18 MR. CROCKER: Okay. Your Honor, at this time, I'd
19 like to offer Respondent's Exhibit One into
20 evidence?

21 THE COURT: Ms. Floyd, have you reviewed that
22 document?

23 MS. FLOYD: Yes, ma'am.

24 THE COURT: Okay. Do you have any objection to it
25 being admitted?



1 MS. FLOYD: No, ma'am.

2 THE COURT: Okay. Thank you. It's admitted with no
3 objection.

4 (Respondent's Exhibit Number One was admitted into
5 evidence.)

6 MR. CROCKER: Okay. Thank you, Your Honor.

7 Q: I'll grab that back from you really quickly.
8 Is a taxpayer informed to have documents ready
9 if there's a dispute?

10 A: That notice there asking them to have their
11 documents ready if they are disputing.

12 Q: Sure, so I'm going to ask you to read something
13 really quickly that portion where in bold
14 print, it says, if you disagree with this
15 notice.

16 A: "If you -- if you disagree with this notice, if
17 you believe that you have filed this return or
18 that you are not required to file a return for
19 this year, please respond in writing, include
20 the reasons you are not required to file, or
21 any pertinent documentation that would prove
22 that you filed. If a payment was made with
23 your return, include a copy of your canceled
24 check front and back, mail this and all
25 documentation with the response form at the



1 bottom of page two. Also see page two for what
2 type of assistance is available and appeal
3 procedures on page four."

4 Q: Okay. Thank you. And that's on the front page
5 of the proposed assessment?

6 A: Yes.

7 Q: And it essentially states if there's a dispute,
8 provide the -- here's your opportunity to
9 provide the -- the department with any further
10 documentation that may help us understand, is
11 that right?

12 A: Correct.

13 Q: Okay. Has that happened in the past? Have
14 taxpayers provided documentation to the
15 department that has helped clarify issues?

16 A: Yes.

17 Q: Okay. Even residency issues?

18 A: Yes.

19 Q: Okay. And -- and in the past, typically, what
20 would help clarify residency issue?

21 A: Usually, things like you -- you turned in your
22 -- you surrendered your South Carolina Driver's
23 License for a driver's license of the other
24 state, you register your vehicles in that
25 state, most individuals register to vote, some



1 purchase a home, and you know, list that as
2 their primary residence.

3 Q: Okay. I'm going to hand you what's been marked
4 as Respondent's Exhibit Two and have you take
5 a look at this, if that's okay with the Court?
6 Do you recognize that?

7 A: Yes.

8 Q: Okay. What is that?

9 A: This was the response from Ms. Floyd's CPA
10 disagreeing with that she was -- needed to file
11 a South Carolina return.

12 Q: Okay. And is the Petitioner's signature
13 represented on those documents?

14 A: I -- not on this document. Her signature was
15 on the power-of-attorney ---

16 Q: Okay.

17 A: --- granting him permission to act on her
18 behalf.

19 Q: Okay. What's the date on that document?

20 A: July 19, 2014.

21 MR. CROCKER: All right. Your Honor, at this time,
22 the department would like to offer Respondent's
23 Exhibit Two into evidence?

24 THE COURT: Ms. Floyd, have you reviewed that
25 document?



1 MS. FLOYD: Yes, ma'am.

2 THE COURT: Okay. I'm assuming you don't have an
3 objection?

4 MS. FLOYD: No, ma'am.

5 THE COURT: Okay. It's admitted with no objection.
6 (Respondent's Exhibit Number Two was admitted into
7 evidence.)

8 MR. CROCKER: Thank you.

9 Q: Was there anything about this letter that stuck
10 out to you that you remember by way of
11 explanation? I mean, it was the protest
12 letter. What was the -- the crux of the
13 protest?

14 A: Well, he stated that she was a Wyoming
15 resident, but the big thing he said, he advises
16 all of his young clients to file using their
17 parents' address because at a young age, you're
18 fluid, you move around from place to place, so
19 that, you know, you have a firm place -- place
20 for your documents to go to.

21 Q: Okay. I'm going to hand you what's been marked
22 as Respondent's Exhibit Three. Do you
23 recognize that?

24 A: Yes.

25 Q: What is that?



1 A: This is the South Carolina power-of-attorney
2 form.

3 Q: Okay. Appointing who as the power-of-attorney?

4 A: Appointing Lewis W. Hazelwood, Jr., as power-
5 of-attorney.

6 Q: Okay. Do you see the taxpayer's signature on
7 that document?

8 A: Yes.

9 Q: What was the purpose for you receiving that
10 document?

11 A: I received this document so that I would be
12 able to speak freely to Mr. Hazelwood about Ms.
13 Hunter's case.

14 MR. CROCKER: Okay. Your Honor, at this time, the
15 department would like to offer Respondent's
16 Exhibit Three into evidence?

17 THE COURT: Ms. Floyd, no objection?

18 MS. FLOYD: No objection.

19 THE COURT: Okay. It's admitted with no objection.
20 (Respondent's Exhibit Number Three was admitted into
21 evidence.)

22 MR. CROCKER: Thank you.

23 Q: Did you correspond with the Petitioner or to
24 the taxpayer in this case at anytime, yourself?

25 A: Yes, I did.



1 Q: Okay.

2 A: The first correspondence I sent back to the
3 CPA. He called me and I asked him for certain
4 documents to show that she established
5 residency. When I didn't hear anything from
6 him, then I drafted a letter and sent it to the
7 Petitioner herself.

8 Q: Okay. The -- the documentation that you just
9 testified that you asked the CPA for, is that
10 the same documentation you testified earlier
11 that you would typically ask for when you're
12 trying to get a taxpayer to provide some
13 substantiation as to where their document -- or
14 their -- their residency was?

15 A: Yes.

16 Q: Okay. And what did you receive in return after
17 having that conversation with the CPA?

18 A: No contact. Well, from the CPA, I didn't
19 receive anything and so I drafted the letter to
20 Ms. Hunter and no contact.

21 Q: No response from Ms. Hunter ---

22 A: No response.

23 Q: --- or from Ms. Floyd either?

24 A: Right.

25 Q: Okay. And you testified that the letter, the



1 protest letter you received from Ms. Floyd's
2 CPA, Mr. Hazelwood, you received that on July
3 19, 2014?

4 A: It came to the department, but it did not reach
5 me.

6 Q: So you received it shortly -- approximately the
7 19th -- shortly thereafter, right?

8 A: No, sir.

9 Q: Okay.

10 A: It took about a couple of months before I got
11 it.

12 Q: Okay.

13 A: Because in between that time, the notice of
14 adjustment turned into an assessment. Mr.
15 Hazelwood sent a second letter and actually it
16 was the second one that reached me.

17 Q: Okay.

18 A: And ...

19 Q: But in terms of documentation for the residency
20 issue, you didn't hear anything back from
21 either the CPA or Ms. Floyd?

22 A: Correct.

23 Q: I'm going to hand you what's been marked
24 Respondent's Exhibit Four. Do you recognize
25 that?



1 A: Yes, this is the assessment letter that was
2 sent out.

3 Q: And did you prepare it?

4 A: No, this automatically comes prepared after a
5 period of time that a notice of adjustment if
6 it's not been reworked or satisfied, then it
7 turns into an assessment.

8 Q: Okay. So in terms of a time line, we've had
9 these interactions with both the taxpayer,
10 Petitioner, and her CPA, and because you didn't
11 get any response, that then turned into an
12 assessment, which this letter ---

13 A: Yes, this ---

14 Q: --- embodies?

15 A: --- turned into an assessment.

16 Q: Okay.

17 A: But this turned into an assessment because I
18 did not get the initial letter timely.

19 Q: Correct.

20 A: And therefore, once I got the second letter and
21 I reviewed and saw the first letter came
22 timely, we removed the assessment because they
23 filed an appeal within the 90-day period.

24 Q: Sure, so explain that process a little bit too,
25 so then the -- so the assessment was sent out



1 because we didn't have a letter from the CPA,
2 then once you received that letter, what
3 happened to the assessment?

4 A: I -- I went and adjusted it to zero so that
5 there would be no bill out there.

6 Q: Okay. But again, in terms of residency issue,
7 you didn't hear anything from either the CPA or
8 Ms. ---

9 A: Correct.

10 Q: --- Ms. Floyd?

11 MR. CROCKER: Your offer or Your Honor, excuse me,
12 Your Honor, at this time, the department would
13 like to offer Exhibit -- or what's been marked
14 as Petitioner's, correction, Respondent's
15 Exhibit Four into evidence?

16 THE COURT: Okay.

17 MS. FLOYD: No objection.

18 THE COURT: No objection. It's admitted with no
19 objection.

20 (Respondent's Exhibit Number Four was admitted into
21 evidence.)

22 MR. CROCKER: Thank you.

23 Q: I will hand you what's been marked as
24 Respondent's Exhibit Five. And do you
25 recognize that?



1 A: Yes.

2 Q: Okay. What is that?

3 A: This is a letter to Hazelwood. After we spoke,
4 I went ahead and put it in writing to send to
5 him requesting the copy of driver's license,
6 voter registration, something to show that she
7 established residency and was asking for a
8 response by November 14, 2014.

9 Q: Okay. What -- what's the date on that letter?

10 A: I mailed this on -- I drafted this on October
11 9, 2014.

12 Q: And you prepared that document?

13 A: Yes.

14 MR. CROCKER: Your Honor, at this time, the
15 department would like to offer Respondent's
16 Exhibit Five into evidence?

17 MS. FLOYD: No objection.

18 THE COURT: It's admitted with no objection.
19 (Respondent's Exhibit Number Five was admitted into
20 evidence.)

21 Q: Now you said after that -- after you spoke to
22 him, you sent this out?

23 A: Right.

24 Q: What do you mean by after that?

25 A: Once I did get his response, I made a phone



1 call to him.

2 Q: Okay. So again in terms of a time line, if
3 we're going back here, we had the assessment,
4 you received some documentation, so then you --
5 you withdrew the assessment, and then you
6 drafted this letter, is that right?

