

**Document Number:** 21-69  
**Tax Type:** Individual Income Tax  
**Description:** Residency : Domicile - Failure to Abandon Virginia Domicile  
**Topic:** Appeals  
**Date Issued:** 05-25-2021  
May 25, 2021

Re: § 58.1-1821 Application: Individual Income Tax

Dear \*\*\*\*\*:

This will reply to your letter in which you seek correction of the individual income tax assessment issued to \*\*\*\*\* (the "Taxpayer") for the taxable year ended December 31, 2017.

### FACTS

The Taxpayer filed a Virginia resident income tax return for the 2017 taxable year. Based on information from the Internal Revenue Service (IRS), the Department determined that he underreported his federal adjusted gross income (FAGI) on the Virginia return. As a result, the Department issued an assessment for additional tax and interest. The Taxpayer contacted the Department and indicated that he was a resident of \*\*\*\*\* (State A) during 2017. Based on additional information the Taxpayer provided, the auditor concluded that the Taxpayer was a resident of Virginia during the 2017 taxable year and upheld the assessment. The Taxpayer appealed, contending he was a resident of State A during the 2017 taxable year.

### DETERMINATION

Two classes of residents, a domiciliary resident and an actual resident, are set forth in *Virginia Code* § 58.1-302. The domiciliary residence of a person means the permanent place of residence of a taxpayer and the place to which he intends to return even though he may reside elsewhere. For a person to change domiciliary residency to another state or country, that person must intend to abandon his Virginia domicile with no intention of returning to Virginia. Concurrently, that person must acquire a new domicile where that person is physically present with the intention to remain there permanently or indefinitely. An actual resident of Virginia means a person who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia. A Virginia domiciliary resident, therefore, working in other

parts of the country or in another country who has not abandoned his Virginia residency continues to be subject to Virginia taxation. Additionally, a person who is not a domiciliary resident of Virginia, but who stays in Virginia for an aggregate of more than 183 days is also subject to Virginia taxation.

In order to change from one legal domicile to another legal domicile, there must be (1) actual abandonment of the old domicile, coupled with an intent not to return to it, and (2) an acquisition of a new domicile at another place, which must be formed by personal presence and an intent to remain there permanently or indefinitely. The burden of proving that the domicile has been changed lies with the person alleging the change.

In determining domicile, consideration may be given to the individual's expressed intent, conduct, and all attendant circumstances including, but not limited to, financial independence, profession or employment, income sources, residence of spouse, marital status, situs of real or tangible property, motor vehicle registration and licensing, and such other factors as may be reasonably deemed necessary to determine the person's domicile. A person's true intention must be determined with reference to all the facts and circumstances of the particular case. A simple declaration is not sufficient to establish residency.

The Department determines a taxpayer's intent through the information provided. A taxpayer has the burden of proving that he or she has abandoned his or her Virginia domicile. If the information is inadequate to meet this burden, the Department must conclude that he or she intended to remain indefinitely in Virginia.

The Taxpayer explains that he obtained a new position with his employer that required him to relocate to State A. The information provided indicates he began leasing a personal residence in State A in December 2016. He also provided further documentation to establish that he resided in State A in 2017, including human resources records from his employer, health insurance information, bank statements, a letter confirming that he obtained a State A highway pass, and vehicle service records. While such documentation tends to show that the Taxpayer was residing in State A, it is not determinative as to whether he formed the requisite intent to remain there permanently or indefinitely, nor does it demonstrate whether he had the intent to abandon his Virginia domicile.

The Taxpayer retained connections to Virginia as well. His parents lived in Virginia. He also held a Virginia driver's license and a Virginia motor vehicle registration. In addition, he filed a Virginia resident income tax return for the 2017 taxable year.

*Virginia Code* § 46.2-323.1 states, "No driver's license . . . shall be issued to any person who is not a Virginia resident." In fact, this section states that every person applying for a driver's license must execute and furnish to the Commissioner of the Department of Motor Vehicles (DMV) a statement that certifies that the applicant is a Virginia resident. The Department has

found that an individual may successfully establish a domicile outside Virginia even if he retains a Virginia driver's license. See Public Document (P.D.) 00-151 (8/18/2000). However, obtaining or renewing a Virginia driver's license is considered to be a strong indicator of intent to retain domiciliary residency in Virginia. See P.D. 02-149 (12/9/2002).

The Department acknowledges that a change of domicile occurs as part of a process in which no single factor is dispositive. Even if the Taxpayer had the requisite intent to establish domicile in State A, the connections he retained with Virginia tend to indicate that he did not intend to abandon his Virginia domicile. In particular, the Taxpayer explained that he retained his Virginia driver's license and motor vehicle registration to make it easier for him to move back to Virginia should he not remain in the new position in State A. Such a statement implies that the Taxpayer had not yet fully formed the intent to change his domiciliary residence from Virginia to State A. As stated above, a change of domicile requires both the establishment of a new domicile and the abandonment of the old, and these requirements must be met concurrently. Therefore, I find that the Taxpayer remained taxable as a domiciliary resident of Virginia for the 2017 taxable year.

The assessment at issue was made based on the best information available to the Department pursuant to *Virginia Code* § 58.1-111. The Taxpayer, however, may have information that better represents his Virginia income tax liability for the taxable year at issue. Therefore, the Taxpayer should file an amended 2017 Virginia resident income tax return to more accurately reflect his Virginia tax liability. The return should be submitted within 60 days from the date of this letter to: Virginia Department of Taxation, Office of Tax Policy, Appeals and Rulings, P.O. Box 27203, Richmond, Virginia 23161-7203, Attention: \*\*\*\*\*. Upon receipt, the return will be reviewed and the assessment will be adjusted, as appropriate. If the return is not received within the allotted time, the assessment will be considered correct and collection actions may result.

The *Code of Virginia* sections and public documents cited are available on-line at [www.tax.virginia.gov](http://www.tax.virginia.gov) in the Laws, Rules & Decisions section of the Department's web site. If you have any questions regarding this determination, you may contact \*\*\*\*\* in the Office of Tax Policy, Appeals and Rulings, at \*\*\*\*\*.

Sincerely,

Craig M. Burns  
Tax Commissioner

AR/3540.B

**Related Documents:**

[00-15102-149](#)

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