

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE PROTEST OF
CARY BROOKS TO ASSESSMENT OF
PERSONAL INCOME TAXES ISSUED
UNDER LETTER ID L0103438848**

No. 06-13

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on July 20, 2006, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Peter Breen, Special Assistant Attorney General. Cary Brooks (“Taxpayer”) represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer moved to New Mexico with his parents when he was in the fourth grade.
2. The Taxpayer attended elementary and high school in Albuquerque and graduated from the University of New Mexico in 1999, after which he went to work for Intel Corporation in Rio Rancho, New Mexico.
3. In June 2000, the Taxpayer was offered a position with Mediadome, Inc. in Santa Clara, California.
4. In July 2000, the Taxpayer resigned his employment with Intel and began work as a web master with Mediadome in California.
5. The Taxpayer initially shared a residence in California with two co-workers.

6. In early September 2000, the Taxpayer notified his automobile insurance company of his new address. The Taxpayer did not change the registration on his vehicle, however, but retained his New Mexico registration and driver's license.

7. At the end of September 2000, the Taxpayer drove back to Albuquerque, where he traded in his old vehicle for a Dodge Dakota.

8. The Taxpayer registered his new vehicle with the New Mexico Taxation and Revenue Department, Motor Vehicle Division, listing his residence and mailing address as 5415 Candlewood Court NE, Albuquerque, New Mexico, which was also his father's address.

9. After purchasing and registering the vehicle in New Mexico, the Taxpayer returned to California with his girlfriend, who had been living in Albuquerque.

10. From October 2000 through February 2002, the Taxpayer leased an apartment in Cupertino, California, where he lived with his girlfriend while continuing to work for Mediadome.

11. In February 2001, the Taxpayer made a trip to New Mexico, during which he renewed his New Mexico driver's license, listing his residence and mailing address as 5415 Candlewood Court NE, Albuquerque, New Mexico. The Taxpayer signed a statement, under penalty of perjury, that the statements made in his license application were true and correct.

12. In February 2002, the Taxpayer made arrangements to continue his work for Mediadome from Albuquerque, and he and his girlfriend returned to New Mexico to be closer to their families.

13. In June 2002, Mediadome went out of business and the Taxpayer was unemployed for about three months before obtaining new employment in New Mexico.

14. The Taxpayer was not registered to vote anywhere until 2003, when he registered to vote in New Mexico.

15. The Taxpayer did not file a federal income tax return for the 2000 tax year until March 2003.

16. In April 2001, the Taxpayer filed for an extension of time until July 1, 2001 to file his 2000 New Mexico income tax return, but did not file a return by the extended due date.

17. The Taxpayer did not file a 2000 California income tax return.

18. In 2005, pursuant to an information exchange agreement, the Department received information from the Internal Revenue Service concerning the income reported on the Taxpayer's 2000 federal income tax return.

19. On March 30, 2005, after determining that the Taxpayer had not filed a 2000 New Mexico income tax return, the Department assessed the taxpayer for \$3,646.00 of personal income tax, plus penalty and interest, on the total amount of income the Taxpayer earned during 2000, as reported on his federal return.

20. On April 27, 2005, the Taxpayer protested the portion of the assessment attributable to the income he earned in California, claiming that he was a part-year resident of New Mexico during 2000 and did not owe tax on the income he earned after beginning work with Mediadome in July 2000.

21. In support of his protest, the Taxpayer filed a New Mexico income tax return for the 2000 tax year which allocated the income he earned from Mediadome to California and reported tax due to New Mexico in the amount of \$1,931.00. The Taxpayer also submitted a

Form W-2 from Intel, showing that \$1,706.00 of tax had been withheld from his wages, leaving a balance due of \$225.00.

22. After receiving the Taxpayer's return, the Department adjusted its assessment of tax principal to give the Taxpayer credit for the taxes Intel had withheld from his wages.