7 A: Correct.

8 Q: Okay. And -- and among other things in the
9 letter, you ask him to please provide any kind
10 of documentation to prove that the Petitioner
11 was a Wyoming resident for that period of time?

12 A: Correct.

13 Q: Was anything submitted to you after that?

14 A: No, sir.

15 Q: Okay. Were there statements made to you
16 expressing any kind of assurances that some
17 documentation would be provided in the future?

18 A: Not after our -- to my recollection, I don't
19 believe I spoke to Mr. Hazelwood again from the
20 time I drafted that letter.

21 Q: Okay. So there -- there was nothing said to
22 you about, you know, their just waiting on
23 something or that they'll -- they'll get some
24 documentation, but that -- you know, there's
25 somebody else they've got to wait on like a DMV



1 or anything like that?

2 A: Not to my recollection. I would say, no.

3 Q: And that was on October 9, 2014, is when you
4 sent that letter out?

5 A: Yes, sir.

6 Q: Okay. I'm going to hand you what's been marked
7 as Respondent's Exhibit Six. Do you recognize
8 that?

9 A: Yes.

10 Q: Okay. What is that?

11 A: This is a conference letter addressed to Ms.
12 Floyd highlighting some things that was in the
13 letter and giving her an opportunity to
14 schedule a conference with us.

15 Q: And did you prepare it?

16 A: Yes, I did. This is dated April 29, 2015, to
17 respond by May 29, 2015.

18 MR. CROCKER: Your Honor, at this time, the
19 department would like to offer Respondent's
20 Exhibit Six into evidence?

21 THE COURT: Ms. Floyd?

22 MS. FLOYD: No objection.

23 THE COURT: Okay. It's admitted with no objection.
24 (Respondent's Exhibit Number Six was admitted into
25 evidence.)



1 MR. CROCKER: Thank you.

2 Q: So between October of '14 and April of '15, did
3 you have any correspondence between the CPA or
4 the Petitioner in this case?

5 A: No, sir.

6 MS. FLOYD: Am I allowed to ask a question?

7 THE COURT: Once he's completed ---

8 MS. FLOYD: Okay.

9 THE COURT: --- his examination of the witness.

10 Q: And in that time frame from October of '14 to
11 April of '15, did any documentation happen to
12 trickle into the department that would prove
13 that she were a Wyoming resident?

14 A: I received no documentation.

15 Q: Why -- why wait so long? Why wait from October
16 of '14 until April to send out the conference
17 letter?

18 A: We had priorities change over the period of the
19 year and we were assisting individual income
20 tax department with some of their work, so it
21 kind of got pushed to the side.

22 Q: Okay. I'm going to hand you what's been marked
23 as Respondent's Exhibit Seven. Do you
24 recognize that?

25 A: Yes, I do.



1 Q: Okay. What is that?

2 A: This is the letter from our tax analyst who
3 helps us with the appeals where she sent this
4 letter to Ms. Floyd.

5 Q: Okay. Did you provide information to the tax
6 analyst that served as the basis of that
7 letter?

8 A: Yes.

9 Q: Okay. Did you have a chance to review that
10 letter?

11 A: Yes.

12 MR. CROCKER: Your Honor, at this time, the
13 department would like to offer what's been
14 marked as Respondent's Exhibit Seven into
15 evidence?

16 THE COURT: Ms. Floyd?

17 MS. FLOYD: No objection.

18 THE COURT: It's admitted with no objection.

19 (Respondent's Exhibit Number Seven was admitted into
20 evidence.)

21 MR. CROCKER: Okay. Thank you, Your Honor.

22 Q: Okay. And what's the date on that document?

23 A: June 8, 2015.

24 Q: I'm going to hand you what's been marked as
25 Respondent's Exhibit Number Eight.



1 A: Okay.

2 Q: Do you recognize that?

3 A: Yes.

4 Q: And what is that?

5 A: This is a screen print showing the years that
6 Ms. Floyd has filed a return and it includes
7 the -- the notice of adjustment that I created
8 a 2008 return for her.

9 Q: And again, you prepared that document?

10 A: The 2008 -- this is an automated -- this is
11 prepared based on information she submitted,
12 the -- all the years, except for 2008. The
13 2008 I prepared.

14 Q: But you generated the document?

15 A: Yes.

16 MR. CROCKER: Your Honor, at this time, the
17 department would like to offer what's been
18 marked as Respondent's Exhibit Eight into
19 evidence?

20 MS. FLOYD: No objection.

21 THE COURT: Admitted with no objection.

22 (Respondent's Exhibit Number Eight was admitted into
23 evidence.)

24 Q: And what exactly does this show in terms of Ms.
25 Floyd's return for the 2008 year?



1 A: With us reviewing it, just from that point, it
2 does not appear that she intended to move away
3 because after she graduated college within a
4 year-and-a-half, she was back in South
5 Carolina.

6 Q: And since then, where has she been based off
7 her tax returns?

8 A: In South Carolina.

9 Q: I'm going to hand you what's been marked as
10 Respondent's Exhibit Nine. Do you recognize
11 that?

12 A: Yes.

13 Q: Okay. What is that?

14 A: This is the department determination that's
15 drafted once we send this -- once we send in
16 her file to litigation and have some of the
17 relevant facts based on information that was
18 submitted by her CPA and including work that I
19 did on the case.

20 MR. CROCKER: Your Honor, at this time, the
21 department would like to offer what's been
22 marked as Respondent's Exhibit Nine into
23 evidence?

24 MS. FLOYD: No objection.

25 THE COURT: Admitted with no objection.



1 (Respondent's Exhibit Number Nine was admitted into
2 evidence.)

3 MR. CROCKER: Thank you.

4 Q: And are the facts found in this determination
5 accurate to the best of your knowledge?

6 A: To the best of my knowledge, yes.

7 Q: And are you aware that facts that you provided
8 served as any foundation or basis for this
9 document?

10 A: Yes.

11 Q: Let me call your attention to the last page.
12 What is the date of that document?

13 A: August 6, 2015.

14 Q: Okay. And what's the amount it asserts is the
15 taxpayer's liability?

16 A: \$3003.58.

17 Q: Okay. Because there's a difference between the
18 -- the time. That was sent out August 2015 and
19 now, would there be any additional interest
20 accrued?

21 A: Yes, there would be.

22 Q: Okay. And lastly, to your knowledge, has the
23 Petitioner or CPA supplied any information to
24 the department showing that she intended to
25 change her domicile?



1 A: To my knowledge, they have not submitted
2 anything showing she intended to change her
3 domicile.

4 Q: Okay. I don't have any more questions right
5 now.

6 THE COURT: Okay. Thank you. Ms. Floyd, at this
7 point, you can ask questions that you want for
8 this witness.

9 MS. FLOYD: Okay. Do I stand?

10 THE COURT: It's not necessary.

11 MR. WESTON - CROSS EXAMINATION BY MS. FLOYD:

12 Q: Maybe the only question I have is were all the
13 documents that were mailed to me, mailed to my
14 CPA as well? I don't have knowledge of many of
15 those documents, I'd say that were mailed to
16 me, which could be my own mail problems, if you
17 will, but he hires -- he handles any and all
18 formal documents to us. So were they all
19 mailed to Lewis Hazelwood as well as me or just
20 to me?

21 A: Some -- one was only mailed to him.

22 Q: Okay.

23 A: The notice of adjustment would be mailed to
24 you.

25 Q: Okay.



1 A: The assessment would be mailed to you.

2 Q: Okay.

3 A: The letter I drafted to him would've been
4 mailed to him. I do -- I may have, but I
5 cannot remember if I sent him -- I don't
6 believe I sent him a copy of the conference
7 notice. That would be mailed to you and if you
8 wanted to send him a copy or address him, then
9 that would be your decision.

10 Q: Okay. I don't think I have any more questions.

11 THE COURT: Do you have any further questions for --

12 -

13 MR. CROCKER: I don't think so, Your Honor.

14 THE COURT: Okay. I don't have any questions for
15 you. I do -- thank you for coming.

16 MR. WESTON: Yes, ma'am.

17 MR. CROCKER: We don't have any other witnesses,
18 Your Honor.

19 THE COURT: Okay.

20 MR. CROCKER: We're ready to rest.

21 THE COURT: Okay. Ms. Floyd, do you have anything
22 further that you'd like to present as a result
23 of this witness's testimony?

24 MS. FLOYD: I might have a couple more things to
25 add. Should I come there or right here?



1 THE COURT: If y'all don't have a problem, but you
2 would be -- Mr. Crocker will have the
3 opportunity to ask you any questions after ---

4 MS. FLOYD: Sure.

5 THE COURT: --- I hear further testimony from you.
6 The court reporter, I -- you don't have any
7 problem with her just remaining where she is?

8 MADAME COURT REPORTER: As long as she speaks up.

9 THE COURT: Okay.

10 MS. FLOYD - REBUTTAL TESTIMONY: Okay. To regard of
11 the driver's license, which I had mentioned
12 before, it was set to expire and no one -- I
13 wasn't ever told that I needed to change
14 driver's license, renew, or return -- or turn
15 in my South Carolina to get a Wyoming. I was
16 out there with other people from various other
17 states and honestly didn't know of anyone there
18 that had a Wyoming Driver's License, even those
19 that had been there for years upon years, so
20 that honestly didn't dawn on me to do. That
21 kind of falls into the court of registering my
22 vehicle. My vehicle at the time was registered
23 under my father's name, who also paid for the
24 insurance on the car and whatever tax needed to
25 be done on that and honestly I didn't want to



1 bring it to his attention because that very
2 well meant that I was then going to take on the
3 charges myself and kind of just kept it under
4 the radar of keeping my plates South Carolina
5 plates. I was never pulled over and never had
6 an issue or was never told in the State of
7 Wyoming, even with a mailing address and a
8 physical address in the State of Wyoming that
9 I needed to change my car plates into Wyoming
10 -- from South Carolina to Wyoming plates.
11 Registering to vote there, I -- I hate to say
12 it, I'm embarrassed to say it, I'm not
13 registered to vote in the State of South
14 Carolina either and at the age of 23, that
15 wasn't one of our, even though that was went,
16 I guess, Obama was elected, I remember we all
17 had a party that night for it, but I wasn't a
18 part of the voting of that and not anyone,
19 really, that I knew there was. It's just kind
20 of wasn't -- still kind of isn't what I was
21 doing then. So the formal documents proving
22 domicile in the State of Wyoming are hard to
23 come by other than the fact that I paid rent
24 there, I have been banking accounts there, I've
25 paid bills there, I paid rent there. I was



1 employed by two employers there and began to
2 build a home there. I was too young to
3 purchase property there and I had no intention
4 until I purchased property in the State of
5 South Carolina two years ago, but that was when
6 I had begun my career and started making decent
7 income and could afford a down payment on a
8 house here. At that time in life, there was no
9 way that, that was a chance, which is also why
10 I left because I couldn't bring in the income
11 that was necessary out there even trying in the
12 event business and industry out in the State of
13 Wyoming as fate -- as fate had it, as I
14 mentioned, that's why I came back to Charleston
15 was an event's opportunity in my hand that was
16 appealing and -- and could, you know, put bread
17 on the table, so that's I guess that's about --
18 that's all I have to say all that. Thank you.

