

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

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SC Court of Appeals

Frances H. Floyd.....Respondent,

V.

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

FINAL BRIEF OF APPELLANT

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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), 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. 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 & Env'tl. Control, 379 S.C. 57, 63, 663 S.E.2d 497, 500-501 (Ct. App. 2008); Turner v. S.C. Dep't of Health & Env'tl. 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 Petitioner 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. 55, 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. 82-83, 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. 82-83, 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

¹**Wyoming 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. 50, 12:18; Tr. p. 12, 12:18; R. p. 56, 18:21, Tr. p. 18, 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. 51, 20:23; Tr. p. 13, 20:23; R. pp. 52-53, 10:3; Tr. pp. 14-15, 10:3).

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. 53, 16:19; Tr. p. 15, 16:19; R. p. 54, 21:23; Tr. 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. 5; 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. 5; 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.

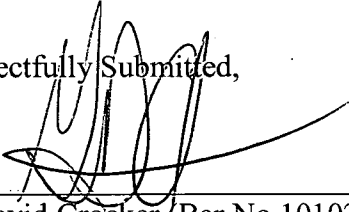
Under the ALC's ruling, a person could move from North Augusta, South Carolina, to Augusta, Georgia, and upon moving back to North Augusta, South Carolina, not be liable for taxes owed during their absence so long as they allege an intention to stay in Augusta. The person need not take any overt action 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

For all the forgoing reasons and for any other reason appearing in the Record on Appeal, the South Carolina Department of Revenue respectfully requests that this Court overturns the ALC's Final Order.

Respectfully Submitted,



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July 21, 2016

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

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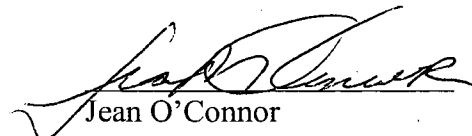
Frances H. Floyd.....Respondent,

V.

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

PROOF OF SERVICE

I, Jean O'Connor, do hereby certify that I have caused to be mailed, postage prepaid, a copy of the South Carolina Department of Revenue's Final Brief and Record on Appeal in the above-referenced matter to Stanley E. McLeod, Esquire, 106 Williams Street, P.O. Box 2464, Greenville, SC 29602 this 28th day of July 2016.


Jean O'Connor