23. The Department refused to accept the Taxpayer's claim to be a part-year resident of New Mexico during 2000, maintaining that he had not abandoned his New Mexico domicile and remained a full-year resident for purposes of state taxation.

24. At the administrative hearing held on July 20, 2006, the Taxpayer provided a copy of his 2000 Form W-2 from Mediadome, Inc. showing that Mediadome withheld \$1,814.74 from the Taxpayer's wages during the 2000 tax year and paid the withheld taxes to the State of California.

25. The Taxpayer also provided a draft copy of a 2000 California tax return he had prepared reporting tax due to California in the amount of \$1,713.77 and requesting a refund of \$100.17 of the \$1,814.74 withheld from his California wages.

26. The record was left open until July 27, 2006, to give the Taxpayer an opportunity to file the 2000 California income tax return he introduced as a draft at the administrative hearing. The Taxpayer subsequently submitted evidence that the return had been filed with California by certified mail on July 24, 2006.

27. The Hearing Officer then notified the parties that she would leave the record open for an additional two weeks and asked the Department's attorney to submit a letter on or before August 10, 2006, setting out the Department's position concerning the Taxpayer's right to claim

a credit against his 2000 New Mexico income tax in the amount of the tax he reported and paid to California. The Department did not file a response.

DISCUSSION

The two issues to be determined in this protest are: (1) whether the Taxpayer was a full-year resident of New Mexico during 2000 and was therefore required to include the income he earned in California on his 2000 New Mexico personal income tax return; and (2) if the Taxpayer was a full-year resident of New Mexico in 2000, whether he is entitled to a credit for the \$1,713.77 of tax he reported and paid to California.

Burden of Proof. NMSA 1978, § 7-1-17(C) states that any assessment of taxes made by the Department is presumed to be correct. *See also, Holt v. New Mexico Department of Taxation & Revenue*, 2002 NMSC 34, ¶ 4, 133 N.M. 11, 59 P.3d 491. Accordingly, it is the Taxpayer's burden to come forward with evidence and legal argument to establish that he is entitled to an abatement of the Department's assessment, in full or in part.

New Mexico Residency. Payment of New Mexico personal income tax is governed by NMSA 1978, §§ 7-2-1, *et seq.* When a taxpayer has income that is taxable both within and without New Mexico, NMSA 1978, § 7-2-11 allows the taxpayer to allocate and apportion certain categories of income between New Mexico and non-New Mexico sources. Pursuant to § 7-2-11(A)(3), New Mexico residents are required to allocate 100 percent of certain categories of income—including compensation for personal services—to New Mexico, regardless of the source of that income. *See also*, Department Regulation 3.3.11.11 NMAC. In this case, the Taxpayer reported the income he earned from Intel between January and July 2000 on his New Mexico income tax return, but did not report the income he earned from Mediadome between

July and December 2000. If the Taxpayer retained his New Mexico residency throughout the 2000 tax year, however, he was required to report all of his compensation to New Mexico.

NMSA 1978, § 7-2-2 of the Income Tax Act, as it existed in 2000, defined the term “resident” as follows:¹

“resident” means an individual who is domiciled in this state during any part of the taxable year; but any individual who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act.

For the years at issue, residency is synonymous with domicile. Regulation 3.3.1.9(B) NMAC defines “domicile” as “a place of a true, fixed home and a permanent establishment to which one intends to return when absent and where a person has voluntarily fixed habitation of self and family with the intention of making a permanent home.” Once established, domicile “is presumed to continue until it is shown to have changed....” *Hagan v. Hardwick*, 95 N.M. 517, 519, 624 P.2d 26, 28 (1981). A change of domicile requires both physical presence in the new locality and an intention to abandon the old domicile and to make a home in the new dwelling place. *Estate of Peck v. Chambers*, 80 N.M. 290, 292, 454 P.2d 772, 774 (1969).

