STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2011-11

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF REVENUE
DIVISION OF TAXATION
ONE CAPITOL HILL
PROVIDENCE, RHODE ISLAND 02908

IN THE MATTER OF:	:	Personal Income Tax
	:	Case No.: 11-T-0010
Taxpayer.	:	

DECISION

I. INTRODUCTION

The above-entitled matter came before the undersigned as the result of a Notice of Hearing and Appointment of Hearing Officer dated February 22, 2011 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on April 26, 2011 with Taxpayer being *pro se* and the Division represented by counsel. The parties rested on the record.

II. JURISDICTION

The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.*, the *Division of Legal Services Regulation 1 – Rules of Procedure for Administrative Hearings*, and the *Division of Taxation Administrative Hearing Procedures Regulation AHP 97-01*.

III. ISSUE

The parties agreed that the issues were as follows: 1) whether the Taxpayer was a resident taxpayer subject to the Rhode Island Personal Income Tax during 2006;[1] and 2)

[1] At hearing, the parties agreed that the year 2006 was at issue and that the years 2004, 2005, 2007, 2008, and 2009 were being treated separately.

if he is, was he entitled to claim credit for taxes paid to another jurisdiction, New York, during the tax year at issue.[2]

IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to the following facts (see agreed statement of facts):

1. The Taxpayer and his wife ("Couple") have continuously maintained a residence in New York. Joint Exhibit One (1).

2. Prior to 1987, there is no evidence that either of the Couple had significant contacts with Rhode Island.

3. In March of 1987, the Couple purchased, as Tenants by the Entirety, real estate located in Rhode Island. Joint Exhibit Two (2). In 1989, the Taxpayer commenced organic farming at the Rhode Island property.

4. The property is a one and quarter story, 1568 square foot, wood frame Cape Cod with a stone foundation and a full basement situated, with an outbuilding, on 3.18 acres. The house is heated and has five (5) rooms including two (2) bedrooms, a bath and a kitchen. It is certified for single family occupancy and the acreage is zoned for agricultural use. Joint Exhibit Two (2).

5. In November, 1989, the Taxpayer obtained a Rhode Island operator's license that was maintained and renewed continuously as an active license with the last renewal occurring in January, 2009. Joint Exhibit Three (3).

6. In November, 1989, the Taxpayer changed his voter registration to Rhode Island and repeatedly exercised his elective franchise in Rhode Island. Joint Exhibits Four (4) and Five (5).

7. In November, 1990, the Taxpayer obtained, as a sole proprietor, a Permit to Make Sales at Retail (Sales Tax Permit) at the property. Business operations were to commence at this location as of November 15, 1990 and the declared purpose of this business was to sell organic vegetables under the trade name Joint Exhibit Six (6).

8. In April, 1995, the Taxpayer obtained a Certificate of Exemption from the Sales and Use Tax as a Rhode Island farmer and has renewed it continuously with the last renewal occurring in April, 2011. Joint Exhibit Seven (7).

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[2] The parties agreed that the statutes directly at issue are R.I. Gen. Laws § 44-30-5 and R.I. Gen. Laws § 44-30-18. The parties also agreed that R.I. Gen. Laws § 44-30-51(a), R.I. Gen. Laws § 44-30-82(b), R.I. Gen. Laws § 44-30-83, R.I. Gen. Laws § 44-30-84, and R.I. Gen. Laws § 44-30-85 may be relevant.

9. The Taxpayer has a history of routinely renewing the Sales Tax Permit with the last renewal occurring in June, 2010. Joint Exhibit Eight (8).

10. The Taxpayer d/b/a has continuously filed Sales Use Tax returns with the Division of Taxation on a quarterly basis declaring no taxable sales. Joint Exhibit Eight (8).

11. In March, 2001, the Taxpayer registered a new 2000 van with the Rhode Island Division of Motor Vehicles as a commercial vehicle and was assigned a plate. The vehicle is listed as being garaged in Rhode Island. Joint Exhibit Nine (9).

12. Since 2004, the Taxpayer has participated in Farm Fresh Rhode Island; a local non-profit organization that runs programs to promote and assist the marketing of agricultural products from local farms. Joint Exhibit Ten (10).