19 THE COURT: Mr. Crocker, do you have any questions?

20 MR. CROCKER: I don't have any questions, Your
21 Honor.

22 THE COURT: Okay. Thank you. Well, I think that
23 I've heard all of the testimony in the case and
24 we're ready to conclude by hearing any closing
25 statements that the parties may have beginning



1 with you, Ms. Floyd ---

2 MS. FLOYD: No, ma'am.

3 THE COURT: --- do you need a closing?

4 MS. FLOYD: I'm fine. Thank you.

5 THE COURT: Okay. Thank you. Mr. Crocker?

6 MR. CROCKER: Just a few, Your Honor, thank you.

7 CLOSING STATEMENT BY MR. CROCKER: If it please the
8 Court, it's -- it can't necessarily be seen as
9 a mitigating circumstance if you pay a
10 professional to do these things for you and you
11 say well that's -- that's all him, like it
12 doesn't matter. I -- I don't need to know what
13 I have to do. That -- that's just not true,
14 especially in terms of taxes or -- or law as a
15 whole. The CPA, we have a letter which has
16 been admitted into evidence where the CPA told
17 the department the advice he gives is just use
18 your parents address, if you're gone, it's no
19 big deal and -- and things like that, so I
20 think that would run afoul of what the purpose
21 is here, which is to prove your intent that
22 your domicile is somewhere else. The
23 Petitioner has testified that she essentially
24 moved out to Wyoming to try to find herself and
25 she testified here on the stand that it was a



1 chance for her to grow up, well, that doesn't
2 -- that doesn't show that there was any intent
3 to establish domicile there either and despite
4 the fact that the economy was bad and maybe she
5 had to move back, that's two contradictory
6 statements. You can't say, well, I just moved
7 out there just trying to figure things out, but
8 when the economy got bad, I came back. So I --
9 I could not have proven I had intent to stay
10 there, but again, that kind of runs afoul of
11 the fact that if you're just moving out there
12 to find yourself or to -- to grow up, that's
13 not necessarily the same thing as trying to or
14 actually proving you had any intent to stay
15 there. And unfortunately for us, your
16 intentions are manifest through actions and
17 here there's no proof or nothing was at least
18 admitted or submitted to the department to show
19 that there was any intention to stay out there.
20 What we simply have is a story where the
21 taxpayer or the Petitioner now says well, I had
22 ever intention of staying there. I didn't for
23 whatever reason, now I'm back, but of course I
24 had every intention of staying there. What we
25 have in this case in terms of evidence just



1 doesn't -- doesn't prove that. We also have
2 the -- the case in Ravenel, which says that
3 intent is the most important issue in
4 establishing whether or not there is domicile
5 in another state and here again, throughout
6 this entire time, over a year-and-a-half that
7 the audit happened up until now, nothing has
8 been provided to the department, not even this
9 story, as a matter of fact, until today,
10 nothing has been provided to the department to
11 say that there was any intention of staying out
12 there. No -- no paper documentation, no
13 conversations, no correspondence, nothing other
14 than the CPA saying I think what she did is
15 okay and no correspondence from the Petitioner
16 in this case. Now we get here today and it was
17 like well she had every intention of staying,
18 it was just the bad economy, that's why I came
19 back. She has not been able to substantiate
20 her position that she intended to make Wyoming
21 her permanent residence or her domicile and
22 because of that, again, we would ask this Court
23 to affirm our determination and uphold the tax
24 liability that -- that she owes to the state
25 for the tax period 2008. Thank you, Your



1 Honor.

2 THE COURT: Thank you, Mr. Crocker. Okay. I am
3 going to take this case under advisement for a
4 couple of days, Ms. Floyd and Mr. Crocker,
5 before I make a final determination. I don't
6 see it as anything that is going to take a long
7 period of time to decide, so we should have an
8 order for you all, I'm just going to say within
9 the next 30 days ---

10 MS. FLOYD: Yes, ma'am.

11 THE COURT: --- with my decision. That being said,
12 the hearing is concluded.

13 MS. FLOYD: Thank you.

14 MR. CROCKER: Thank you, Your Honor.

15 THE COURT: Thank you all for coming.

16 MADAME COURT REPORTER: All rise.

17 (There being no further matters, the hearing
18 adjourned at 11:01 a.m.)



CERTIFICATE

This is to certify that the within hearing consisting of fifty (50) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on April 21, 2016.


Carla S. Dominick
Court Reporter

Notary Public for South Carolina
My Commission Expires: 3/13/2022



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

Shirley Robinson, Administrative Law Judge

Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

South Carolina Department of Revenue,.....Appellant,

v.

Frances H. Floyd,.....Respondent.

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ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT ERR IN HOLDING THE RESPONDENT WAS NOT SUBJECT TO SOUTH CAROLINA INCOME TAX FOR THE 2008 TAX YEAR?

STATEMENT OF THE CASE

In 2004, Frances Hunter Floyd ("Respondent") left South Carolina to attend college in Oxford, Mississippi. During her time in Mississippi, the Respondent filed South Carolina tax returns for periods 2005 to 2007. In December of 2007, the Respondent graduated from college and moved to Jackson, Wyoming, where she worked in the resort industry. The Respondent was employed at Jack Dennis Sports, Inc. and 3 Creek Ranch Golf Club, earning wages in Wyoming until May of 2009.

The Respondent's 2008 W-2 from Jack Dennis Sports, Inc., utilizes a Spartanburg, South Carolina address that the Respondent provided as her address. Line 1 of the Respondent's 2008 Form 1040 Federal Income Tax return lists a Drayton, South Carolina address. Above the South Carolina mailing address, the Respondent wrote "a Wyoming Resident." The Respondent did not file a 2008 income tax return with South Carolina. Upon leaving Wyoming in May of 2009, the Respondent returned to South Carolina. On June 6, 2014, the South Carolina Department of Revenue (the "Department" or "Appellant") issued the Respondent a Proposed Notice of Assessment for the 2008 Income Tax year, notifying the Respondent that she failed to file a South Carolina income tax return for the 2008 period. The Respondent has continually resided in South Carolina since returning in May of 2009.

On July 29, 2014, the Department received an appeal from a certified public accountant representing the Respondent named Lewis W. Haselwood ("Mr. Haselwood")

or the Respondent's "accountant"). Mr. Haselwood stated that the Respondent established residency in Wyoming because she lived and worked in Wyoming during the 2008 period. He also stated that he advised the Respondent to use the mailing address of a parent for income tax purposes until her residency became less fluid. The Respondent's parents have a Spartanburg, South Carolina mailing address.

On September 16, 2014, the Department issued a Notice of Assessment. On September 22, 2014, the Department received a second appeal letter from the Respondent. On October 9, 2014, the Department removed the Assessment and sent a letter to Mr. Haselwood requesting that the Respondent provide copies of a Wyoming driver's license and voter registration to prove intent to establish domicile in Wyoming. The Respondent did not provide any of these documents, nor did Mr. Haselwood provide them on her behalf.

On April 29, 2015, the Department sent the Respondent a letter inviting her to an appeal conference to discuss her reasons for appealing. The Respondent did not respond to this letter. On August 6, 2015, the Department issued its Determination, finding that the Respondent remained domiciled in South Carolina and was therefore liable for South Carolina income tax for the 2008 tax year. On September 4, 2015, the Respondent appealed the Department's Determination and requested a contested case hearing before the Administrative Law Court ("ALC"). On February 4, 2016, the ALC held a contested case hearing on this matter.

At the hearing, the Respondent offered only her testimony that she moved to Wyoming with the intention of staying there indefinitely. The Department offered multiple exhibits and testimony from its auditor. The Department showed the Respondent

never surrendered her South Carolina driver's license or obtained a Wyoming driver's license, maintained a South Carolina vehicle registration and never registered to vote in Wyoming but maintained a post office box in South Carolina.

In its Final Order, dated February 11, 2016, the ALC reversed the Department's Determination and found the Respondent established domicile in Wyoming and therefore was not liable for 2008 South Carolina income tax. On February 22, 2016, pursuant to ALC Rule 29(D) and Rule 59(E), SCRCP, the Department filed a Motion for Reconsideration with the ALC. The Department's basis for the motion was twofold. First, that the ALC had incorrectly applied precedent and second, that the ALC failed to consider the Respondent's inaction in terms of establishing domicile in the State of Wyoming. On March 3, 2016, counsel for the Respondent filed a response to the Department's Motion. On March 21, 2016, the ALC issued its Order denying the Department's Motion for Reconsideration. Because the ALC erred in finding that the Respondent was not domiciled in South Carolina for the 2008 tax year, the Appellant now seeks this appeal.

ARGUMENT

THE ADMINISTRATIVE LAW COURT ERRED IN HOLDING THE RESPONDENT WAS NOT SUBJECT TO SOUTH CAROLINA INCOME TAX FOR THE 2008 TAX YEAR.

