

JUL 13 1076

MICHAEL R. HOYT,

Petitioner

v.

DISTRICT OF COLUMBIA,

Respondent

FILED

Docket No. 2296

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT

This matter comes before the Court on petitioner's appeal from an assessment of income taxes against him by the District of Columbia for the years 1968, 1969, 1970, and the first three months of 1971.

The case was tried before the Court sitting without a jury, and upon consideration of the testimony and documentary evidence, the Court makes the following findings of fact and conclusions of law:

I

FINDINGS OF FACT

1. Petitioner was born in Chicago, Illinois, February 28, 1943. He lived in the District of Columbia from 1953 to April, 1967.

2. Petitioner lived with his parents during the time he resided in the District of Columbia, living first at 3636 Sixteenth Street, N.W., and in 1965 moving to 2939 Van Ness Street, N.W.

3. Petitioner filed resident income tax returns with the District of Columbia for the years 1965 and 1966.

4. In early 1966 petitioner applied for admission to the Air Force Officers Training School but, because of certain FBI background investigations, he did not actually enter the military service until April, 1967. Petitioner left the District of Columbia in April, 1967, when he was inducted into the United States Air Force.

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5. Petitioner was not inducted into the military service under any threat of imminent draft but joined the military voluntarily. He had been attending graduate school at American University and had a draft deferment.

6. At the time petitioner was inducted into the Air Force, he intended to make the military his career. He had no intention of returning to the District of Columbia. He and his wife discussed negatively the possibility of returning to the District of Columbia.

7. During the time petitioner lived in the District of Columbia, he was unmarried. On June 30, 1967, he was married at Lackland Air Force Base, Texas, to Jean B. Vollweiler.

8. The petitioner's marriage occurred subsequent to his entrance into the military service, although it had been planned about three months prior to the time he entered the service. He had met his wife in early 1966 in New York City where she was living. She was a resident of New York City prior to their marriage and had never lived in the District of Columbia.

9. Petitioner received his basic training at Lackland Air Force Base, Texas, and was commissioned a Second Lieutenant on June 30, 1967.

10. After petitioner's basic training and receipt of his commission, he was assigned to Keesler Air Force Base near Biloxi, Mississippi, for training at a communications school. He was assigned to Keesler from July, 1967 to May, 1968.

11. While at Keesler Air Force Base, petitioner maintained his intention of making the Air Force his career.

12. In May, 1968, petitioner was assigned to the 33rd Air Division, Fort Lee, Virginia, as a communications officer. His assignment at Fort Lee was known as a permanent assignment and was to extend for at least three years.

13. At no time did petitioner ever seek to be assigned or be reassigned to the District of Columbia. Petitioner and his wife had discussed the question of returning to the District of Columbia and had come to the conclusion that they did not wish to live in the District of Columbia.

14. Petitioner intended to make Virginia his home. He and his wife considered Virginia to be their domicile.

15. Petitioner prepared a Career Objective Statement on October 15, 1969, while stationed at Fort Lee, Virginia, indicating the location of future assignments he would like in the Air Force after his three-year assignment at Fort Lee, Virginia. He did not indicate a preference for being assigned in or near the District of Columbia. However, under Air Force policy, he was not free to choose a continued assignment in Virginia.

16. Petitioner was officially separated from active duty with the military on June 30, 1971. He left Fort Lee, Virginia, in April, 1971, and moved directly to Fort Lauderdale, Florida. Petitioner's household effects were moved by the military to Florida. When petitioner arrived at Fort Lee, Virginia, he still intended to make the military his career. Approximately one year prior to leaving the military service, petitioner determined that he no longer wanted to make the military his career. After making such a determination, petitioner did not contemplate returning to the District of Columbia.

17. Upon leaving Fort Lee in April of 1971, petitioner became a resident of the State of Florida, working at various jobs until November, 1975, when he determined to return to the Metropolitan Washington area. Petitioner's return to this area was prompted by the unexpected death of his mother.