13. For calendar year ending 2006, the Couple filed a joint personal income tax return federally and a joint resident personal income tax return with New York. Joint Exhibits 11 and 12. The Taxpayer did not file a 2006 personal income tax return with Rhode Island; either as resident or a nonresident.

14. A routine computerized search of Federal forms issued by income payors for tax year 2006 disclosed that three (3) of the twenty (20) income sources listed for the Taxpayer on the Couple's 2006 federal income tax return listed the payee as having a Rhode Island address. Joint Exhibit 13.

15. As a result of this search, the Division prepared an initial Notice of Deficiency Determination under the Personal Income Tax dated February 12, 2010. This Deficiency Notice was directed to the Taxpayer alone. Joint Exhibit 14.

16. The Taxpayer orally protested the initial Deficiency Notice and the Division secured and reviewed an electronic transcript of his 2006 federal income tax filing. Joint Exhibit 15.

17. As a result of this review, the Division revised the determination of Rhode Island income tax liability for 2006 and issued a revised Deficiency Notice under the Personal Income Tax dated April 20, 2010. This Deficiency Notice was directed to the Couple jointly. Joint Exhibit 16.

18. The Taxpayer made a timely request for administrative hearing on the revised Deficiency Determination in a letter dated May 12, 2010.

19. As a result of preliminary review with a senior member of the audit staff, it was discovered that the Taxpayer's wife had no licenses, registrations, or other legal contacts with Rhode Island and she was employed in New York during tax year 2006.

20. As a result of this inquiry, the auditor determined that, for state income tax purposes, the Taxpayer should have filed as "married filing separately" with Rhode Island and his wife should have filed as "married filing separately" with New York for tax year 2006. Based on information provided by the Taxpayer, the auditor apportioned and allocated their various items of income and loss between the Couple and revised the Taxpayer's Rhode Island tax liability for tax year 2006. Joint Exhibit 17.

Principal Revenue Agent, testified on behalf of the Division. She testified that this matter arose out of the computer system identifying a 2006 Federal return with a Rhode Island address which resulted in a "Notice of Intent to Assess Tax" being forwarded to the Taxpayer. She testified that the Taxpayer responded to that notice and provided further information. She testified on the basis of the information received, a revised billing was sent to the Taxpayer. She testified that the Taxpayer sent in further information (Joint Exhibit 19) in response to the revised billing and another revised billing issued finding that the Taxpayer's wife was not a Rhode Island resident so the deficiency was significantly reduced. See Joint Exhibit 17.

testified that the Division did not give the Taxpayer credit for income taxes paid to New York since it was found he was a Rhode Island domiciliary (filing as a married separately) and had no filing requirement in New York. She testified that there is a procedure whereby income tax can be apportioned between two (2) states when a taxpayer is a domiciliary of one state and a statutory resident of the other state but the Taxpayer would not agree to being either for Rhode Island. She testified that if he had agreed to be a statutory resident of Rhode Island (183 days), she found that he would not have been given any credit for taxes paid to New York since the basis for the New York tax liability was his wife's income and not his.

The Taxpayer testified on his behalf. He testified that he took early retirement in 1989 from his job in New York and began an organic farm in Rhode Island where had already bought property in 1987. He testified local suppliers would not accept out-of-state checks without a Rhode Island license so he obtained a Rhode Island license in 1989 and at that time checked the box on the license application to register to vote with the mistaken belief that it was required in order to obtain a driver's license. He testified in 1991 he obtained a checking account in Rhode Island. He testified he renewed his license in Rhode Island from inertia until about 2010 when he learned that his Rhode Island license and voting could be used to show domicile in Rhode Island so he switched both back to New York.

The Taxpayer testified that his Rhode Island house has five (5) rooms with 1000 square foot and the New York house has eight (8) rooms with 1600 square foot. He testified that his New York house has been continuously occupied by his family since 1962. He testified he has made no improvements to the Rhode Island house but has to his New York house including a $ remodeling in 2009. See Taxpayer's Exhibit One (1) (invoice). He testified the Rhode Island house is used for business and in the last 20 years there have only been a handful of family gatherings there. He testified that the New York house is the center for family events. He testified that he washes all his laundry from staying in Rhode Island and prepares all his meals for staying in Rhode Island in the New York house. He testified that he was unable to obtain Rhode Island home insurance after 2005 so that the Rhode Island house is no longer insured. See Taxpayer's Exhibit Two (2). He testified the New York house is fully insured. He testified his wife has not visited the Rhode Island house for the last six (6) years.

