

OPINION NO. 252

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

GIST BLAIR,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent.

DOCKET NO. 340

FINDINGS OF FACT AND OPINION

The petitioner paid to the District of Columbia an income tax in the sum of \$435.37 for the calendar year 1939 in two equal installments, and on the dates of payments, respectively, filed simultaneously claims for the refund of such tax. The Assessor disallowed such claims. The petitioner alleges that such action of the Assessor was erroneous for the reason that the petitioner was not domiciled in the District of Columbia at any time during the calendar year 1939.

Findings of fact

The petitioner is an individual. He is married. He maintains two residences: at 1651 Pennsylvania Avenue, Northwest, in the City of Washington, District of Columbia, and in Bar Harbor, Maine.

The petitioner's grandfather was domiciled in Maryland, and as such was prominent in local politics. He was the first of the petitioner's family to own premises 1651 Pennsylvania Avenue, Northwest, in the City of Washington, which will be hereinafter called the "Washington Residence." The Washington Residence descended to the petitioner's father, who at the time of petitioner's birth, September 10, 1860, was living in Maryland. He was the recognized

leader of the Republican party in the state at that time, and headed the Maryland delegation at the Republican National Convention in 1860. As a resident of Maryland he was appointed Postmaster General by President Lincoln in 1861. Throughout the remainder of his life he resided in Maryland and died at his Silver Spring, Maryland, home in 1883. His estate was administered in Montgomery County, Maryland. He used the Washington Residence chiefly in connection with his political life and practice as a lawyer. The major part of his time was spent in the Silver Spring home.

The petitioner during his minority resided with his father. When he became of age in 1881 he registered as a voter in Maryland and voted in the next election in 1882. In the same year he was admitted to the Maryland Bar. The Board finds that, during the minority of the petitioner, his father resided in Maryland with the intention of making it his home for an indefinite period, and that until the early part of 1883 the petitioner had the same residence and intention.

In 1883 the petitioner removed to St. Louis, Missouri, where he remained as a resident until 1897. During his residence in Missouri, the petitioner was admitted to the Missouri Bar, maintained a home and voted in that state. He took active part in politics in St. Louis and received and held elective offices therein. The Board finds as a fact that when the petitioner removed to Missouri in 1883 he had the intention to reside and make his home in that state for an indefinite period of time.

In 1897 the petitioner left St. Louis and removed to Washington, D. C. He lived for a short while in the Washington Residence. His father's home property in Silver Spring, Maryland, was then divided between him and his brother, and the petitioner built a home in Silver Spring on his portion of the inherited land. This was within two years from his return from St. Louis. The petitioner lived in the Silver Spring home most of the year,

although he did reside in the Washington Residence during part of the time. When he returned to Silver Spring he registered as a voter in Maryland and entered upon an active political life in that state. In the years 1904, 1912 and 1916 he was a delegate from Maryland to the Republican National Convention, either as delegate-at-large or from the Sixth Congressional District of Maryland.

In 1904, through the efforts of the petitioner, a post office was established for the first time at Silver Spring, and the petitioner became its first postmaster. He was the Republican candidate for States Attorney of Montgomery County at one time, and was twice a candidate for Congress from the Sixth Congressional District of Maryland. During the Administration of Governor Goldsborough of Maryland, the petitioner served on the Governor's staff as Chief of Ordnance of the militia.

About the time of his return from St. Louis in 1897 the petitioner became a member of the Chevy Chase and Metropolitan Clubs, both in or in the vicinity of Washington, and has been a member thereof ever since.

During the time of his second residence at Silver Spring, Maryland, the petitioner was assistant or trust officer of the National Savings and Trust Company. He spent most of his winters in the Washington Residence, and engaged in social and civil activities in the District of Columbia.

The Board finds as a fact that when the petitioner built his home in Silver Spring, Maryland, after his return from St. Louis in 1897, he had an intention to reside and make his home in Silver Spring, Maryland, for an indefinite period of time.

