

Opinion
1167

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

WILLIAM FURTON
CLERK OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

RICHARD M. WATERSTRAT,)
)
 Petitioner)
)
 v.)
)
 DISTRICT OF COLUMBIA,)
)
 Respondent)

FEB 16 1979

FILED

Docket No. 2397

OPINION AND ORDER

The petitioner appeals from District of Columbia income tax assessments made against him for calendar years 1973, 1974, and 1975, in the total amount of \$2,880.32. The notices of assessment were dated June 24, 1976, and the taxes were paid by the petitioner on July 30, 1976.

This Court has jurisdiction of this appeal pursuant to D. C. Code 1973, §§11-1201, 11-1202 and 47-2403.

The petitioner alleges two errors in the assessments; first, he contends that he should not have been assessed for income taxes for 1973, 1974 or 1975 because he was not a domiciliary of the District of Columbia for those years. In the alternative, he argues that if it is determined that he was a domiciliary, he should be given a credit for taxes paid in Switzerland and to the Swiss Canton where he and his wife resided during the years in question. The District opposes both arguments.

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After considering the testimony and the other evidence offered at trial, together with the arguments of counsel, the Court makes the following findings of fact:

1. The petitioner was born in Cincinnati, Ohio in 1928.
2. The petitioner's family moved to Tonawanda, New York, when the petitioner was a year old. The petitioner and his family continued to live in Tonawanda and the petitioner attended the local schools and graduated from Tonawanda High School. He worked for several years in Tonawanda and then entered the Erie County Technical Institute in Buffalo, New York, and graduated from that school in 1951. During this entire period he continued to maintain his home address at 26 Milton Street, Tonawanda, New York, the home of his parents.
3. The petitioner then obtained employment with the General Electric Research Laboratory in Schenectady, New York, where he worked from 1951 to 1958. It was during this time that he met a Professor Beck from the University of Illinois. Professor Beck was apparently impressed with the petitioner's scientific knowledge and background and offered him an opportunity to attend the University of Illinois and work parttime.
4. The petitioner resigned his employment with the General Electric Company and returned to Tonawanda for one month before enrolling at the University of Illinois. He graduated from the University in June 1961 with a Bachelor of Science degree in Metallurgical Engineering. Petitioner then

returned to Tompkins, New York, where he resided until September, 1961.

5. In September 1961, the petitioner moved to the District of Columbia in order to work for the American Dental Association at the National Bureau of Standards (Bureau)^{1/}, which at that time was located in the District of Columbia. At the time of his move he was told by his employer that the Bureau would only remain in the District until its new facilities were erected in Gaithersburg, Maryland. It was petitioner's intention to continue his employment with the Bureau, if and when it moved.

6. The petitioner rented a room in the District and lived there for a period of time and thereafter moved to rented quarters located at 2829 Connecticut Avenue, N.W. in the District of Columbia, where he continued to reside until 1973. While in the District he met and married his wife.

7. The petitioner had previously registered to vote in the State of New York while his wife, who was from Pennsylvania, had never registered to vote before their marriage. After the marriage they both decided to register to vote in the District of Columbia and did actually register and vote in the District in national elections.

^{1/} The term Bureau as used throughout this Opinion and Order will refer to the petitioner's place of employment with the American Dental Association at the National Bureau of Standards.

8. The petitioner had his office in the District of Columbia.

9. The quarters located at 2829 Connecticut Avenue, N.W. was within walking distance of the Bureau's District offices. The Bureau moved to its new Gaithersburg offices in 1966 however, the petitioner decided not to move at that time because he was working on a project which required him to make frequent trips to Annapolis, Maryland. He continued to work in that project for approximately two years after 1966.

10. He became acquainted with a Professor Muller from Geneva, Switzerland in 1968. In 1971, Professor Muller expressed interest in having the petitioner work and study at the University of Geneva in order to obtain his doctorate degree.

11. During the time he lived in the District (1961 - 1973) he continued to receive some mail at his parents home at 26 Milton Street, Tonawanda, New York. The mail received there was not active personal or business correspondence but was in the nature of letters from his school or alumni or professional associations at the University of Illinois. These letters were sent to Tonawanda, New York, solely because the petitioner had not given those associations his new address in the District of Columbia.

12. During the period 1961 to 1973, the petitioner filed and paid District of Columbia income taxes. ^{2/}

^{2/} The mere fact that the petitioner paid a District of Columbia income tax for those years when he resided in the District does not mean that he was a domiciliary of the District or necessarily that he considered the District his domicile. The Code (D.C.