On cross-examination, the Taxpayer testified that the Rhode Island house is classified as residential and has a kitchen and bath which he uses and two (2) bedrooms, one for sleeping and one for seed storage. He testified that he renewed the Rhode Island driver's license at least three (3) times since 1990 and did not have a driver's license in New York. He testified that he did not vote in New York but voted in Rhode Island. See Joint Exhibit Five (5). He testified he voted so he would have a say in the local community. He testified that he changed his voting registration when he applied for the driver's license because he thought it was required but since that explanation sounded simple minded, he told the Division that he changed his registration to establish community ties. See Joint Exhibit 19. He testified that for a sales permit application he gave the Rhode Island address to the Division rather than in care of his New York address. He testified that he has received a reduction for property tax because of the farmer's exemption. He testified he has joined local farming organizations. He testified that on the basis of his variety of crops, he has a long growing season with Spring and Winter vegetables. See Joint Exhibit Ten (10). He testified that before he owned the 2000 van, he owned another vehicle also registered in Rhode Island and when he closes the house in the Winter, he returns to New York in his Rhode Island registered vehicle.

On questioning from the undersigned, the Respondent testified that he starts the Spring season in February and ends by October 1. He testified that for the heavy farming seasons of July and August, he is in Rhode Island for six (6) days a week but for the other months, he is there for a few days a week. He testified that he has a farm stand which is open six (6) days a week for July and August.

V. DISCUSSION

A. Legislative Intent

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453 (R.I. 2002) (citation omitted). The Supreme Court has also held that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131 (R.I. 1998).

B. Relevant Statutes

R.I. Gen. Laws § 44-30-5 states:

> "Resident" and "nonresident" defined. – *(a) Resident individual.* A resident individual means an individual:
>
> (1) Who is domiciled in this state. In determining the domicile of an individual, the geographic location of professional advisors selected by an individual, including without limitation advisors who render medical, financial, legal, insurance, fiduciary or investment services, as well as charitable contributions to Rhode Island organizations, shall not be taken into consideration.
>
> (2) Who is not domiciled in this state but maintains a permanent place of abode in this state and is in this state for an aggregate of more than one hundred eighty-three (183) days of the taxable year, unless the individual is in the armed forces of the United States.
>
> *(b) Nonresident individual.* A nonresident individual means an individual who is not a resident.

R.I. Gen. Laws § 44-30-18 states in part as follows:

> Credit for income taxes of other states. – *(a) General.* A resident shall be allowed a credit, against the Rhode Island personal income tax otherwise due for the taxable year, for the aggregate of net income taxes imposed on him or her for the taxable year by other states (including the District of Columbia) of the United States if the taxes are imposed irrespective of the residence or domicile of the taxpayer.
>
> *(b) Limitation of credit.* The credit shall not exceed the proportion of the taxpayer's Rhode Island personal income tax that the taxpayer's Rhode Island income derived from the other taxing states bears to his or her entire Rhode Island income for the same taxable year. The source of income shall be determined in accordance with the rules prescribed in § 44-30-32.
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> ***
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> *(d) Double residence.* If the taxpayer is regarded as a resident both of Rhode Island and of another state for purposes of both their net income tax laws, the portion of Rhode Island tax allocable on average to the income taxed twice by reason solely of dual residence shall be reduced by the "appropriate percentage" of the lower of the two (2) state taxes allocable on average to the income taxed twice, if the other state also allows a similar reduction of its tax. The "appropriate percentage" shall be the percentage, which the Rhode Island tax is of the combined taxes of the two (2) states, allocable on average to the income taxed twice.