18. Petitioner established his own independent household, separate and apart from that of his father with whom he had previously lived prior to his induction into the military service. Petitioner and his wife have lived together continuously as a family since their marriage. One son, William, was born to the couple at Fort Lee, Virginia, in 1969.

19. Petitioner filed federal income tax returns for the years 1968 through 1970 while stationed in Fort Lee, Virginia. These returns show as his address 283 A Bizerte Circle, Fort Lee, Virginia.

20. Petitioner filed Virginia State Resident Individual Income Tax Returns for the years 1968, 1969 and 1970 and a Virginia Nonresident Income Tax Return for the year 1971. All taxes due on said returns were paid.

21. In 1967, while in training in Texas and Mississippi, petitioner failed to file a state income tax return. He has subsequently paid a local income tax to the District of Columbia for the full year.

22. Petitioner owned a Volkswagon and subsequently a 1970 Oldsmobile while living at Fort Lee, Virginia. These automobiles were licensed and registered in the State of Virginia during the taxable years in question.

23. Petitioner drove on a District of Columbia driver's license during the time he lived in Fort Lee, Virginia, which he renewed on November 5, 1969.

24. Petitioner and his wife shopped in the Tri-City area of Richmond, Petersburg and Fort Lee. While there, they opened a charge account at Sears Roebuck and Company.

25. Petitioner's wife worked at Central State Hospital in Petersburg, Virginia, commencing in late 1968. She also did volunteer work at the Hospital and with Joint Action in Community Service, took flying lessons and belonged to the Le Leche League.

26. During the tax period in question, petitioner and his wife lived in off-post rental housing, first in Colonial Heights, Virginia, and about six months later at 283 A Bizerte Circle, Fort Lee, Virginia. The latter was provided by the military. During this period of time, the petitioner did not own, lease or maintain any real estate located in the District of Columbia. Petitioner's parents did not maintain a room for him looking forward to his return to the District.

27. All mail and correspondence came directly to the address of the petitioner and did not go through the military. Petitioner never requested any mail to be sent to his father's address in the District of Columbia by the military. Petitioner did not file any formal address changes with the military as he believed it to be unnecessary.

28. The petitioner maintained a local telephone in Fort Lee, Virginia, which was listed in his own name with his name appearing in the local directories. No calls came through the military switchboard.

29. Petitioner's furniture and furnishings were located at Fort Lee, Virginia, during the period in question. His household insurance was for goods located at Fort Lee. No furnishings were located in the District of Columbia.

30. Petitioner maintained a checking and savings account at United Virginia State Planters Bank in Fort Lee, Virginia, during the period in question except that, in early 1970, the checking account was closed and a new checking account was established at The Vermont Bank and Trust Company in Brattleboro, Vermont. This account was established only to save the service charge which was being charged on the State Planters Bank checking account. Petitioner used these bank accounts for his day-to-day operations.

31. Petitioner also had bank accounts at First Federal, Perpetual and American Security and Trust in the District of Columbia. These accounts were established by his father, for his father's convenience in connection with certain joint financial ventures and gifts made by petitioner's father. They were established as a matter of convenience for petitioner's father and had no connection with the District of Columbia other than the fact that his father lived in the District of Columbia. This practice continued after petitioner moved to Florida.

32. Petitioner did not become involved in the day-to-day operations of the business ventures run by his father in which petitioner had an interest. Certain of the business ventures involved real estate holdings outside of the District of Columbia. Petitioner did not actively participate in the handling of these personal financial investments while living at Fort Lee, Virginia. There was no investment connection with the District of Columbia other than the fact petitioner's father lived there.

33. Petitioner applied for an absentee ballot from the District of Columbia for the 1968 Presidential Election, but it is unclear whether he submitted his ballot. Petitioner was not eligible by local law to vote in Virginia in 1968.

34. Petitioner performed various volunteer services of a charitable nature for Central State Hospital during his stay at Fort Lee, Virginia.

35. Petitioner and his wife participated in the foster child program in the State of Virginia from early 1969 through approximately June, 1969. Petitioner's involvement in the foster child program required certain clearances by the local welfare agency and the court in the State of Virginia. Among the qualifications was the fact that the individual must show

himself to be resident of the State of Virginia. Petitioner and his wife were so approved and received a foster child into their home for approximately six months beginning in early 1969.