13. The petitioner obtained a District of Columbia Motor Vehicle Operators Permit in 1962 and he maintained that permit up and until November 1977. The petitioner testified that he originally obtained a District of Columbia Operators Permit because "the law required that if you live in the District for more than one year" you are required to obtain a District of Columbia permit.

14. The petitioner continued to live in the District of Columbia ~~after~~ he had completed the project which required him to travel to Annapolis, Maryland.

15. In 1973, the petitioner decided to attend the University of Geneva in Switzerland in order to obtain his doctorate degree.

16. He and his wife placed their household goods in storage with the Security Storage Company. Although the goods were actually stored in a Security warehouse located in Maryland, the petitioner did not, either directly or indirectly, request Maryland as a storage site.

17. Both the petitioner and his wife filed the necessary Passport Applications prior to their trip to Switzerland.

Footnote 2 cont'd.----

Code 1973, §47-1551, ~~et seq.~~) requires every "resident" to file and pay the District of Columbia income tax. "Resident" includes a person who maintained a place of abode within the District for more than seven months of the year. See D. C. Code 1973, §47-1551c(s).

They both listed 2829 Connecticut Avenue as their mailing address. The petitioner provided that in the event of illness or death his father should be notified, giving that address as 26 Milton Street, Tonawanda, New York, while his wife asked that in such an event her grandmother should be notified, giving the grandmother's address in East Plymouth, Pennsylvania. (Pet. Ex. 3, Resp. Ex. 2.)

18. Both the petitioner and his wife described the purpose of the trip as the petitioner's "research sabbatical" with the proposed length of stay "1 year" and indicated that they did not intend to take "another" trip abroad and that they would "visit" Switzerland. (Pet. Ex. 3, Resp. Ex. 2.)

19. The petitioner and his wife departed from the District in July 1973. As noted above, their household furniture was placed in storage with Security Storage Company.

20. Prior to travelling to Switzerland, the petitioner and his wife left their automobile with petitioner's brother-in-law in Pennsylvania and thereafter went to Tonawanda, New York, and remained there for approximately one month. They also stored their personal possessions in Tonawanda with the petitioner's father.

21. They arrived in Switzerland in August 1973 and remained there until April 5, 1975.

22. In Switzerland, the petitioner attended the University of Geneva and was paid a salary for teaching. He paid Swiss taxes on his income earned at the University.

23. The petitioner was still on the employee list at the Bureau and he continued to draw benefits from the Bureau while in Switzerland. His status was that of a leave of absence. Throughout the period when he was in Switzerland, he continued to treat the Bureau as his place of employment. Moreover, he continued to maintain regular contact with Bureau personnel including having personnel of the Bureau do various chores and errands for him.

24. The petitioner gave up his residence at 2029 Connecticut Avenue, N.W. in the District upon his departure from the District and he maintained no other address after that time in the District.

25. He applied for an International Drivers License while he was in Switzerland but found that he had difficulty renting or leasing automobiles with that license.

26. He renewed his District of Columbia Driver's Permit in 1974 and continued to list as his address for the purposes of that permit, 2029 Connecticut Avenue, N.W. in the District of Columbia.

27. The petitioner renewed his permit through an employee or employees of the Bureau since he was afraid that if he wrote directly it might raise questions as to his home address not being in the District of Columbia. Letters to the Department of Motor Vehicles in this regard were written by personnel of the Bureau and the Department was given the Bureau's address for purposes of communicating with the petitioner.

28. The petitioner made it clear in numerous letters to the Bureau concerning his driver's permit that he wished to leave the impression with the Department of Motor Vehicles that he continued to reside at 2829 Connecticut Avenue, N.W. The petitioner's intention in this regard was to perpetuate the belief that he remained a resident of the District.

29. The Bureau's correspondence with the Department of Motor Vehicles was written in early 1974 and finally when the petitioner did not receive his renewal he wrote to the Department of Motor Vehicles, giving his Swiss address, on April 23, 1974, and advised the Bureau that he was "temporarily living in Switzerland" (Emphasis petitioner's.) and that he expected to "return to Washington, D. C. later this year but the exact date of my return is not yet fixed".

30. He continued to maintain a bank account in the District of Columbia in which he had deposited approximately \$12,000 and he paid for his District of Columbia driver's permit by a check drawn on his account at the American Security and Trust Company, a District of Columbia banking institution.