C. The Arguments

The Division represented that it is not seeking to prove that the Taxpayer spends over 183 days a year in Rhode Island as provided for in R.I. Gen. Laws § 44-30-5(a)(2). The Division argued that a taxpayer's subjective intent for domicile is defined by objective manifestations of intent. The Division argued that this Taxpayer purposely changed his license to extend credit and voted in local elections as part of a deliberate business plan that was only repudiated when the Taxpayer discovered its tax consequences. The Division argued that while the Rhode Island house is basic, it is still residential and it is irrelevant that it is also used for business and the Taxpayer is not an absentee landlord but rather engages in a labor intensive business with sustained annual returns to the State and with produce that could start late January or February and could

be picked as late as October. The Division argued that this evidence shows intent by the Taxpayer to define himself as a Rhode Island resident.

The Taxpayer relied on his testimony and evidence arguing that all together it demonstrated that he was not a Rhode Island resident.

D. Whether the Taxpayer was a Domiciliary of Rhode Island

The seminal Rhode Island case on domiciliary for tax purposes is *DeBlois v. Clark*, 764 A.2d 727 (2001) which found as follows:

> Applying these principles [*McCarthy v. McCarthy,* 45 R.I. 367 (1923) and *Black's Law Dictionary*] to this case, it is our opinion that an individual may retain contacts to Rhode Island, where he or she may spend significant time, but become domiciled in another state, provided the prerequisites of domicile are met. Moreover, a person may have more than one residence, Restatement (Second) *Conflict of Laws* § 20 cmt. *b* (2) (1971), and may even maintain a residence in the former domicile. *See* Restatement (Second) *Conflict of Laws* § 18 cmt. *e* (1971) ("It is * * * possible for a person to retain his old dwelling place and to cease to regard it as his home. In that case, if he regards the new dwelling place as his home, his domicil changes to the new dwelling place") . . . In order to effectuate a change of domicile, physical presence must concur with the intention of making the new location a permanent abode. (citation omitted). One need not abandon a former domicile-to the extent that means never or rarely returning-nor must one gradually sever or break ties to the state of origin. (footnote omitted).
>
> The determination of domicile must be made on a case by case basis upon consideration of all the evidence. *McCarthy,* 45 R.I. at 370 . . . (citation omitted). A person's intent with respect to domicile may be evidenced by his or her testimony and may-and often as a practical matter, must-also be evidenced by objective manifestations of that intent. *McCarthy,* 45 R.I. at 370 . . . Here, evidence that petitioners intended to change their domicile to Florida was substantial. The petitioners' condominium furnishings in Florida were valuated by an insurance company "in excess of $150,000," compared to "about $50,000" valuation of furnishings in Rhode Island. The Florida condominium also contains silverware, "the valuables [and] some paintings." It is more expensive than their condominium in Warren. They filed for and were granted a homestead exemption in Florida, the application for which asked for the "[d]ate you last became a permanent resident of Florida," to which petitioners responded "10/90."(footnote omitted). The petitioners changed their drivers' licenses and car registrations to Florida and changed their wills to recite that they were "of Vero Beach, Florida." Mr. DeBlois

made repeated references to Florida as his "permanent," "official," and "legal" home in resignation correspondence to various Rhode Island civic and business groups to which he had belonged. (footnote omitted). The petitioners filed Florida "intangible tax returns" and paid the taxes thereon. They registered to vote in Florida and since 1991 have only voted there. *See Blount v. Boston,* 351 Md. 360, 718 A.2d 1111, 1115 (1998) ("Our cases have characterized the place of voting as 'the highest evidence of domicile.'").

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For federal income tax purposes, the petitioners treated the 1993 sale of the Vero Beach condominium as a sale of a principal residence ("[T]he decision was that Florida was my home, and we treated the sale of the condominium that way."). Furthermore, all but one of their checking accounts are in Florida.[FN11] In addition to these objective manifestations of intent, when asked, "So, it's fair to say as of August 1, 1990, you had intended to change domiciles at that point?," Mr. Deblois responded "yes." [footnote omitted].

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FN11. *See* Restatement (Second) *Conflict of Laws* § 20 at 82 "Special Note on Evidence for Establishment of a Domicil of Choice" (" *Acts.* * * * [T]he location of a person's bank is some evidence as to the place of his domicil since, for the sake of convenience, he would presumably wish to deal with a bank close to his home.").

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Moreover, it is our opinion that a change in domicile does not require abandonment of one's former state. Domicile is manifested by physical presence plus intent. Here, petitioners' actions demonstrated their intent to establish domicile in Florida. *DeBlois*, at 734-737.