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Envtl. Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); Clark v. Aiken County Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101

(Ct. App. 2005). S.C. Code Ann. § 1-23-610(B) (Supp. 2013) provides the applicable standard:

(D) The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the Appellant has been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The Department appeals the ALC's Order because the ALC also abused its discretion in finding for the Respondent, despite the fact that the Respondent failed to meet her burden of proof at the hearing by failing to offer substantial evidence to support her assertions. Also, the ALC improperly applied case law and precedent in its finding that the Respondent established domicile in Wyoming for the 2008 Tax Year. In addition, the ALC erred in its Order reversing the Department's Determination that the Respondent was a South Carolina resident, and therefore owes taxes to South Carolina, for the 2008 Tax Year. Therefore, the Appellant respectfully requests that the Court reverse the Order of the ALC.

A. The ALC's Finding That The Respondent Established Domicile In Wyoming Is Clearly Erroneous In View Of The Substantial Evidence In The Whole Record.

i. The Respondent did not offer substantial evidence that she adopted domicile in Wyoming.

The Respondent requested a contested case hearing in order to challenge the Department's determination that she owes income tax for the 2008 tax year. Per ALC Rule 29(A)(3), the Respondent bore the burden of proof to the ALC. At the hearing before the ALC, the Respondent argued that, with Wyoming as her domicile for the 2008 tax year, she did not have a South Carolina tax liability. To support her argument, the Respondent offered nothing more than her oral testimony. The Respondent offered no proof that she was a domiciliary of Wyoming or that she had not abandoned her domicile in South Carolina. Because the Respondent did not prove she obtained domicile in Wyoming, she remained domiciled in South Carolina and therefore was liable for 2008 income tax. At the ALC hearing, the Department showed the Respondent took no overt steps to abandon domicile in South Carolina nor did she take steps to establish domicile in Wyoming.

S.C. Code Ann. § 12-6-510(A) (2014) of the South Carolina Income Tax Act imposes a tax on the South Carolina taxable income of individuals, estates, and certain other entities. For residents, § 12-6-560 (2014) indicates how this taxable income is to be determined. More specifically, § 12-6-560 states, "[a] resident individual's South Carolina gross income, adjusted gross income, and taxable income is computed as determined under the Internal Revenue Code" Pursuant to such Code, taxable income is simply gross income minus certain deductions and exclusions (see I.R.C. § 63). In the instant situation, the Taxpayer's income is taxable under § 12-6-510(A) if it

comes within the definition of "gross income" at I.R.C. § 61. That definition defines "gross income" to include: "(a) . . . all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items[.]"

Because § 12-6-560 applies to "resident individuals," the issue becomes whether the Respondent is a resident individual. S.C. Code Ann. § 12-6-30(2) (2014) defines "resident individual" as "an individual domiciled in this State." The statute does not define "domicile." The South Carolina Supreme Court, however, assigned the following meaning to the term: ". . . 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, 379, 218 S.E.2d 521, 528 (1975). The Court further stated that a person may have several residences or dwelling places, but may only have one domicile at a particular time, and such person maintains his domicile until he establishes a new one. Id. Accordingly, if the Respondent is domiciled in South Carolina, she is a resident individual subject to state income tax.

In addressing domicile, the Supreme Court in Ravenel stated: ". . . intent is a most important element in determining the domicile of an individual. It is . . . elementary . . . that any expressed intent . . . must be evaluated in the light of [the person's] conduct which is either consistent or inconsistent with such expressed intent." Ravenel, 265 S.C. at 379, 218 S.E.2d at 528 (emphasis added). That is, intent is manifested through actions.

It is undisputed that the Respondent lived and worked in the State of Wyoming from December, 2007, until May, 2009. After sending the Proposed Notice of

Assessment to the Respondent, the Department received a Power of Attorney and Declaration of Representative Form from the Respondent's accountant, Mr. Haselwood. The Department made requests for additional documentation in order to verify or substantiate the Respondent's claims of being domiciled in Wyoming. Regarding matters of residency, the Department requests proof that a taxpayer had indeed adopted a new state of domicile. The Department requests documents that would serve to show whether a person's conduct is in keeping with their intent, per Ravenel. Documents from the alleged state of domicile such as a new driver's license, voter registration, vehicle registration or other documents that would show intent to make another state the taxpayer's permanent home.

The Department contacted both the Respondent and Mr. Haselwood by mail, asking for documentation that would verify the Respondent's intent to make Wyoming her state of domicile. The letter to the Respondent, dated April 29, 2015, stated:

I sent Mr. Haselwood a letter dated October 14, 2014(...) requesting that you submit documents showing that you established residency in Wyoming such as a Driver's License, Voter Registration Card or Vehicle Registration. These are some of the steps one will take when moving to another state to establish permanent residence instead of temporary employment.

The Department received no response from either the Respondent or Mr. Haselwood.

At the February 4, 2016, at the ALC hearing, the Respondent's lack of any evidence tending to show the Respondent intended to make Wyoming her state of domicile was the central feature of the Department's case. Because the Department received no substantiating documentation from the Respondent or her accountant prior to the hearing, the Department's counsel asked the Respondent at the hearing whether she

had obtained any of the documentation the Department requested, but the Respondent did not provide, prior to the hearing.

Q: ...while you were in Wyoming, did you obtain a Wyoming Driver's License?

A: I did not.

Q: Did you register to vote in Wyoming?

A: I did not.

(R., p. ___, 12:17; Tr., p. 17, 12:17).

A review of the events leading to the hearing and the February 4, 2016 hearing show the Respondent did nothing, save moving to Wyoming, to establish domicile there.

During the hearing, the Respondent stated she was unaware that she was required to do anything to change domicile. At the ALC, the Respondent stated:

To regard of the driver's license, which I had mentioned before, it was set to expire and no one – I wasn't ever told I needed to change driver's license, renew, or return – or turn in my South Carolina to get a Wyoming. I was out there with other people from various other states and honestly didn't know of anyone that had a Wyoming Driver's License, even those that had been there for years upon years, so that honestly didn't dawn on me to do. That kind of falls into the court of registering my vehicle. My vehicle at the time was registered under my father's name, who also paid the insurance on the car and whatever tax needed to be done on that and honestly I didn't want to bring it to his attention because that very well meant that I was going to take on the charges myself and kind of just kept it under the radar of keeping my plates South Carolina plates.

Registering to vote there, I – I hate to say it, I'm embarrassed to say it, I'm not registered to vote in the State of South Carolina either...

(R., pp. ___, 10:5, 11:14; Tr., pp 44-45, 10:5, 11:14).

What is certain from the Respondent's testimony is that other than paying rent, she took no overt steps to abandon her South Carolina domicile or adopt a new domicile in Wyoming. In fact, she actively took steps to avoid certain liabilities. Her testimony

about her vehicle registration shows that she was at least aware of, and willing to circumvent paying for, whatever expenses would be incurred with registering her vehicle in Wyoming. In discussing keeping her vehicle registered in South Carolina, the Respondent stated:

My vehicle at the time was registered under my father's name, who also paid the insurance on the car and whatever tax needed to be done on that and honestly I didn't want to bring it to his attention because that very well meant that I was going to take on the charges myself and kind of just kept it under the radar of keeping my plates South Carolina plates.

(R. pp. _____, 22:5; Tr., pp. 44-45, 22:5)...

Avoiding the vehicle registration to "take on the charges myself and kind of just kept it under the radar of keeping my plates South Carolina plates" shows a willingness to also avoid becoming a resident of Wyoming. Taken altogether, the lack of any documentation to verify domicile and the Respondent's own testimony shows that the Respondent took no steps to abandon her South Carolina domicile and therefore could not have adopted a new domicile.

In order to obtain a driver's license in Wyoming, a person need only provide proof of identity, current residence and proof of a Social Security number to a local Wyoming Department of Transportation office. This process is codified as Wyoming Statute 31-7-111.¹ The Respondent did not explain why she continued to utilize a South

¹Wyoming Statute 31-7-111. Application for license or permit generally. (a) Every application for an instruction permit, driver's license, commercial driver's license or commercial learner's permit shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee, proof of residence and proof of identity. Proof of identity shall be established by a certified copy of the applicant's birth certificate, valid unexpired United States passport, consular report of birth abroad, certificate of citizenship, certificate of naturalization, permanent resident card,

Carolina license and didn't obtain a Wyoming driver's license. However, as the Department contends, because she had no intention of staying in Wyoming, there would have been no reason to obtain a new driver's license. The previously mentioned facts show that the Respondent's conduct was inconsistent with her intent. Ravenel.

Similarly, Wyoming law requires the registration of Wyoming residents' vehicles.

Wyoming statute 31-2-101 states:

31-2-101. Required Application.

(a) Except as provided by W.S. 31-2-102 and subsection (b) of this section, every owner of a vehicle which will be operated on Wyoming highways and for which no Wyoming certificate of title has been issued to the owner, or the transferee upon transfer of ownership of a vehicle for which a Wyoming certificate of title is required, shall apply for a certificate of title at the office of a county clerk.

(b) Every owner or transferee upon transfer of ownership of an off-road recreational vehicle may apply for a certificate of title at the office of a county clerk.

(Emphasis added). The timeline for vehicle registration is also codified and found in § 31-2-201, which states:

31-2-201. Registration required; timelines.

(a) Except as provided in W.S. 31-2-224, every owner, or if applicable, operator or lessee, of a vehicle which will be operated or driven upon any highway in Wyoming, shall be required to obtain registration at the following times:

* * *

employment authorization document, foreign passport (with United States visa affixed and accompanied by an approved document documenting the applicant's most recent admittance to the United States), state issued driver's license or identification card which complies with federal law and applicable regulations, or other document required by the division to establish identity where reasons beyond the applicant's control prevent the applicant from presenting the documents required by this subsection.

(iii) Upon becoming a resident in the case of a previous nonresident owner;

(iv) Notwithstanding paragraph (iii) of this subsection, immediately when the vehicle is being operated by a person not from this state for transportation to or from, or for the purpose of gainful employment or any trade, profession or occupation within this state.

