

BEFORE THE ARIZONA DEPARTMENT OF REVENUE

In the Matter of)	DECISION OF
[REDACTED])	HEARING OFFICER
UTI # [REDACTED])	Case No. 201200229-I
_____)	

A hearing was held on December 18, 2012 in the matter of the protest of [REDACTED] (Taxpayer) to an assessment of income tax, penalty and interest by the Individual Income Tax Audit Section (Section) of the Arizona Department of Revenue (Department) for tax year 2007.

This matter is now ready for ruling.

FINDINGS OF FACT

1. Taxpayer did not file a resident Arizona state income tax return with the state of Arizona for tax year 2007.
2. The Section received information from the Internal Revenue Service (IRS) that Taxpayer filed a federal income tax return for 2007 showing an Arizona address.
3. The Section issued an assessment dated January 19, 2012 including in Taxpayer's Arizona income his federal adjusted gross income (FAGI) and allowing Taxpayer a standard deduction and personal exemption.
4. The assessment included statutory interest and a penalty for failure to a return when due.
5. Taxpayer timely protested the assessment stating that he was not an Arizona resident during 2007 until December 27, 2007 and that he earned no income in Arizona.
6. Taxpayer filed a part-year Arizona return for tax year 2004 and resident Arizona income tax returns for tax years 2005, 2006, and 2008 through 2010.

7. Taxpayer was born in and is a citizen of [REDACTED] ([REDACTED]).
8. Taxpayer moved to Arizona in 2004. Prior to moving to Arizona Taxpayer worked in [REDACTED].
9. Taxpayer's business was [REDACTED] design.
10. Taxpayer's mother became ill and Taxpayer wanted to return to [REDACTED] to be with his mother.
11. In June 2006 Taxpayer ended his lease on his residence, sold his furniture, packed his personal effects and drove to [REDACTED].
12. Taxpayer rented a storage unit in [REDACTED] in July 2006.
13. Taxpayer changed the address on his bank account in July 2006 and began working in [REDACTED].
14. Taxpayer flew to [REDACTED] in September 2006 and moved into his brother's house.
15. During October through December 2006 Taxpayer researched location to set up a business in [REDACTED] and decided on [REDACTED].
16. In January 2007 Taxpayer flew to [REDACTED] and shipped his personal effects to his brother's house in [REDACTED].
17. During February through May 2007 Taxpayer lived in a hotel in [REDACTED] and worked on a house in [REDACTED].
18. Taxpayer's truck registration expired and he registered the truck in [REDACTED].
19. In July 2007 Taxpayer sold his truck, went to [REDACTED], rented an apartment, purchased a truck, purchased furniture for the apartment and equipment for work and applied for a provisional driver's license.
20. Taxpayer flew to [REDACTED] in November 2007 to do repairs and touch-up on a house Taxpayer painted in 2005.
21. In December 2007 Taxpayer received an offer to work on houses in [REDACTED], Arizona and in [REDACTED].

22. Taxpayer did not have significant job opportunities available in [REDACTED] and decided to accept the offer to work in Arizona and [REDACTED].
23. Taxpayer then received offers for additional jobs in Arizona.
24. Taxpayer believed he would have more jobs in the southwest United States and in [REDACTED] and on December 24, 2007 Taxpayer signed a six month lease on a furnished apartment in [REDACTED].
25. In January 2008 Taxpayer flew to [REDACTED] closed the apartment, stored his personal belongings at his brother's house and then returned to Arizona.
26. Taxpayer did not have income from Arizona sources from June 2006 until 2008.
27. Taxpayer's income during 2006 was derived from Arizona sources.
28. Taxpayer was advised by a tax practitioner to use his previous Arizona address on his 2006 tax return because all of his income in 2006 came from Arizona sources.
29. Taxpayer was out of the state of Arizona for the period June 2006 to December 24, 2007.
30. Taxpayer used a [REDACTED] mailing address during 2007.
31. Taxpayer testified that he purchased a truck and the equipment in [REDACTED] and rented an apartment because he intended to stay in [REDACTED].