DeBlois arose out of an appeal of a 1996 Tax Administrator's decision that evaluated the DeBloises' continuing contacts with Rhode Island and found the DeBloises to be Rhode Island domiciliaries. The District Court upheld said decision finding that the DeBloises had not taken enough steps to break with Rhode Island. However, the State Supreme Court overturned the District Court decision finding that, "[d]omicile is manifested by physical presence plus intent." *Id.*, at 737. The Court also found that an individual may retain contacts to Rhode Island and spend considerable time there but become domiciled in another state provided the prerequisites of domicile have been met. *Id.*, at 734. Finally, the Court found that,

> The determination of domicile must be made on a case by case basis upon consideration of all the evidence. (citations omitted). A person's intent with respect to domicile may be evidenced by his or her testimony and may-and often as a practical matter, must-also be evidenced by objective manifestations of that intent. *Id.*, at 735.

Thus, the Court relied on 1) Mr. DeBlois' testimony that he and his wife planned to change their domiciliary; and 2) the "objective manifestations of intent" to find that the DeBloises had changed their domiciliary. Part of the objective manifestations of the DeBlois' intent was their voting and driving records. However, the Court did not find that such indicia are controlling but rather the Court explicitly stated that the decision must be made on a case-by-case basis.

This matter is opposite of *DeBlois* since the Taxpayer did not leave Rhode Island and declare an intention of no longer being a Rhode Island resident and of not returning to Rhode Island and then seek to demonstrate that intention through objective manifestations (e.g. changing voting registration, driver's license, etc.) of that intent. Instead, the Taxpayer bought a house in Rhode Island, lives in Rhode Island for at least 125 days a year to work,[3] obtained and renewed a Rhode Island driver's license, registered cars in Rhode Island, and registered and voted in Rhode Island for approximately 20 years. Upon discovering the potential tax consequences of his actions, the Taxpayer changed his voting registration and driver's license back to New York.

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[3] The Taxpayer testified that he is in Rhode Island six (6) days out of seven (7) days for July and August. Assuming that July and August combined equal nine (9) weeks that equals 54 days. He testified that for the months of February through June and September and October, he is in Rhode Island for a few days a week. Assuming those other months equal approximately 26 weeks with the Taxpayer's stay being three (3) days a week that would total 78 days. 78 days and 54 days equal 133 days. (Four (4) days a week would equal 104 days a week for a total of 158 days a year).

Indeed, the Taxpayer wrote to the Division that he spends approximately 190 days a year in Rhode Island (Joint Exhibit 19). This was most likely before the Taxpayer was aware of the tax consequences of spending over 183 days a year in Rhode Island. However, by the Taxpayer's own accounting he spends very close to 183 days a year; if not, over.

a. Objective Manifestations of Intent

i. Voting

In the recent *Tax Decision* 2010-10 (10/21/10) ("2010 Decision"), that taxpayer had moved overseas from Rhode Island so could not change his voting registration to another state as the DeBloises did. However, in this matter, the Taxpayer switched his voting registration to Rhode Island from New York.

Prior to hearing, the Taxpayer wrote to the Division on May 18, 2010 (Joint Exhibit 19) that he voted in Rhode Island thinking that community ties would be helpful in marketing his business. However, he testified that he changed his voting registration to Rhode Island when he applied for the Rhode Island driver's license because he thought it was required but since that explanation sounded simple minded, he told the Division that he changed his voting registration to establish community ties. But he also testified that he voted in Rhode Island so he would have a say in the local community.

While the Taxpayer may have initially switched his voting registration because he thought it required in order to obtain a driver's license in Rhode Island, he registered to vote in Rhode Island in 1990 and only switched it back to New York in 2010 after discovering the possible tax consequences of being registered in Rhode Island. He voted in Rhode Island in 2001 (statewide), 2001 (financial town meeting), 2001 (special election), 2002 (statewide), 2004 (statewide primary and general election), 2006 (statewide), and 2008 (statewide). See Joint Exhibit Five (5). The Taxpayer's testimony that he voted to have a say in the local community is more credible than he only registered to vote to obtain a driver's license. Even if that was his initial reason to register to vote in Rhode Island, the Taxpayer chose to vote in Rhode Island for several

years because he was living in Rhode Island and cared about his community. He chose not to register and vote in New York.