In this case, there is no dispute that the Taxpayer had a physical presence in California from July through December 2000. What is at issue is whether the Taxpayer intended to abandon his New Mexico domicile and make California his permanent home. Although the Taxpayer testified that he intended to remain in California indefinitely, his actions indicate otherwise, including the following:

¹ Effective for 2003 and subsequent tax years, § 7-2-2 was amended to expand the definition of residency to include persons who are physically present in New Mexico for 185 days or more during the taxable year. Laws 2003, ch. 275, § 1. The statutes and regulations cited in this decision are to the versions that were in effect during the 2000 tax year.

— Upon moving to California, the Taxpayer notified his insurance company of his new address in California, but did not register his vehicle in California.

— In September 2000, more than two months after moving to California, the Taxpayer returned to Albuquerque and purchased a new vehicle which he registered in New Mexico using an Albuquerque address.

— In February 2001, the Taxpayer made another trip to New Mexico to renew his New Mexico driver's license, listing the same Albuquerque address as both his residence and mailing address. The Taxpayer signed a statement, under penalty of perjury, that the statements made in his license application were true and correct.

— A year later, in February 2002, the Taxpayer made arrangements to continue his work for Mediadome from Albuquerque, and he and his girlfriend returned to New Mexico to be closer to their families.

The facts show that while the Taxpayer may have changed his physical address to California, he retained his connections to Albuquerque and did not abandon his New Mexico domicile. Pursuant to Regulation 3.3.1.9(C) NMAC, an individual who holds a valid New Mexico driver's license, and has not subsequently obtained a driver's license in any other state, is presumed to be domiciled in New Mexico. In this case, it is clear that the Taxpayer's failure to obtain a California driver's license or register his vehicle in California was not simply a product of inertia. Nor was it based on a decision to simply delay obtaining California documentation until his New Mexico license and registration had expired. Instead, the Taxpayer took affirmative action to travel from California to New Mexico in order to purchase and register a new vehicle in this state. A few months later, he again returned to New Mexico in order to renew his New Mexico driver's license. After a year-and-a-half in California, the Taxpayer arranged to continue his work for his California employer long distance and returned to Albuquerque with his girlfriend, who also had ties to New Mexico. Based on these facts, the Taxpayer has failed to

meet his burden of proving that he had abandoned his New Mexico domicile and was no longer a New Mexico resident at the end of the 2000 tax year.

Credit for Taxes Paid to California. As a full-year resident of New Mexico, the Taxpayer was required to include the wages he earned in California as New Mexico income on his 2000 income tax return. New Mexico has taken steps, however, to insure that its residents are not subject to double taxation on the same income. NMSA 1978, § 7-2-13 allows residents who owe tax to another state on income that is also included in New Mexico net income to “receive a credit against the tax due this state in the amount of the tax paid the other state with respect to income that is required to be either allocated or apportioned to New Mexico.”

In this case, the Taxpayer has provided evidence that Mediadome, his California employer, withheld \$1,814.74 from the Taxpayer’s wages during the 2000 tax year and paid the withheld taxes to the State of California. He has also provided evidence that he reported and paid 2000 personal income taxes to California in the amount of \$1,713.77, requesting a refund of \$100.17. The Department has not disputed the evidence provided by the Taxpayer. Accordingly, the Taxpayer is entitled to claim a credit of \$1,713.77 against the Department’s assessment of New Mexico personal income tax for the 2000 tax year.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest to the assessment of personal income taxes issued under Letter ID L0103438848, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer was a full-year resident of New Mexico during the 2000 tax year, and the income he earned in California during 2000 is subject to New Mexico personal income tax.

C. The Taxpayer is entitled to claim a credit of \$1,713.77 against his New Mexico income tax liability for the 2000 tax year.

For the foregoing reasons, the Taxpayer's protest IS GRANTED IN PART AND DENIED IN PART. The Department is ordered to apply the \$1,713.77 of tax the Taxpayer reported and paid to California as a credit against his 2000 New Mexico personal income taxes; the Taxpayer is ordered to pay the tax liability remaining after application of the \$1,713.77 credit, plus applicable penalty and interest.

DATED August 11, 2006.