36. Petitioner and his wife also took other children from Central State Hospital into their home on a voluntary and temporary basis.

37. The amount of income taxes in controversy for calendar years 1968 through and including a portion of 1971, as stipulated, are:

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Basic Tax	\$1,268.68	\$1,517.00	\$1,308.00	\$664.00
Penalty & Interest	<u>748.52</u>	<u>804.01</u>	<u>614.76</u>	<u>272.24</u>
	\$2,017.20	\$2,321.01	\$1,922.76	\$936.24

## II

### CONCLUSIONS OF LAW

1. The District of Columbia imposes an income tax upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year. (Emphasis supplied.) D.C. Code §§47-1551c(s), 47-1567b(a).

Since the parties have stipulated to the amount of taxable income earned by the petitioner,<sup>1/</sup> the sole issue presented here is whether the petitioner was a domiciliary of the District of Columbia during the years in question.

2. Domicile has been traditionally defined as the concurrence of two elements--physical presence in a locality and an intention to remain there. Sweeney v. District of Columbia, 72 U.S. App. D.C. 30, 33, 113 F. 2d 25 (1940); Jones v. Jones, 136 A. 2d 580, 581 (Mun. Ct. App., 1957). After a domicile is established, one need

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<sup>1/</sup> See Findings of Fact No. 37.

not always be physically present there in order to retain that domicile, but only retain the intention of returning. Jones v. Jones, supra, p. 582, fn. 2. An individual may not be domiciled in two jurisdictions at the same time, and one is presumed to retain a domicile until a new domicile is established by a clear preponderance of the evidence. Jones v. Jones, supra, p. 582; Sweeney v. District of Columbia, supra.

3. To establish a new domicile, there are two requisites: (1) physical presence and (2) an intent to abandon the former domicile and remain in the new locale for an indefinite period of time. A new domicile comes into being when the two elements coexist. Jones v. Jones, supra, p. 581.

4. Where an individual is a member of the Armed Forces and subject to frequent transfer of assignments, as petitioner was in this case, it is generally presumed that the person retains his/her domicile in the state from which he/she entered the Service unless there is evidence of intent on his/her part to change that domicile. Rudd v. Rudd, 278 A. 2d 120, 121 (D.C. App., 1971); Stephenson v. Stephenson, 134 A. 2d 105, 106 (Mun. Ct. App. D.C., 1957).

5. The burden of establishing a new domicile is on the individual seeking to do so by a showing of the clearest and most unequivocal proof. Wilson v. Wilson, 189 S.W. 2d 212 (Tenn., 1945); Sweeney v. District of Columbia, supra, p. 32. And the bare testimony of the party as to an intention to establish the new domicile is not enough, unless accompanied by acts and declarations showing such an intent. Wilson v. Wilson, supra.

6. The intent that need be proven is the intent upon the arrival at the new locality. The fact that the individual may later have acquired doubts about remaining in his new home or

may have been called upon to leave it is not relevant so long as the subsequent doubt or circumstances surrounding this departure do not indicate that the intention to make the place the petitioner's home never existed. Gallagher v. Philadelphia Transport, 185 F. 2d 543, 546 (3rd Cir., 1950), as cited in Jones v. Jones, supra, p. 582.

7. It is clear that petitioner physically resided in Petersburg, Virginia, during the years in question. Whether or not petitioner established as well a new domicile in Virginia depends upon the facts and circumstances which evidence his intent to remain in Virginia and his intent to abandon his presumed domicile in the District of Columbia.

The entire factual framework of petitioner's life in Virginia supports his self-declared intention to establish a Virginia domicile and not to return to the District of Columbia. Petitioner, voluntarily leaving Washington to join the Air Force as a career officer, came to Petersburg on a permanent Service assignment with his wife. There he set up his first married household. His cars were registered in Virginia; all the furniture and possessions of the couple were insured and kept in their home. A son was born to the Hoyt's in 1969, and through the three odd years they spent in Petersburg, he and his wife consistently developed social and economic ties to the area similar to those of civilian couples with their community. Finally, during the years of his residence, state income taxes were paid to Virginia.<sup>2/</sup> In short, petitioner lived as a full member of that community, fully adopting Petersburg as his home, indicating an intent to remain there as long as his assignment allowed, and holding out no other residence as a permanent home.