ii. Driver's License

Unlike the 2010 Decision where that taxpayer lived overseas and retained his Rhode Island driver's license for the convenience of visiting the United States, this Taxpayer chose to obtain a Rhode Island license and not a New York license. He testified that he obtained the Rhode Island license so he could use out-of-state checks. However, he obtained a Rhode Island bank account in 1991 and had a Rhode Island address. He testified that he renewed his license at least three (3) times since 1989 from inertia and only switched back to New York in 2010 after discovering the possible tax consequences. Once the Taxpayer established a Rhode Island bank account, he no longer needed the Rhode Island license for out-of-state checks.

iii. Banks

DeBlois found that the DeBloises banked in Florida. In this matter, the Taxpayer established a Rhode Island bank account in 1991 presumably for his in-state business.

iv. Property

In *DeBlois*, the DeBloises registered their car in Florida. They owned a condominium in Florida that was bigger than their condominium in Rhode Island. In this matter, the Taxpayer owns a car registered in Rhode Island and owns a house in Rhode Island which is smaller than his New York house.

v. Declarations

In *DeBlois*, the Court found that the DeBloises for Federal income tax purposes had treated the sale of their Florida condominium as the sale of their principal residence.

The Court also found that Mr. DeBlois made repeated references to being a permanent residence of Florida in his resignation letters to Rhode Island civic and business groups to which he belonged. Similarly, in the 2010 Decision, that taxpayer applied for an absentee ballot in 2004 and did not state that he was a US citizen temporarily residing outside the US but rather stated he was a US citizen residing outside the US and his address on his tax returns were in care of his tax preparer's Rhode Island address.

The Taxpayer's only declarations regarding being a New York resident rather than a Rhode Island resident occurred after the notice of this tax liability. He could not point to any other documentation indicating that he intended to stay a New York resident. Rather he used his Rhode Island address to obtain a permit to make sales at retail.

vi. Physical Presence

DeBlois found that a taxpayer may retain contacts and spend significant time in Rhode Island and still not be a domiciliary. However, *DeBlois* addressed those Rhode Island residents who move out-of-state and maintain contacts with Rhode Island via a summer house or family, etc. And unlike the taxpayer in the 2010 Decision who spent less than 32 days one year and less than 48 days in Rhode Island the other year, this Taxpayer spends over 125 days living in Rhode Island. In the 2010 Decision, the only contacts that the taxpayer had with Rhode Island aside from his voting registration and driver's license was visiting Rhode Island each year to see family. This Taxpayer has more extensive physical contacts and presence with Rhode Island than just a driver's license and voting registration. The Taxpayer owns a house in Rhode Island, lives in Rhode Island when working in Rhode Island, and owns a Rhode Island registered car.

vii. Testimony

The Taxpayer testified that he never intended to become a Rhode Island resident and based on the facts that his main house is in New York, that his wife lives in New York, and the center of his family is in New York, he is a New York resident.

viii. Other Prior Administrative Tax Decisions

Tax Decision, 2004 WL 3078823, applied *DeBlois* to find that a taxpayer was not domiciled in Florida. In that matter, the taxpayer had declared an intent to be a Florida domicile but both husband and wife were still registered to vote in Rhode Island, each had a Rhode Island driver's license, they had two (2) cars registered in Rhode Island, they owned a house in Rhode Island and Florida, the wife still resided in Rhode Island, and they had a bank account in Rhode Island. The husband also owned a house in California and decided to change his domicile from California to Florida by renting a hotel room in Florida and then later buying a house in Florida. The husband obtained a Florida's driver's license the year after he argued he was domiciled in Florida.