* * *

(j) Any nonresident owner, lessee or operator of a vehicle that is not a commercial vehicle, who is employed in this state on a temporary or full-time basis may choose to purchase a temporary worker registration permit from the county treasurer in lieu of registering the vehicle pursuant to paragraph (a)(iv) of this section and paying the fees pursuant to W.S. 31-3-101, provided the vehicle displays a valid registration and license plate from another jurisdiction and is properly insured. Application for the temporary worker registration permit shall be made to the county treasurer in the manner and form prescribed by the department and shall be submitted with proof of valid insurance. The temporary worker registration permit shall bear a distinctive number assigned to the vehicle, an expiration date and at all times be prominently displayed and clearly visible on the vehicle in a manner prescribed by the department. Fees collected under this subsection shall be deposited in the county general fund. The fee for a temporary worker registration permit shall be fifty dollars (\$50.00) per each month of required registration, and shall not exceed one hundred twenty (120) days per vehicle.

(Emphasis added). These statutes clearly state that Wyoming residents must register their vehicles in the state. Additionally, the statutes set out requirements for when the registration is to occur. Per § 31-2-201(a)(iv), a person gainfully employed in Wyoming in any "trade, profession or occupation" must register their vehicle. The facts in this matter demonstrate that the Respondent failed to follow Wyoming law. The Department contends that the Respondent did not follow Wyoming law because she had no intention of making Wyoming her domicile. Again, the Respondent's actions are inconsistent with her intent. Ravenel.

The Respondent offered no documentary evidence that she adopted Wyoming as her state of domicile. Furthermore, the Respondent admitted at the hearing before the ALC that she failed to follow Wyoming law in obtaining a driver's license and registering her vehicle. Such demonstrates the Respondent had no intention of adopting Wyoming as her state of domicile. As such, the Respondent failed to meet her burden of proof at the ALC hearing by failing to offer substantial evidence that she established domicile in Wyoming.

ii. The Respondent made contradictory statements at the ALC about her intention to establish domicile in Wyoming.

The Respondent made statements at the hearing that show she did not intend to make Wyoming her "permanent home." Ravenel. At the ALC hearing, the Respondent stated that after her arrival in Wyoming in December, 2007, she engaged in seasonal work, but realized at some point that she wanted to pursue a career in event planning.

While out in Jackson doing the – the la-di-da, day-to-day jobs out there that weren't true careers that I knew at the age of 23. I think I was, you know, kind of over the just getting by and having a little too much fun out there too, to be honest, and realized I needed to figure out a career.

* * *

So it was, you know, working at a snowboarding shop and working the ski rental and working at a golf course and easy day-to-day jobs that weren't true career paths for me.

(R., p. ___, 12:18; p. ___, 18:21; Tr., p. 12, 12:18; p. 16, 18:21).

Unfortunately for the Respondent, there were few job opportunities in Jackson Hole, Wyoming, and the lack of employment caused the Respondent to look outside of Wyoming for other employment options. During 2008, the Respondent was already looking to leave the state.

...jobs were harder to find. While out there, I did hear of job opportunities in Atlanta, Georgia and job – job opportunities in Charleston, South Carolina.

* * *

And I didn't – like I was saying, I didn't want to wait tables, I kind of wanted to find my – find my path and – really dig into it and see if events planning was my true career and my true path. In that, this family said they – they got – they had Gathering Events reach out to my – my parents...mom reached out to me and she was like, you know, it might be worth it – while you're in Charleston for a friend's wedding – I was in Charleston flew from Wyoming there to attend a wedding, it might be worth going by and talking to this company there and seeing what they can do. Low and behold, we hit it off. Once I flew back to Wyoming, we carried on a conversation with Gathering Events in Charleston. Wrapping up the winter season, I guess it was 2009 at that point...

(R., p. ____, 5:15, 20:23; pp. 14-15, 10:2; Tr., p. 13, 5:15, 20:23, pp. 14-15, 10:2).

The Respondent made the following statement about her decision to leave Wyoming:

It just wasn't – I couldn't, honestly I couldn't afford to do it and it was just time to kind of grow up a little bit and – pursue a career...

At the time then, there just wasn't anything to facilitate what I needed to do in order, again, to grow up.

(R., p. ____, 16:19, p. ____, 21:23; Tr., p. 15, 16:19, p. 16, 21:23).

These statements, made by the Respondent at the hearing, demonstrate that she never truly intended to establish domicile in Wyoming. For example, the Respondent claimed she realized once in Wyoming that she then needed to “grow up” and “pursue”, “figure out a career”. These statements demonstrate that the Respondent did not move to Wyoming with the intention of making it her domicile, since the Respondent characterized the time spent not knowing what to do. Furthermore, her lack of intending to make Wyoming her domicile is evidenced by the fact that at some point a few months

into her stay, she began to look for other jobs outside of Wyoming. During 2008, only months after arriving in Wyoming, the Respondent travelled to Charleston and began discussing job opportunities with an event planner there.

It appears that while the Respondent was "having a little too much fun out there", she at some point "realized I needed to figure out a career." However, upon the realization that she was unable to obtain steady employment, she began to look elsewhere for employment, including outside of Wyoming. She looked as far as Atlanta, and also in South Carolina, to which she returned in 2009.

Further evidence that the Respondent had no intention of abandoning her South Carolina domicile is found in the fact that the Respondent listed a South Carolina post office box on her 2008 federal individual income tax return ("Form 1040"). The Respondent listed her parents address on her tax returns while at college. The post office box listed on her 2008 Form 1040 is different from the address listed on Form 1040's for prior tax years. The Department received a letter from the Respondent's accountant in July, 2014. The Department offered this letter into evidence at the hearing. Among other things, the letter states:

As a consequence of my personal and professional experiences, I recommend to young taxpayers that, regardless of the location of their various permanent residences, for purposes of income tax returns and brokerage account statements, they continue to use the mailing address of a parent until their lives become less fluid.

While the letter explains a young person's use of a parent's address, it fails to explain why a South Carolina post office box would be necessary for someone who truly intended to establish domicile in another state. The post office box is not the address of

the Petitioner's parents. The 2008 Form 1040, which lists the post office box, was filed in 2009, a full year after the Petitioner went to Wyoming. The necessity of a post office box on the advice of the Respondent's accountant until her life becomes "less fluid" would only be useful if someone's living arrangement did not reflect their true fixed and permanent home. Maintaining and utilizing a post office box in South Carolina for important matters such as tax filings is patently inconsistent with the establishment of domicile in Wyoming and actually shows she was preserving domicile in South Carolina. It is further evidence the Respondent did not have an intention of abandoning her South Carolina domicile and adopting domicile in Wyoming.

The Respondent's statements at the ALC hearing contradicted the Respondent's assertions that she intended to make Wyoming her domicile. While the Respondent claimed she intended to stay in Wyoming, she offered nothing to the ALC other than her statements to support her claim and those statements are inconsistent. Additionally, the Respondent's maintenance of a post office box in South Carolina is evidence of her intention to keep her South Carolina domicile. The Respondent's statements concerning her intention to sever ties with South Carolina directly contradict her actions.

Given the Respondent's contradictory statements at the hearing, as well as her failure to produce any documentation substantiating her assertion that she adopted Wyoming as her domicile, it is clear the Respondent remained domiciled in South Carolina. The ALC's ruling for the Respondent in light of these contradictory statements is clearly erroneous in view of the substantial evidence in the record and an abuse of its discretion.

B. The ALC Abused Its Discretion By Applying Improper Weight To The Respondent's Self-Serving Testimony.

The ALC appears to have based its Order solely on the Respondent's own self-serving testimony. However, The Respondent's testimony and alleged intentions alone are not enough to meet her burden of proof. As stated in Jackson v. Commissioner, 1953 WL 10532 Tax Court (1953), "the rule is well established that bare assertions by a taxpayer as to the amount of his income, or that his return is correct as filed, are not sufficient to overcome the presumption of correctness which attaches to the Commissioner's determinations." (Emphasis added). The Respondent has offered no proof to establish she intended to make Wyoming her permanent home, except for her uncorroborated testimony. The Respondent failed to present any documents to support her assertion that she wanted to make Wyoming her domicile. The Respondent has offered nothing to further substantiate her claim except for "bare assertions" about establishing domicile in Wyoming. Moreover, these bare assertions are contradicted by the Respondent's actions or lack of actions as previously discussed.

Self-serving, uncorroborated testimony is not enough to prove domicile. In Mitchell v. U.S., 88 U.S. 1874, the United States Supreme Court noted that for domicile "[t]o be established it must be proved. Among the circumstances usually relied upon to establish the [intention to remain] are: Declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence, and a place of business." Here, the Respondent did not purchase a house or obtain long-term housing. To the contrary, she had temporary housing and a job she had no intention of pursuing as she was still trying to determine what she wanted to do. Both her living and employment arrangements reflect the temporary nature of her time in Wyoming. The Respondent did

not meet the other factors found in Mitchell, paying taxes and exercising political rights.

Thus, the Respondent did not prove for intent to change domicile.

In addition, in State of Texas v. State of Florida, the United State Supreme Court stated:

While one's statements may supply evidence of intention requisite to establish domicile at a given place of residence, they cannot supply fact of residence there and they are of slight weight when they are in conflict with the facts especially when those declarations were inspired to establish a nominal residence for tax purposes different from the actual residence in fact."

State of Texas v. State of Florida, 306 U.S. 398, 59 S.Ct. 563 (1936). Texas is directly on point in the present case because the ALC gave the Respondent's statements more than "slight weight". Given the Respondent's statements were all she offered, and given that some of the statements were contradictory, the ALC gave those statements decidedly more weight than the facts, facts which were in conflict with the Respondent's statements.