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<sup>2/</sup> Although under the Virginia Code, §58-151.016, for the years in question, a member of the Armed Forces stationed in Virginia need not have paid income tax to the state unless he was a domiciliary of the state, petitioner testified that he paid those taxes because he believed all residents were so obligated as long as they lived there.

8. The fact that the petitioner decided after two years in Virginia that he no longer intended to make the Air Force his career is not relevant to the issue of domicile in that state. The intent relevant to the issue of domicile is the intent formed at the inception of his assignment. As long as petitioner's initial intent to remain there indefinitely concurred with his residence in Virginia, he was effectively domiciled in Virginia. See Jones v. Jones, supra.

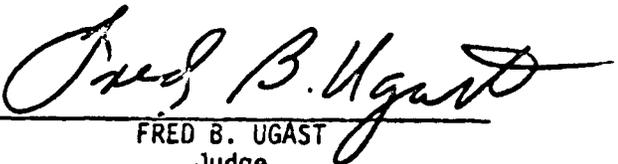
9. The contacts retained by petitioner to his former domicile most forcefully argued by the respondent as indicating an intent to retain the District of Columbia as his domicile were a renewal of a driver's license, an attempt to vote in 1968 in Washington, D.C., when he was not eligible to vote in Virginia, and visits to his parents in the District. Such actions, when viewed in the totality of the Hoyts' other conduct and activities, are not necessarily inconsistent with an intent on the part of a member of the Armed Forces to establish a new independent household with his wife and family at the locale of his "permanent" Air Force assignment. On balance, the record here supports a clear and unequivocal showing of petitioner's intent to leave and not return to the District and take up a permanent Virginia residence for the indefinite period of his assignment. This intent, together with the presence of petitioner and his wife in Virginia, is sufficient to establish a domicile in Virginia.

10. Petitioner and his wife were domiciliaries of the State of Virginia from 1968 through March 31, 1971, and thus were not liable for filing District of Columbia income tax returns for the calendar years 1968, 1969, 1970, and the first three months of 1971.

JUDGMENT

Accordingly, judgment is entered for the petitioner and the assessments of income taxes against petitioner for the years 1968, 1969, 1970, and the first three months of 1971 be and the same hereby are abated.

JULY 13, 1976.

  
FRED B. UGAST  
Judge

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
TAX DIVISION

JUL 22 1976

FILED

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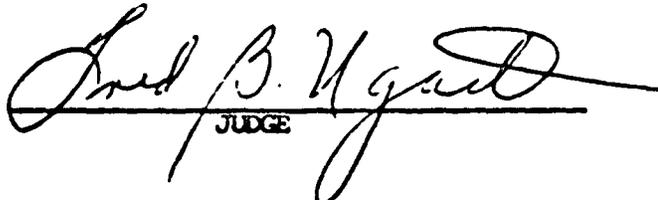
ORDER

In accordance with judgment of this Court that the Petitioner is entitled to a refund of income taxes paid as follows (including the amount paid and previously stipulated by Respondent to be refunded):

	<u>Basic Tax</u>	<u>Interest and Penalty</u>
1968	\$2,918.00	\$1,845.27
1969	2,706.00	1,543.93
1970	2,725.00	1,386.64
1971	1,410.00	604.22
	<u>\$9,759.00</u>	<u>\$5,380.06</u>

it is this 22<sup>nd</sup> day of July, 1976,

ORDERED, That Petitioner is entitled to a refund of District of Columbia income taxes paid for the calendar years 1968, 1969, 1970 and the first three months of 1971 and that the total amount of this refund is \$15,139.06 with interest thereon at the rate of 4 percent per annum, as provided by law, from March 25, 1975, to the date of the making of the refund.

  
JUDGE

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