In contrast to that 2004 *Tax Decision*, a 2003 *Tax Decision*, 2003 WL 21700339, when applying *DeBlois* found that a taxpayer was not a domiciliary of Rhode Island. In that situation, the taxpayer lived overseas and previously had been a student in Rhode Island and kept his Rhode Island address because his family was in Rhode Island. The taxpayer was not registered to vote anywhere in the US, did not have a house in Rhode Island, had both a Rhode Island and foreign driver's license, had a Rhode Island business address and not a personal residence address on his tax return, visited Rhode Island for two (2) weeks every year, had Rhode Island bank accounts used by family representatives to pay expenses, had no vehicles in Rhode Island, and no telephone listing in Rhode

Island. Said decision found that the taxpayer's only contact with Rhode Island were a long ago obtained driver's license and a business connection with a financial entity handling his family's business. The decision found that the taxpayer's permanent place of abode was in a foreign country for ten (10) years and he had no present intention to return to the US, let alone Rhode Island, so that to assess a tax on the basis of only a few criteria would be far reaching.

ix. Conclusion

DeBlois relied on a physical presence, a stated intent, and objective manifestations to support that intent. As demonstrated by the 2004 *Tax Decision*, objective manifestations do not always support a declared intention to change a domiciliary. In that case, despite the husband stating that he was a Florida domiciliary, all the other evidence pointed to continuing to be a Rhode Island domiciliary (house in Rhode Island, cars registered in Rhode Island, voting in Rhode Island, etc.).

As discussed above, this matter is the opposite of *DeBlois* in that the Taxpayer moved to Rhode Island rather than left it. However, the types of contacts the Taxpayer has with Rhode Island are the types of contacts that demonstrate that someone has not cut off contact with Rhode Island if he or she were "leaving" the State.

This decision has discussed the various types of "objective manifestations" of intent as discussed in *DeBlois*. This is not an exhaustive list. Indeed, *DeBlois* indicates that this type of decision is a case-by-case decision. Here, the Taxpayer registered a car in Rhode Island for over ten (10) years, was registered to vote for 20 years in Rhode Island, voted several times in local and State elections in those 20 years, obtained and renewed several times a Rhode Island driver's license for 20 years, owns a house [for

over 20 years] in Rhode Island, has a Rhode Island bank account [for almost 20 years], and spends a significant time living in Rhode Island each year [at least 125 days a year]. Thus, the Taxpayer's physical presence and the objective manifestations of intent demonstrate that he was a Rhode Island domiciliary for 2006.

DeBlois found that under R.I. Gen. Laws § 8-8-28, a taxpayer must demonstrate a change in domicile by the preponderance of evidence. Based on the totality of objective manifestations of intent and considering them in this matter, the Taxpayer has not demonstrated by a preponderance of evidence that he was not a domiciliary of Rhode Island for 2006 so he owes personal income tax to the State of Rhode Island.

E. Penalties

The Division's Notices of Deficiency[4] assessed three (3) penalties: 1) late payment interest; 2) late filing penalty; and 3) late payment penalty. See Division's Exhibits 16 and 17 (revised Notice and further revisions) and Agreed Statement of Facts. R.I. Gen. Laws § 44-30-85(a)(1)[5] provides for a penalty for late filing. R.I. Gen. Laws §

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[4] R.I. Gen. Laws § 44-30-82 (b) authorizes the Division to estimate a taxpayer's Rhode Island taxable income when a return is not filed and impose tax, penalties, and interest from the date of the mailing the notice of assessment. R.I. Gen. Laws § 44-30-83 provides that there is no time limit to assessing a taxpayer when a return has not been filed.

[5] R.I. Gen. Laws § 44-30-85 states in part as follows:

> Additions to tax and civil penalties. – *(a) Failure to file tax returns or to pay tax.* In the case of failure:
>
> (1) To file the Rhode Island personal income tax return or the employer's withheld tax return on or before the prescribed date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, an addition to tax shall be made equal to five percent (5%) of the tax required to be reported if the failure is for not more than one month, with an additional five percent (5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate. For this purpose, the amount of tax required to be reported shall be reduced by an amount of the tax paid on or before the date prescribed for payment and by the amount of any credit against the tax which may properly be claimed upon the return;
>
> (2) To pay the amount shown as tax on the personal income tax return on or before the prescribed date for payment of the tax (determined with regard to any extension of time for payment) unless it is shown that the failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on the return five-tenths percent (0.5%) of the amount of the tax if the failure is for not more than one month, with an

44-30-85(a)(2) provides for a penalty for late payment for personal income tax. R.I. Gen. Laws § 44-30-84[6] provides for interest on the underpayment of income tax.