Texas is in keeping with the previously mentioned case, In re Dorrance's Estate. In Dorrance, the Supreme Court of Pennsylvania noted that, "More weight will be given to a person's acts than his declarations in questions of domicile." Just as the Pennsylvania Supreme Court recognized, more weight should be given to the Respondent's acts than her self-serving testimony. Also, the multiple exhibits and the auditor's testimony offered by the Department at the ALC hearing should carry more weight than the Respondent's self-serving testimony, alone, especially because the Respondent's testimony is inconsistent.

These cases taken together illustrate that the establishment of domicile must be accompanied with proof of an intention to remain in the adopted domicile for an unlimited time and that proof must be more than a "bare assertion". The Respondent's mere testimony is neither sufficient to meet her burden to prove she was no longer domiciled in South Carolina nor to overcome her inaction in establishing domicile in Wyoming. The Respondent's alleged intentions also fail for the same reason: they are unaccompanied by any proof of intent to abandon her South Carolina domicile. Therefore, the Respondent has ultimately failed to meet the requisite burden of proof.

It appears the ALC relied solely upon the Respondent's testimony at the hearing in making its determination, as found in its Order. (R., p. ____; Order, p. 5). While the Respondent's testimony is worthy of consideration, the Department asserts it is an error of law to rule solely based upon self-serving testimony when the substantial evidence put forth by the Department contradicts that testimony. The ALC failed to consider the overwhelming weight of both the Department's evidence and the Respondent's inaction in proving her domicile was anywhere other than South Carolina. Moreover, the Respondent's uncorroborated testimony and alleged intentions are simply not substantial evidence and such statements are contradicted by substantial evidence on the record.

The ALC simply abused its discretion when it ignored the Department's evidence. The ALC's statement that, "No credible evidence was presented by the Department to dispute the Petitioner's testimony of her intent" fails to acknowledge the nine exhibits offered by the Department as well as the testimony of the Department's auditor. The ALC's finding that "the credible evidence and testimony in this case supports [the Respondent]" ignores the Respondent's inaction in abandoning her South Carolina

domicile and her contradictory statements. It is as though the Respondent's mere allegation of her intent to adopt domicile in Wyoming was sufficient to overcome the entirety of the Department's proffered evidence. Despite the lack of overt acts, the ALC ruled entirely based on the Respondent's self-serving statements that were not supported by any documentary evidence. The Respondent's self-serving, uncorroborated testimony is not enough for her to either meet her burden of proof or overcome the Department's evidence. Moreover, the ALC's reliance solely upon the self-serving testimony of the Respondent despite substantial contradictory evidence constitutes an arbitrary and unwarranted abuse of discretion.

C. The ALC Erred In Its Ruling By Failing To Correctly Apply Case Law And Precedent.

Among applicable South Carolina case law addressing domicile, Ravenel does not stand alone. In determining domicile, the South Carolina Supreme Court stated that "It has been well settled in this state, as elsewhere, that place of residence is a question of fact and depends upon the intention of the party as evidenced by his acts and declarations...". Sample v. Bedenbaugh, 158 S.C. 496, 155 S.E. 828 (1930). (Emphasis added). Because intent is at the root of a change in domicile, the determination of whether one has changed domicile requires an examination of a person's actions. The Court in Sample recognized that declarations alone are not enough to determine domicile. The South Carolina Supreme Court reaffirmed this position in St. Clair v. St. Clair, wherein the Court quoted its prior reasoning as found in Sample. St. Clair v. St. Clair, 175 S.C. 83, 178 S.E. 493 (1935).

Applying Sample, the reason for an examination of a person's acts as well as declarations is clear – an adverse party will likely attempt to choose what position is most

advantageous to their interests. Again, in this case, there is no dispute the Respondent lived in Wyoming from December, 2007, until May, 2009. What is at issue is whether the Respondent took steps to abandon her South Carolina domicile and adopt Wyoming as her state of domicile. Because the Respondent alleged she adopted Wyoming as her state of domicile, the Department reasonably asked for verification, in the form of documentation, or as stated in Sample, "acts". Here, as in all cases involving residency, the Department looks to overt acts by a taxpayer in abandoning their South Carolina domicile to ensure the change is legitimate. Here the Respondent did not take the overt steps necessary to change her domicile and in fact her acts show she maintained her South Carolina domicile.

In Gasque v. Gasque, the South Carolina Supreme Court stated: "Generally, temporary absence from one's domiciliary state solely because of government work or employment does not effect a change of domicile within the meaning of divorce laws, in the absence of clear proof of an intent to abandon old domicile and acquire a new one." Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965). While divorce is not at issue here, the Court heralded the primary distinction in the determination of domicile: generally, temporary absence from one's state of domicile solely because of employment does not change domicile, without clear proof of intent to abandon old domicile and adopt a new one. Unless a taxpayer is able to show clear proof of intent of a change of domicile, merely moving out of the state for temporary employment does not equate to abandoning a domicile and adopting a new one. In the present matter, the Respondent must show that she has abandoned South Carolina as her state of domicile because the mere act of moving out of the State of South Carolina is not sufficient to show intent to

adopt a new domicile.

There is additional case law that illustrates the importance of determining intent in terms of domicile. In Roorda v. Volkswagenwerk, A.G., the Court stated that, "In order for there to be a legal change of residence, there must be a true intent to reside indefinitely in the new domicile. But that rule is attended by the condition that the acquisition of such citizenship is real, with the purpose to establish permanent domicile in the state of which he professes to be a citizen at the time of the suit, and not fictitious or pretended." Roorda v. Volkswagenwerk, A.G., 481 F. Supp. 868 (1979) (emphasis added). The fact that the court acknowledged that some declarations about an adopted domicile are "fictitious or pretended" is telling. Again, in order to determine the truth regarding a person's intent to adopt a new domicile, the Department looks to the person's conduct in the form of whether they took actions and acquired documentation incident to making another state their domicile. The Department asked the Respondent for documentation proving she was domiciled in Wyoming before and during the hearing, which the Respondent was unable to provide. Moreover, the Respondent failed to provide the ALC with documentation supporting her position in this tax case.

Other jurisdictions have similar requirements for adopting a new domicile. In Blount v. Boston, the Court of Appeals of Maryland addressed the issue of domicile, extensively, stating "Intent is best shown by objective factors" and also that:

The two most significant objective factors evidencing a person's intent regarding domicile are where the person lives and where he or she votes or is registered to vote. *Bainum*, 272 Md. at 498, 325 A.2d at 397 ("the two most important elements in determining domicile are where a person actually lives and where he votes"). Our cases have characterized the place of voting as "the highest evidence of domicile"...

Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998). Likewise, the Supreme Court of Pennsylvania stated, "...the law is generally settled that, as regards the determination of domicile, a person's expression of desire may not supersede the effect of his conduct." In re Dorrance's Estate. Finally, the Louisiana Supreme Court similarly stated, "Types of documentary evidence for determining domicile in fact include: voter registration, homestead exemptions, vehicle registration records, driver's license address, statements in notarial acts and evidence that most of the person's property is housed at that location." Landiak v. Richmond, 899 So.2d 535 (2005). These jurisdictions recognize factors of establishing domicile that mirror South Carolina's. Overt acts are required instead of merely changing addresses, temporarily. In the present matter, the Respondent did not take any overt steps and in fact retained her ties to South Carolina.

The Department raised the issue of the Respondent's contradictory actions and testimony before the ALC. The Department offered exhibits, the testimony of its Auditor as a witness and the Respondent testified. Still, the ALC determined in its Order that:

I find that the credible evidence and testimony in this case supports a finding that in 2008 the [Respondent's] conduct shows that she intended for her domicile to be the State of Wyoming. Specifically, the [Respondent] had no intention of returning to South Carolina after graduating college, and intended her move to Wyoming to be permanent. Although the [Respondent] 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 [Respondent's] testimony of her intent. (R., p. ____; Order, p. 5).

Here, the ALC erred in finding the Respondent abandoned her South Carolina domicile. The ALC's Order states that the Respondent's conduct shows she intended to adopt Wyoming as her state of domicile. Applying the Supreme Court's reasoning in

Ravenel, that “expressed intent . . . must be evaluated in the light of [the person’s] conduct which is either consistent or inconsistent with such expressed intent”, the facts do not support the finding that the Respondent showed she intended to be domiciled in Wyoming. While the Respondent alleges that she intended to make Wyoming her domicile because it benefits her by keeping her from paying income taxes, her declarations and actions are not consistent with her allegations.

As previously stated, during the entire time the Respondent lived in Wyoming, she did not surrender her South Carolina driver’s license or obtain a Wyoming driver’s license. She did not register to vote. She maintained a South Carolina vehicle registration and in fact conspicuously objected to registering her vehicle in Wyoming so that her father would continue to pay for the liabilities associated with the car. She held only seasonal jobs and by her own admission, used the time in Wyoming to “grow up”. She maintained a post office box in South Carolina as indicated on her 2008 Form 1040. During The Respondent’s time in Wyoming, she began looking for jobs in other states. According to the Respondent’s own testimony, she began discussing employment opportunities with a business in Charleston, South Carolina, months before she moved. The Respondent neither intended to make Wyoming her place of domicile nor did she take steps toward abandoning her South Carolina domicile. The ALC simply looked upon the Respondent’s verbal claims regarding her intentions and wholly ignored the Respondent’s actions as well as declarations that contradicted the alleged intent to abandon her South Carolina domicile. The ALC also failed to consider the Department’s process to determine whether the Respondent’s claims were neither fictitious nor pretended. Roorda. Communication from the Department was largely ignored despite the

Department's best efforts to verify the Respondent's domicile for 2008, most significantly the Respondent failed to present substantial evidence at the hearing that she had indeed changed domicile.

South Carolina law is clear on establishing domicile. One's intentions and acts must be consistent in adopting a new state as a domiciliary. Other jurisdictions have ruled similarly. The Respondent's intention, as stated at the ALC hearing, and acts while in Wyoming are not consistent. On the contrary, the Respondent was unable to provide any evidence other than her own testimony to support her assertions that she intended to make Wyoming her domicile. Based on the foregoing cases, intent, and oral testimony is not sufficient to establish domicile; acts must accompany intentions. Here, the record does not support the Respondent's testimony. Because the ALC ignored the Respondent's contradictory statements and her inaction in abandoning her South Carolina domicile, the ALC erred in its Order that the Respondent had established domicile in Wyoming for the 2008 Tax Year. In ruling for the Respondent, the ALC erred by failing to apply applicable case law from both South Carolina and other jurisdictions, thus making an erroneous ruling.