In November, 1917, the petitioner was commissioned Major in the United States Army. Shortly thereafter he was detailed to Boston, Massachusetts, where he remained until the end of the first World War. Concerning his residence after that time the

petitioner testified, and the Board finds the facts to be as follows:

"Following the armistice and my resignation of my commission, I was asked by my cousins, Mary G. Ray and Mary J. E. Clapp, both of Portland, Maine, to take up my residence at that place and devote my time to the supervision of their extensive business interests. I thereupon rented a home in Portland and opened an office there in the Clapp Memorial Building which has been maintained continuously in my name until the present time. After my removal to Portland, I determined to relinquish my citizenship in Maryland, and accordingly sold my home in Silver Spring and became a legally qualified voter in Portland. On the death of my cousins, Miss Ray and Miss Clapp, I was named one of the executors of each of their estates and was named life trustee of Miss Clapp's estate. The administrations and trusteeships required and continued to require a very large amount of time, and have involved the continued renting of an office in my name in Portland and the hiring of office aid. Since removing to Portland, such work has constituted my sole business interest, and I have engaged in no business affairs whatever in Washington except as director of the American Security and Trust Company. I am listed on the directorate, however, as from Maine, and because of the large part of the year that I am away from Washington, my directors fees seldom exceed \$100 per year. My compensation first as executor and later as trustee of the Maine estates has, however, been substantial.

"After residing two years in Portland, Maine, I removed my residence to Bar Harbor, Hancock County, Maine, where I first rented and later purchased the home which I still occupy. This home is very substantial in size and contains about the same number of rooms as my residence at 1651 Pennsylvania Avenue. Immediately upon removing to Hancock County, I had my name placed on the register of voters there and reported my property to the Assessor, having been assessed annually since that time on my tangible and intangible personalty as well as my real estate. I became a member of the Cumberland Club of Portland and the Pot and Kettle and Bar Harbor Clubs of Bar Harbor. I also took an active part in Maine political life and have voted in person in practically every general state election since taking up residence. During the years 1934, 1936 and 1938, I was Chairman of a Republican Campaign Fund Committee in Bar Harbor, and for over ten years I have been President of the Village Improvement Society at Bar Harbor, which, in conjunction with the town authorities, supervises the local parks and paths, examines the water supply, etc.

Since becoming a resident of Maine, I have generally spent a large part of the year in that state as well as in Washington. I reside in Maine annually from about the middle of June until the first of October and return later in the year for varying periods to Portland. During the remainder of the year, I have generally been away from Washington for several months, in South Carolina or Florida or in European travel, and my Washington residence will be closed and wired for the greater part of the year. During

the past twelve months, for example, my Washington residence was closed from June 15th to October 15th, then opened until the 20th of December, and closed again until April, then reopened until the present time, although it will be closed again within the next few days as I expect to return to Maine. Thus, it will be seen that my Washington residence has been open as an average, in my opinion, for only about five months of the last twelve.

"While I maintain an office in the Union Trust Building in this city, no business is transacted there except for correspondence with the Portland office which I maintain as trustee of the Clapp estate. The office here is used chiefly in connection with my numerous civic and charitable activities such as Emergency hospital, etc., and for personal matters.

"My residence at 1651 Pennsylvania Avenue came to me by inheritance, and has been in my family for over one hundred years. As both my father and grandfather were prominent Maryland politicians, although naturally not as legal residents of Washington. The House has many historic associations and is marked by a tablet commemorating some of those events. For both historic and sentimental reasons, I naturally wish to continue to own this residence and to occupy it during the months that I am in Washington. During the entire period of my ownership, however, I have rented or owned or occupied and rented, homes in other jurisdictions, successively in St. Louis, Missouri, Silver Spring, Maryland, and Portland and Bar Harbor, Maine, and have voted and taken an active part in the political life in those jurisdictions. I have prized my franchise as a voter and my life in those other jurisdictions, where I have always been considered a bona fide citizen, have held public office as such and been taxed as such. I do not believe that the mere ownership of the residence in Washington should subject me to taxes as a citizen, nor should the fact that I have been willing to devote much of my time while in Washington to civic and charitable enterprises of a nature which I have been also willing to discharge in other jurisdictions. If, however, a District of Columbia tax should be sustained against me so that I will be subject to double taxation, it may be necessary for me to close permanently my Washington residence and resign from all local civic affairs, as I have no intention of giving up my home or my franchise in Maine.

"In reference to the questions on the claim for refund heretofore filed in respect of which answer was deferred, I would state as follows:

" 4(e) How long have you resided in the District of Columbia?

It is believed that the foregoing facts fully answer this question.