31. The petitioner never intended to permanently reside in Switzerland and never really considered himself to be a bona fide resident, in the permanent sense, of Switzerland. His sole intention in going to Switzerland was to obtain his doctorate degree and then to return to the Bureau.

32. The petitioner's original leave of absence from the Bureau was for one year, however, he had his leave of absence

extended for an additional six months. Throughout that period he continued to consider himself as being an employee of the Bureau.

33. (Just prior to leaving Switzerland in 1975, the petitioner decided that he wanted to attend a professional conference in another European country and requested the Bureau's permission to have additional leave to attend that conference. The Bureau denied his request and "ordered" (petitioner's words) him to return and advised him that they might send him to the same conference once he returned to this country. This made little sense to the petitioner since he was already in Europe and he advised the Bureau that he would attend the conference on his own before returning to the Bureau.

34. The petitioner and his wife attended the conference and then returned to the United States in April 1975, going first to Pennsylvania to pick up their automobile which had been left with his brother-in-law while the petitioner was in Switzerland, and then to Tonawanda, New York, where he remained for approximately one month. The purpose of the trip to Tonawanda was to pick up his personal goods and to remain there until he had determined his status with the Bureau. In the event he was not rehired by the Bureau, he intended to look for other employment.

35. While the petitioner had always considered himself to be an employee of the Bureau while in Switzerland, he was afraid that his status may have changed after he refused to

return home at the Bureau's request in March 1975 but insisted instead on attending a professional conference in Europe.

36. Once the petitioner arrived in Tonawanda, New York, the only potential employer he contacted was the Bureau and he was advised that he still had his old job. It was always the petitioner's intention to return to the Bureau and it was his intention upon returning to Tonawanda to immediately contact the Bureau to renew his employment if possible.

37. After remaining in Tonawanda for approximately one month, the petitioner and his wife went to Maryland, found housing, and have continued to live in and about the Gaithersburg, Maryland area, near his place of employment at the Bureau, since that time.

38. Neither the petitioner nor his wife have ever registered to vote in Maryland. The petitioner has not voted by absentee ballot in New York or the District of Columbia since his departure from the District in 1973. Prior to that date, the petitioner and his wife had voted in the District of Columbia and he had never voted by absentee ballot in New York while residing in the District.

39. The petitioner since moving to Maryland has registered his automobile with the State of Maryland, however, as of November 2, 1977, he had not obtained a Maryland driver's permit but continued to use his District of Columbia driver's permit. The petitioner made no effort to determine whether he was required to obtain a Maryland driver's permit as he alleges

was the case in obtaining his District driver's permit in 1962.

40. The petitioner renewed his District of Columbia driver's permit in July 1975 after he returned from Switzerland to continue his employment at the Bureau. On his application for a duplicate District driver's permit in 1975, he listed his address as, 2829 Connecticut Ave., N.W., District of Columbia. His intention in giving the Connecticut Avenue address on the application, was to perpetuate the belief, insofar as the District of Columbia Department of Motor Vehicles was concerned, that he maintained a residence in the District. (Resp. Ex. 3.)

41. The petitioner filed D.C. Non-Resident Request for Refund or Ruling (Form D 40B) for 1973 and 1974. Those forms were filed in June 1975.

42. The petitioner filed his 1973 Federal Income Tax Return (Form 1040) in March 1974 and listed his home address as "9 Rue du Levrier, Geneva, Switzerland". His 1974 and 1975 federal returns, filed June 1975 and April 1976, respectively, listed his address as Gaithersburg, Maryland.

43. After 1961, the petitioner intended to remain employed at the Bureau and had no intention of returning to Tonawanda, New York, or any other place. He considered his permanent place of employment to be the Bureau.

44. The petitioner was not required to file New York State Income Tax Returns while living in the District even if he had been a domiciliary of that state.

11

The petitioner contends that he is not liable for District of Columbia income taxes for taxable years 1973, 1974 and 1975 for the reason that he was not domiciled in the District on the last day of each of the taxable years which are the subject of this appeal and was not physically present in the District after July 1973.

The tax is imposed by D. C. Code 1973, §47-1557b which provides that every "resident" shall be liable for income taxes based upon the rates set forth therein. "Resident" is defined as "every individual domiciled within the District on the last day of the taxable year, and every other individual who maintains a place of abode within the District for more than seven months of the taxable year, whether domiciled in the District or not". D. C. Code 1973, §47-1551c(a). The only question raised on this appeal is whether the petitioner was a "resident" for all or any portion of the subject years.