CONCLUSIONS OF LAW

1. The presumption is that an assessment of additional income tax is correct. *Arizona State Tax Commission v. Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).
2. For tax years prior to 2007 Taxpayer was an Arizona resident and had his domicile in Arizona.
3. Once a domicile is established it is presumed to continue until a change in domicile has been shown. *Jizmejjan v. Jizmejjan*, 16 Ariz.App. 270, 492 P.2d 1208 (1972).

4. A person cannot have more than one domicile at a time. *Clark v. Clark*, 71 Ariz. 194, 225 P.2d 486 (1950).
5. The burden of proof is on the party asserting that an earlier domicile has been abandoned for a new domicile. *Jizmejjan v. Jizmejjan, supra*.
6. A new residence or domicile is acquired only by the concurrence of an intention to establish a new domicile and acts evidencing that intention. *Kauzlarich v. Board of Trustees*, 78 Ariz. 267, 278 P.2d 888 (1955); Department Income Tax Procedure (ITP) 92-1.
7. A change of domicile requires an intent to abandon the former domicile and remain at the new. *DeWitt v. McFarland*, 112 Ariz. 33, 537 P.2d 20 (1975).
8. Taxpayer has shown that he changed domicile in 2006 when he left Arizona with the intention of returning to [REDACTED].
9. Taxpayer was not an Arizona resident during tax year 2007 until December 24, 2007.
10. A non-resident of this state is subject to tax on taxable income derived from sources within Arizona. A.R.S. § 43-102(A)(5).
11. Taxpayer did not receive income derived from sources within Arizona during tax year 2007.
12. Taxpayer was not subject to Arizona income tax on income he received in 2007 derived from sources outside of Arizona.
13. The Section's assessment dated January 19, 2012 for tax year 2007 is reversed.

DISCUSSION

The issue in this protest is whether Taxpayer was a nonresident of Arizona during tax year 2007 and therefore income from sources outside Arizona would not be subject to Arizona individual income tax.

There is substantial authority in Arizona concerning the determination of residency status. Once a domicile is established, it is presumed to continue until a change in domicile has been shown. *Jizmejjan v. Jizmejjan, supra*. A person cannot have more than one domicile at a time. *Clark v. Clark, supra*. A new residence or domicile is acquired only by the concurrence of an intention to abandon the former domicile and establish a new domicile where they will remain for an indefinite period of time and acts evidencing that intention. *Kauzlarich v. Board of Trustees, supra; DeWitt v. McFarland, supra*. The burden of proof is on the party asserting that an earlier domicile has been abandoned for a new domicile. *Jizmejjan v. Jizmejjan, supra*.

Prior to 2007 Taxpayer was an Arizona resident domiciled in Arizona and filed Arizona resident income tax returns. The question therefore is whether Taxpayer demonstrated that he abandoned his Arizona domicile before the beginning of tax year 2007 and established a new domicile elsewhere.

Based on the record, Taxpayer did abandon his Arizona domicile prior to tax year 2007 and did establish a new domicile in [REDACTED]. Taxpayer left Arizona in June 2006 and did not leave any belongings in Arizona. Taxpayer changed the address on his checking account to a [REDACTED] address in July 2006. Taxpayer sold his truck and furniture in [REDACTED] and shipped his personal belongings to [REDACTED]. Taxpayer purchased a truck in t[REDACTED], rented an apartment and purchased equipment in an effort to start a business in [REDACTED]. Taxpayer applied for a provisional driver's license in [REDACTED] and began the process to obtain a permanent license. The facts of this case support Taxpayer's subjective testimony that he intended to stay in [REDACTED] and establish a business there. Taxpayer did not return to the United States and the southwest until new business opportunities arose and he had difficulties in establishing a business in [REDACTED]. Once Taxpayer returned to Arizona, he began filing resident tax returns.

Based on the foregoing, the Section's proposed assessment dated January 19, 2012 for tax year 2007 is reversed.

DATED this 23rd day of January, 2013.

ARIZONA DEPARTMENT OF REVENUE
HEARING OFFICE

[REDACTED]
Hearing Officer

Original of the foregoing sent by
certified mail to:

[REDACTED]

Copy of the foregoing delivered to:

Arizona Department of Revenue
Individual Income Tax Audit Section