" 8. Do you regularly report your income of intangible personal property and pay taxes thereon to any State or territory?

I have continuously paid intangible personal property taxes to the State of Maine, first in Portland and subsequently in Bar Harbor, Hancock County, Maine, since removing my residence there from Maryland more than twenty years ago. It is not the practice in Maine, however, to require a return by the taxpayer. The local Assessor and Collector of Hancock County, Maine, makes an assessment each year on my intangible personal property for local, county and state purposes, and I have paid the full amount of this

assessment annually. I have also paid an annual poll tax."

The Board finds as a fact that when the petitioner removed to Portland, Maine, in 1918 he intended to reside and make his home therein for an indefinite period of time, and that such intention accompanied his change of residence to Bar Harbor, Maine.

The petitioner is President of the Emergency Hospital, Washington, D. C. He is a director of the American Security and Trust Company of Washington, D.C. He is shown on the records of the Trust Company as being from Maine.

During the calendar year 1939 the petitioner made the following contributions to charities and the like, of Washington and Maine:

National Cathedral, Washington	\$10.00
Community Chest, Washington	200.00
St. Johns Church, Washington	133.50
Humane Society, Washington	5.00
Animal Rescue League, Washington	5.00
Emergency Hospital, Washington	622.50
Child's Welfare Society, Washington	10.00
Mother's Health Ass'n, Inc., Washington,	20.00
American Legion, Washington,	5.00
Society for Prevention of Blindness, Wash.,	25.00
Village Improvement Society, Bar Harbor,	25.00
St. Saviour's Guild and Church, Bar Harbor,	35.00
St. Desert Hospital, Bar Harbor,	45.00

The petitioner duly filed a return of income for the calendar year, which showed an income tax of \$435.37 due the District of Columbia. The petitioner paid such tax in two equal installments, and contemporaneously filed with the Assessor claims for refund. The Assessor disallowed such claims and notified the petitioner thereof in respect of the first half of such tax on June 10, 1940, and as to the second half on July 19, 1940. This proceeding was filed on August 22, 1940.

Opinion

From the facts as found by the Board it is clear that the petitioner never was domiciled in the District of Columbia. His domicile of origin was Maryland, succeeded by fourteen years' domicile in St. Louis, Missouri. Then he began a new domicile in his old home in Silver Spring, to be followed later by his domicile in Maine. While the petitioner has kept the residence in Washington for sentimental and historical reasons, and has regularly used it during the winter months, the Board does not believe that, in view of all the circumstances of the case, such use converted such temporary residence into domicile.

This is a very close case, and must not be taken as a precedent, except in cases identical therewith. Its consideration was attendant with the usual difficulty in determining domicile in instances where the person involved actually uses two or more residences in different jurisdictions during the year. It should be added that no weight was given by the Board to the fact that the petitioner voted in Maryland, Missouri, and Maine. The cases cited by the petitioner are applicable to the circumstance of a person living in two jurisdictions, both of which afford the right of suffrage. Of course, in such instance, the act of the party in selecting a jurisdiction in which to register and vote is significant. Where, as here in the District of Columbia, the right of suffrage is denied, the fact of registering and voting in a state is of no real value in determining domicile.

Section 2 of the District of Columbia Income Tax Act imposes a tax on those only who were domiciled in the District of Columbia on the 1st day of the taxable year. Since the petitioner was not so domiciled on December 31, 1939, he was not liable to the District of Columbia for an income tax for 1939. His claim

for refund should have been granted since the tax was erroneously paid. He therefore is entitled to a refund of the sum of \$435.37 paid as an income tax to the District of Columbia.

Decision will be entered for petitioner.

A handwritten signature in cursive script, appearing to read "J. Stinson", is written over a horizontal line.

DECEMBER 4, 1940

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BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

GIST LAIR,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

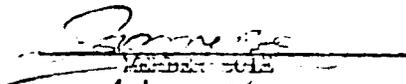
Respondent.

CKET NO. 340

D E C I S I O N

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the board this 4th day of December, 1940.

ADJUDGED AND DETERMINED, That an income tax for the year 1939 in the sum of \$435.37 was erroneously collected from the petitioner by the District of Columbia, and that said petitioner is entitled to a refund of said sum.

  
MEMBER

December 4, 1940.