It is clear from a reading of Section 47-1551c(a) that the petitioner cannot be taxed as having maintained a place of abode for more than seven months in each of the taxable years since the Court has found, Part I, supra, that he was not physically present in the District after July 1973, and that he vacated his house at 2029 Connecticut Avenue, N.W. in the District in July 1973. He never acquired another house in the District and he lived in Switzerland from 1973 until 1975 when he returned to the United States and secured living quarters in Gaithersburg, Maryland. Thus, if his income is

taxable in the District, it is by virtue of his being domiciled here in the taxable years.

III

Domicile has been defined as "[t]hat place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. Not for a mere special or temporary purpose, but with the present intention of making a permanent home, for an unlimited and indefinite period". Black's Law Dictionary 572 (rev. 4th ed. 1968). The Supreme Court, in considering whether a taxpayer was domiciled in the District and thus liable for District income taxes, stated that "[t]he place where a man lives is properly taken to be his domicile until facts adduced establish the contrary". District of Columbia v. Murphy, 314 U.S. 441, 455 (1941). "[T]he question of domicile is a difficult one of fact to be settled only by a realistic and conscientious review of the many relevant (and frequently conflicting) indicia of where a man's home is and according to the established modes of proof." Id.

Turning to the facts as found by the Court in this case, Part I, supra, it is noted that the petitioner was born in Ohio and thereafter moved with his family to Lenawanda, New York, when he was a baby. He attended the local schools in that community, was later employed in Troy, New York, and finally attended the University of Illinois. After graduating from that institution, he came to the District of Columbia in order to work for the American Dental Association at the Bureau.

His domicile until 1961 when he moved to the District was New York State.

The petitioner is obviously quite content in working for the Bureau and the Court finds as a fact that he intended to and still intends to work for the Bureau indefinitely. He met and married his wife in the District and both registered to vote in the District of Columbia and actually voted in national elections. He maintained a bank account here, filed and paid his District income taxes and obtained a District operator's permit. When the Bureau moved to its new location in Gaithersburg, Maryland, the petitioner continued to live here since he was on assignment to Annapolis, Maryland, and he continued to live here once he had completed that assignment. His only contact with Tonawanda, New York, was purely sentimental and to visit his family remaining there. He lived in the District from 1961 until 1973, a period of some 12 years. Once the petitioner obtained employment with the Bureau, he never intended to return to Tonawanda; his intention was to permanently reside in the area and to continue his work with the Bureau. While employed at the Bureau and up until 1973, his only physical residence in the area was in the District of Columbia.

The facts described so far satisfy this Court that the petitioner had effectively abandoned his old domicile in New York and acquired a new one in the District of Columbia. He has admitted that he intended to continue his employment at the Bureau and it follows that he intended to reside within commuting distance of the Bureau. One can surmise

from the facts of this case that the petitioner would have remained in the District of Columbia indefinitely had not the Bureau moved to Gaithersburg. This being the case, and there being a concurrence of physical presence in the District with the intent to remain here indefinitely, the Court finds as a matter of law that he had established the District of Columbia as his domicile. See Adams v. Adams, 136 A.2d 666 (D.C. Mun. App. 1957); Jones v. Jones, 136 A.2d 580 (D.C. Mun. App. 1957).

The record is equally clear that the petitioner did not effectively abandon the District of Columbia as his domicile when he traveled to Switzerland. He described his trip to that country as nothing more than a "visit" or "sabbatical" to attend the University of Geneva. While there he remained in the employ of the Bureau and continued to draw his employee benefits from that agency. He maintained contact with Bureau personnel and had them perform various chores for him. Although he contends that he was not domiciled in the District for the taxable years in question, he enlisted the assistance of Bureau personnel in attempting to renew his District operator's permit in 1974 in order that he might lease automobiles in Europe. Finally, he wrote directly to the District's Department of Motor Vehicles and advised them that he was "conspicuously living in Switzerland" (emphasis the petitioner's) and expected to "return to Washington, D. C. later this year [1974]" (matter in brackets this Court's). He described his trip abroad as a leave of absence from the Bureau and there is no doubt

whatsoever that he intended to continue working for the Bureau upon his return from Europe.