D. The ALC's Order Will Cause Harmful Effects.

It is difficult to articulate the severity of the repercussions that will inevitably arise due to the ALC's Order. Given the ALC's reasoning, anyone can temporarily move from the State of South Carolina in order to forgo the payment of income taxes simply by alleging domicile elsewhere. Per the ALC's Order, a taxpayer need only move out of state, take no action to comply with the new state's residency laws, then allege an intention to stay in another state to be absolved from income taxes for that period. The

Order, multiplied by the number of people who can now move temporarily out of the state in order to avoid taxes, will have disastrous effects on the State's revenue. This outcome is not an exaggeration but a likely occurrence if the ALC's Order remains.

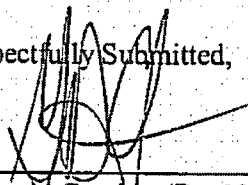
Under the ALC's ruling, a person could move from North Augusta, South Carolina, to Augusta, Georgia, and upon moving back to North Augusta, South Carolina, not be liable for taxes owed during their absence so long as they allege an intention to stay in Augusta. The person need not take any overt action such as register a car or obtain a Georgia driver's license to establish domicile in Georgia, but simply make the assertion that they intended to make Georgia their domicile, in order to avoid South Carolina tax. This is a disastrous consequence and is exactly the reason why the Department verifies residency and requests substantiating documentation when questions about residency arise.

The basis of domicile is permanence. A temporary change in residence, as well as having multiple residences, is not the same as a change in domicile. The primary indicators of a change in domicile are the acts a person takes to manifest their intention to abandon their previous place of domicile and adopt a new one. Anything less than the abandonment of an old domicile and the adoption of a new domicile is not a change in domicile and flies in the face of precedent. However, the ALC's Order removes these requirements and establishes a new requirement that an allegation of intent, by itself, is sufficient to establish domicile. The meager burden of self-serving testimony to establish domicile is not contemplated by any precedent and cannot be allowed as the burden of proof for establishing domicile.

CONCLUSION

The Administrative Law Court erred in holding the Respondent was not liable for South Carolina Income Tax for the 2008 Tax Year. The ALC's Order was arbitrary and constitutes an abuse of discretion. Moreover, the Order is clearly erroneous in view of reliable probative and substantial evidence in the record. For all the forgoing reasons the Department asks that this Court overturns the ALC's order.

Respectfully Submitted,



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May 23, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

The Honorable Shirley Robinson, Administrative Law Court Judge

Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

South Carolina Department of Revenue,.....Appellant;

v.

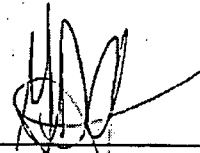
Frances H. Floyd,.....Respondent.

APPELLANT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent proposes the following to be included in the Record on Appeal:

1. Administrative Law Court's Order dated February 11, 2016
2. Appellant's Motion for Reconsideration dated February 22, 2016
3. Administrative Law Court's Order denying Motion for Reconsideration dated March 21, 2016
4. Transcript of Administrative Hearing on February 4, 2016
5. Appellant's Brief dated May 23, 2016

I certify that this designation contains no matter which is irrelevant to this appeal.



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May 23, 2016

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT COURT OF APPEALS
In a Contested Case Hearing

The Honorable Shirley Robinson, Administrative Law Court Judge

Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

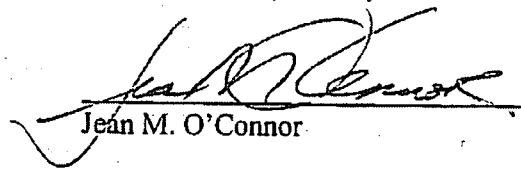
South Carolina Department of Revenue,.....Appellant,

v.

Frances H. Floyd,.....Respondent.

PROOF OF SERVICE

I, Jean M. O'Connor, do hereby certify that I have caused to be mailed, via United States Postal Service, postage prepaid, the South Carolina Department of Revenue's, Appellant, Initial Brief and Designation of Matter in the above referenced matter to John M.S. Hoefer, PO Box 8416, Columbia, SC 29202-8416 this 23rd day of May 2016.


Jean M. O'Connor

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

The Honorable Shirley Robinson, Administrative Law Court Judge

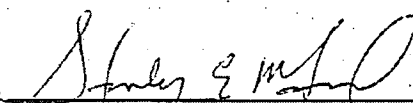
Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

South Carolina Department of Revenue, ... Appellant,

v.

Frances H. Floyd, ... Respondent

INITIAL BRIEF OF RESPONDENT



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ISSUE ON APPEAL

DID THE ADMINISTRATIVE LAW COURT ERR IN HOLDING THE RESPONDENT WAS NOT SUBJECT TO SOUTH CAROLINA INCOME TAX FOR THE 2008 TAX YEAR?

STATEMENT OF THE CASE

In 2004, Frances Hunter Floyd ("Respondent") left South Carolina to attend college in Oxford, Mississippi. In December of 2007, the Respondent graduated from college and moved to Jackson, Wyoming, where she worked in the resort industry. The Respondent was employed at Jack Dennis Sports, Inc. and 3 Creek Ranch Golf Club, earning wages in Wyoming until May of 2009.

On the 2008 Form 1040 Federal Income Tax return, the Respondent indicated she was "a Wyoming Resident." The Respondent did not file a 2008 income tax return with South Carolina as she was a Wyoming resident. Upon leaving Wyoming in May of 2009, the Respondent returned to South Carolina. On June 6, 2014, the South Carolina Department of Revenue (the "Department" or "Appellant") issued the Respondent a Proposed Notice of Assessment for the 2008 Income Tax year, notifying the Respondent that she failed to file a South Carolina income tax return for the 2008 period. The Respondent has resided in South Carolina since returning in May of 2009.

On July 29, 2014, the Department received an appeal from a certified public accountant representing the Respondent named Lewis W. Haselwood ("Mr. Haselwood" the Respondent's "accountant"). Mr. Haselwood stated that the Respondent established residency in Wyoming because she lived and worked in Wyoming during the 2008 period.

On August 6, 2015, the Department issued its Determination, finding that the Respondent remained domiciled in South Carolina and was therefore liable for South Carolina income tax for the 2008 tax year. On September 4, 2015, the Respondent appealed the Department's Determination and requested a contested case hearing before the Administrative Law Court ("ALC"). On February 4, 2016, the ALC held a contested case hearing on this matter.

At the hearing, the Respondent testified that she moved to Wyoming with the intention of staying there indefinitely. Respondent testified that, "I graduated from the University of Mississippi ready to go out of the South with the intention of staying out of the South." (Transcript, p. 11 lines 20-25).

In its Final Order, dated February 11, 2016, the ALC reversed the Department's Determination and found the Respondent established domicile in Wyoming and therefore was not liable for 2008 South Carolina income tax. On February 22, 2016, pursuant to ALC Rule 29(D) and Rule 59(E), SCRCF, the Department filed a Motion for Reconsideration with the ALC. The Department's basis for the motion was twofold. First, that the ALC had incorrectly applied precedent and second, that the ALC failed to consider the Respondent's inaction in terms of establishing domicile in the State of Wyoming. On March 3, 2016, counsel for the Respondent filed a response to the Department's Motion. On March 21, 2016, the ALC issued its Order denying the Department's Motion for Reconsideration. The Appellant then filed its appeal of the ALC's Order.

ARGUMENT

THE ADMINISTRATIVE LAW COURT DID NOT ERR IN HOLDING THE RESPONDENT WAS NOT SUBJECT TO SOUTH CAROLINA INCOME TAX FOR THE 2008 TAX YEAR.

In an appeal from the decision of an administrative agency, the Administrative Procedures Act provides the appropriate standard of review. Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Envtl. Control, 377 S.C. 540, 544, 661 S.E.2d 118, 120 (Ct. App. 2008); Clark v. Aiken County Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005). S.C. Code Ann. § 1-23-610(B) (Supp. 2013) provides the applicable standard:

(D) The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the Appellant has been prejudiced because of the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (t) arbitrary or capricious or characterized by abuse of discretion

or clearly unwarranted exercise of discretion.

Under the substantial evidence standard, a reviewing Court may reverse or modify an agency decision based on errors of law, but may only reverse or modify an agency's finding of fact if they are clearly erroneous. The Court reviewing the agency's decision should not substitute its own finding of fact for those of the agency nor should the Court substitute its judgment for that of the agency as to the weight of the evidence. Tobey v. L&P Const. Co., 296 S.C. 123, 125, 370 2d 897, 899 (Ct. App, 1988).

The Department argues that the ALC abused its discretion in finding for the Respondent failed to meet her burden of proof at the hearing by failing to offer substantial evidence to support her assertions. The Department also argues the ALC improperly applied case law and precedent in its finding that the Respondent established domicile in Wyoming for the 2008 tax year. In addition, it argues the ALC erred in its Order reversing the Department's Determination that the Respondent was a South Carolina resident, and therefore owes taxes to South Carolina, for the 2008 tax year. Respondent respectfully requests that the Court deny the appeal of the Department as there is sufficient evidence in the record to affirm the decision of the ALC.