F. New York Tax Credit

The Taxpayer did not demonstrate that he paid any tax to New York on his New York income which is attributable to Rhode Island. The Taxpayer did not demonstrate that he should receive a credit under R.I. Gen. Laws § 44-30-18.

VI. FINDINGS OF FACT

1. On or about February 22, 2011, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. A hearing in this matter was held on April 26, 2011 at which time the parties rested on the record.

3. The facts contained in Sections IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Division has jurisdiction over this matter pursuant to R.I. Gen. Laws § 44-30-1 *et seq.* and R.I. Gen. Laws § 44-1-1 *et seq.*

2. Pursuant to R.I. Gen. Laws § 44-30-5, the Taxpayer was a domiciliary of Rhode Island for 2006.

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additional five-tenths percent (0.5%) for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate.

[6] R.I. Gen. Laws § 44-33-84 states in part as follows:

Interest on underpayment. – (a) General.

(1) If any amount of Rhode Island personal income tax, including any amount of the tax withheld by an employer, is not paid on or before the due date, interest on the amount at the annual rate provided by § 44-1-7 shall be paid for the period from the due date to the date paid, whether or not any extension of time for payment was granted. The interest shall not be paid if its amount is less than two dollars ($2.00).

3. Therefore, the Taxpayer owes personal income tax to Rhode Island for 2006 as well as interest and penalties assessed pursuant to R.I. Gen. Laws § 44-30-84 and R.I. Gen. Laws § 44-30-85 as issued in the revised Notices of Deficiency for 2006. See Joint Exhibits 16 and 17.

4. The Taxpayer is not entitled to receive a tax credit for any taxes paid to New York under R.I. Gen. Laws § 44-30-18.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends as follows:

Pursuant to R.I. Gen. Laws § 44-30-5, the Taxpayer was a domiciliary of Rhode Island for 2006 and owes personal income tax for 2006 to Rhode Island as well as the interest and penalties assessed pursuant to R.I. Gen. Laws § 44-30-84 and R.I. Gen. Laws § 44-30-85 as set forth in the revised Notices of Deficiency. See Joint Exhibits 16 and 17. Pursuant to R.I. Gen. Laws § 44-30-18, the Taxpayer is not entitled to any credit for taxes paid to New York.

Date: 6/9/11

Catherine R. Warren
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

____ ADOPT
____ REJECT
____ MODIFY

Date: June 13, 2011

David Sullivan
Tax Administrator

NOTICE OF APPELLATE RIGHTS

THIS DECISION CONSTITUTES A FINAL ORDER OF THE DIVISION. THIS ORDER MAY BE APPEALED TO THE SIXTH DIVISION DISTRICT COURT PURSUANT TO R.I. Gen. Laws § 44-30-90 WHICH STATES AS FOLLOWS:

§ 44-30-90 Review of tax administrator's decision.

(a) General. Any taxpayer aggrieved by the decision of the tax administrator or his or her designated hearing officer as to his or her Rhode Island personal income tax may within thirty (30) days after notice of the decision is sent to the taxpayer by certified or registered mail, directed to his or her last known address, petition the sixth division of the district court pursuant to chapter 8 of title 8 setting forth the reasons why the decision is alleged to be erroneous and praying relief therefrom. Upon the filing of any complaint, the clerk of the court shall issue a citation, substantially in the form provided in § 44-5-26 to summon the tax administrator to answer the complaint, and the court shall proceed to hear the complaint and to determine the correct amount of the liability as in any other action for money, but the burden of proof shall be as specified in § 8-8-28.

(b) Judicial review sole remedy of taxpayer. The review of a decision of the tax administrator provided by this section shall be the exclusive remedy available to any taxpayer for the judicial determination of the liability of the taxpayer for Rhode Island personal income tax.

(c) Date of finality of tax administrator's decision. A decision of the tax administrator shall become final upon the expiration of the time allowed for petitioning the district court if no timely petition is filed, or upon the final expiration of the time for further judicial review of the case.

CERTIFICATION

I hereby certify that on the 13th day of June, 2011, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to Taxpayer's address on file with the Division of Taxation and by hand delivery to Bernard J. Lemos, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belanco