The petitioner suggests in his argument that, if indeed, he was domiciled in the District up until 1973, he abandoned his domicile when he went to Tonawanda to store some of his personal property with his family. This he contends was the establishment of domicile in New York State. The evidence does not support that contention. He never intended to work any place other than the Bureau both before and after his trip to Switzerland. He merely stopped in Tonawanda on his way to Switzerland in order to store some personal property there and visit with members of his family. He stopped there on his return from Switzerland in order to pick up his personal property and to await word when he should resume his active employment with the Bureau. Additionally, he had placed his furniture in storage in the District of Columbia although it was actually stored in a warehouse in Maryland.

The petitioner was domiciled in the District in 1973 when he physically left the jurisdiction and that domicile remained until he acquired a new one in Maryland in 1975.

Adams v. Adams, supra, at 867. See also Shillman v. Holtzman, 78 U.S. App.D.C. 173, 180, 138 F.2d 925, 927 (1943); Jones v. Jones, supra. The earliest he could have acquired a new domicile in Maryland was 1975 when he physically moved to that state.

The petitioner cites the Court to Alexander v. District of Columbia, 370 A.2d 1327 (D.C. App. 1977) in support of his

argument. However, that case is distinguishable on its facts. There the court concluded that the taxpayer was domiciled in Japan and that he merely visited the District during the taxable period while looking for further employment in the Far East. Here, the taxpayer admittedly only visited Switzerland and always intended to return to this area.

The Court finds as a fact and concludes as a matter of law that this petitioner was domiciled in the District of Columbia from 1951 until 1975 when he moved to Maryland. It follows then, that being domiciled in the District of Columbia on the last day of 1973 and 1974, he is liable for income taxes for those years and that his appeal from the taxes imposed for those years must be denied.

IV

Petitioner contends that even though held liable for taxes for 1973 and 1974, he cannot be held liable for those taxes for the first four months of 1975 because he did not have his domicile in the District on the last day of the taxable year. Since he was on a calendar year, he reads the last day of the taxable year as being December 31, 1975.

The statute, D. C. Code 1973, §47-1551c(k) is dispositive on this point. It defines "taxable year":

[T]he calendar year or the fiscal year, upon the basis of which the net income of the taxpayer is computed under this subchapter; if no fiscal year has been established by the taxpayer, they mean the calendar year. The phrase 'taxable year' includes, in the case of a return made for a fractional part of a calendar or fiscal year under the provisions of this subchapter or under regulations prescribed by the Commissioner, the period for which such return is made.... (Emphasis this Court's.)

Thus the "taxable year" in this case is the first four months of 1975, the period for which the taxpayer was required to file a return since he was domiciled in the District of Columbia during that period. The last day of his taxable year then was the last day he was domiciled in the District of Columbia. Cf. District of Columbia v. Davis, 125 U.S. App. D.C. 331, 314, 371 F.2d 964, 967 (1967). Accordingly, this Court holds that the petitioner was domiciled in the District of Columbia on the last day of his taxable year in 1975 and that he is required to pay the income tax due for that period. His appeal from the assessment of taxes for 1975 must also be denied.

V

Petitioner's final argument is that, if found to be liable for any portion of the subject taxes, he should be given credit for income taxes paid in Switzerland. This contention must be rejected for two reasons. First, he was never a bona fide domiciliary of Switzerland and second, credits are allowed only for a tax paid to a State, Territory or political subdivision thereof; Switzerland does not fall within that category. D. C. Code 1973, §47-1567d(a).

ORDER

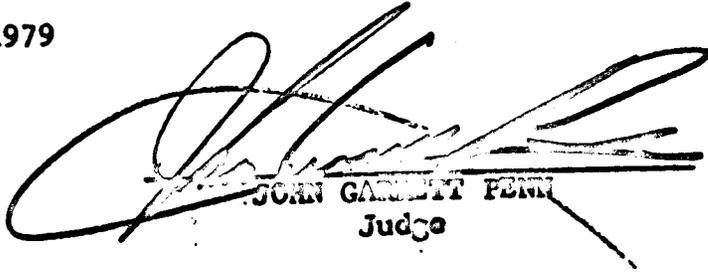
The Court having found the contentions of the petitioner to be without merit,^{3/} it is hereby

ORDERED that the petitioner's appeal from income taxes assessed for 1973, 1974 and 1975 is denied, and it is further

^{3/} The petitioner's additional arguments are without merit and need not be discussed here.

ORDERED that this case is dismissed with prejudice.

Dated: February 7, 1979



JOHN GARRETT FERN
Judge