A. The ALC's Finding That The Respondent Established Domicile In Wyoming Is Supported By The Evidence In The Record.

The Respondent did offer substantial evidence that she adopted domicile in Wyoming. At the hearing before the ALC, the Respondent testified that, "I graduated from the University of Mississippi ready to go out of the South with the intention of staying out of the South." (Transcript p.11, Lines 20-25) Respondent testified that it was her true and honest intent to stay in Wyoming. Respondent testified that she was happy and wanted to stay and "you know, was with someone there and wanted to remain and get married and have the family and have the beautiful little, you know, one tree wonderland out there." (Transcript p. 15, Lines 9-16)

S.C. Code Ann. § 12-6-510(A) (2014) of the South Carolina Income Tax Act imposes a tax on the South Carolina taxable income of individuals, estates, and certain other entities. For residents, §

12-6-560 (2014) indicates how this taxable income is to be determined. More specifically, § 12-6-560 states, "[a] resident individual's South Carolina gross income, adjusted gross income, and taxable income is computed as determined under the Internal Revenue Code" Pursuant to such Code, taxable income is simply gross income minus certain deductions and exclusions (see I.R.C. § 63). In the instant situation, the Taxpayer's income is taxable under § 12-6-510(A) if it comes within the definition of "gross income" at I.R.C. § 61. That definition defines "gross income" to include: "(a) . . . all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items[.]"

Because § 12-6-560 applies to "resident individuals," the issue becomes whether the Respondent is a resident individual. S.C. Code Ann. § 12-6-30(2) (2014) defines "resident individual" as "an individual domiciled in this State." The statute does not define "domicile." The South Carolina Supreme Court, however, assigned the following meaning to the term: ". . . 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, 379, 218 S.E.2d 521, 528 (1975). The Court further stated that a person may have several residences or dwelling places, but may only have one domicile at a particular time, and such person maintains his domicile until he establishes a new one. *Id.* Accordingly, if the Respondent is domiciled in South Carolina, she is a resident individual subject to state income tax.

In addressing domicile, the Supreme Court in Ravenel stated: ". . . intent is a most important element in determining the domicile of an individual.

The Respondent testified that she rented a place to live in Wyoming, opened a bank account, incurred bills, was employed by two employers there and began to build a home there. (Transcript p. 45, Lines 21-25). The above clearly evidences Respondent's intent to make Wyoming her domicile. She had been out of South Carolina since 2004. Respondent had no home in South Carolina. Her parents had a house, but Respondent had graduated from college and had no permanent home or

principal established in South Carolina to return to unless she moved back in with her parents which was not discussed as an option.

B. The ALC Did Not Abuse Its Discretion in Evaluating Testimony and Credibility.

The ALC based its Order on the evidence presented at the hearing, including the testimony of Respondent as to her intent to be a Wyoming resident, the rental of a home, the opening of a bank account, the obtaining of two (2) jobs, and the search for other opportunities there. (Transcript p. 45, Lines 21 – 25, p. 46, Lines 1-2). Respondent's testimony clearly reflected her intent to be a Wyoming resident and also reflected on her 2008 Federal tax return.

In Mitchell v. U.S., 88 U.S. 1874, the United States Supreme Court noted that for domicile "[t]o be established it must be proved. Among the circumstances usually relied upon to establish the intention to remain are: Declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence, and a place of business." Here, the Respondent rented a house and got two (2) jobs and searched for others. Respondent graduated from the University of Mississippi ready to go out of the South with the intention of staying out of the South. Respondent testified it was her true and honest intent to stay in Wyoming.

The Appellant argues that the establishment of domicile must be accompanied with proof of an intention to remain in the adopted domicile for an unlimited time and that proof must be more than a "bare assertion." The Respondent's testimony along with her rental of a home, the opening of a bank account, obtaining two (2) jobs and search for other opportunities was clearly sufficient to the ALC to prove that she intended to establish her domicile in Wyoming. She testified in no uncertain terms that she wanted to move out of the South and establish a home in Wyoming. Appellant argues that Respondent's intentions are unaccompanied by any proof of intent to abandon her South Carolina domicile. That is simply untrue as the ALC found. Respondent rented a home, set up bank accounts, got two (2) jobs and looked for other opportunities and would have stated in Wyoming if she had found the right job. Respondent testified she wanted to be a Wyoming resident and put that on her

Federal tax return. Appellant refuses for some reason to acknowledge that Respondent just got out of college in Mississippi and chose to move to Wyoming to get out of the South and establish a home in Wyoming. She rented a home, set up a bank accounts got two jobs, and filed a Federal tax return setting forth she wanted to be a Wyoming resident and not a South Carolina resident.

C. The ALC Erred In Its Ruling By Failing To Correctly Apply Case Law And Precedent.

Among applicable South Carolina case law addressing domicile, Ravenel does not stand alone. In determining domicile, the South Carolina Supreme Court stated that "It has been well settled in this state, as elsewhere, that place of residence is a question of fact and depends upon the intention of the party as evidenced by his acts and declarations..." Sample v. Bedenbaugh, 158 S.C. 496, 155 S.E. 828 (1930). (Emphasis added). Because intent is at the root of a change in domicile, the determination of whether one has changed domicile requires an examination of a person's actions.

In this case, there is no dispute the Respondent lived in Wyoming from December, 2007, until May, 2009. What is at issue, according to the Appellant, is whether the Respondent took steps to abandon her South Carolina domicile and adopt Wyoming as her state of domicile. When Respondent filed her Federal return and put on it "Wyoming Resident," that was an overt act to abandon South Carolina as her domicile. The Department looks to overt acts by a taxpayer in abandoning their South Carolina domicile to ensure the change is legitimate. Here the Respondent did take the overt step to change her domicile and in fact her acts show she desired to be a Wyoming resident.

The Appellant agrees that certain cases support their position. In one case so cited, Blount v. Boston, the Court of Appeals of Maryland addressed the issue of domicile, extensively, stating "Intent is best shown by objective factors" and also that:

The two most significant objective factors evidencing a person's intent regarding domicile are where the person lives and where he or she votes or is registered to vote. Ballwin, 272 Md. at 498, 325 A.2d at 397 ("the two most important elements in determining domicile are where a person actually lives and where he votes"). Our cases have characterized the place of voting as "the highest evidence of domicile."

Blount v. Boston, 351 Md. 360, 718 A.2d 1111 (1998). The Respondent lived in Wyoming and had chosen not to register to vote yet in South Carolina nor Wyoming.

The ALC found the Respondent abandoned her South Carolina domicile. The ALC's Order states that the Respondent's conduct shows she intended to adopt Wyoming as her state of domicile. In Ravenel "expressed intent . . . must be evaluated in the light of [the person's] conduct which is either consistent or inconsistent with such expressed intent," the facts do support the finding that the Respondent showed she intended to be domiciled in Wyoming. Respondent testified that she intended to make Wyoming her domicile and she rented a home, set up a bank account and got two jobs in Wyoming and searched for other opportunities.

Respondent did not get a new driver's license as her old one had not expired. She did not register to vote as she had never registered to vote. She did not change the vehicle registration as it was her father's vehicle. However, everything else shows she was to be a resident of Wyoming and not South Carolina.

D. The ALC's Order Will Not Cause Harmful Effects.

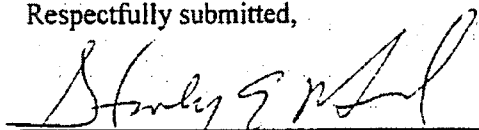
The Appellant argues that given the ALC's reasoning, anyone can temporarily move from the State of South Carolina in order to forgo the payment of income taxes simply by alleging domicile elsewhere. Per the ALC's Order, a taxpayer need only move out of state, take no action to set up a "home," establish a bank account nor get a new job, then can allege an intention to stay in another state to be absolved from income taxes for that period. This argument is an exaggeration and not likely an occurrence if the ALC's Order remains. Such an argument as made by the Appellant is absurd. Not many people who live in South Carolina and work in South Carolina can simply move out of state to get around paying South Carolina taxes. They would have to sell their homes and quit their jobs here.

The Appellant then argues the basis of domicile is permanence. Appellant also argues a temporary change in residence, as well as having multiple residences, is not the same as a change in domicile. Appellant then sets forth that the primary indicators of a change in domicile are the acts a person takes to manifest their intention to abandon their previous place of domicile and adopt a new one. The Appellant is so concerned that everyone in South Carolina will sell their homes and quit their jobs and move out of South Carolina to not pay South Carolina taxes that they fail to see the facts in the present case are different. Appellant moved to Wyoming after college in Mississippi to find the job she desired. Appellant stayed in Wyoming for over a year and a half. She intended to remain there. She opened a bank account, rented a home and found two (2) jobs and searched for others. She had no home in South Carolina. Her parents did, however. She would have stayed in Wyoming if she could have found her desired job.

CONCLUSION

The Administrative Law Court found the Respondent was not liable for South Carolina Income Tax for the 2008 Tax Year as she established Wyoming as her residence. The ALC's Order is supported by sufficient evidence of this case. For all the foregoing reasons the Respondent asks that this Court affirm the ALC's Order.

Respectfully submitted,



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June 23, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 28 2016

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing

The Honorable Shirley Robinson, Administrative Law Court Judge

Docket No. 15-ALJ-17-0458-CC
Appellant Case No.: 2016-000766

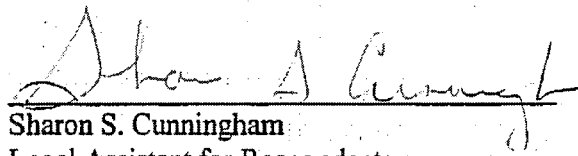
South Carolina Department of Revenue, ... Appellant,

v.

Frances H. Floyd, ... Respondent

PROOF OF SERVICE

I, Sharon S. Cunningham, do hereby certify that I have caused to be mailed, via United States Postal Service, postage prepaid, Frances H. Floyd's, Respondent, Initial Brief and Designation of Matter in the above referenced matter to Sean G. Ryan, Esquire, P. O. Box 12265, Columbia, SC 29211, this 23 day of June 2016.


Sharon S. Cunningham
Legal Assistant for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 28 2016

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley Robinson, Administrative Law Judge

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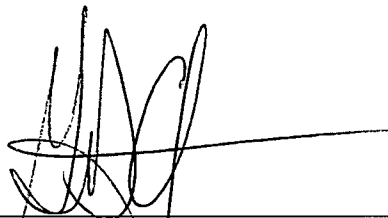
Frances H. Floyd.....Respondent,

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South Carolina Department of Revenue.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by the above-referenced parties and not any other material in compliance with Rule 210(g), SCACR.



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