STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2014-18

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.: 12-T-0028**
Taxpayers.	:	

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 April 24, 2012 and issued to the above-captioned taxpayers[1] ("Taxpayers') by the Division of Taxation ("Division") in response to a request for hearing. A hearing was held on November 19, 2013 and January 6, 2014. Both parties were represented and briefs were timely filed by June 10, 2014.

II. JURISDICTION

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

III. ISSUE

Whether pursuant to R.I. Gen. Laws § 44-30-5, the Taxpayer was a domiciliary of Rhode Island from 2005 to 2008 and thus subject to Rhode Island personal income tax.

[1] The taxpayers are a married couple. The husband shall be referred to as "Husband" and the wife as "Wife."

IV. MATERIAL FACTS AND TESTIMONY

, Principal Revenue Agent, testified on behalf of the Division. She testified that between 2005 and 2008, the Wife filed Rhode Island resident returns and paid Rhode Island income tax; however, the Husband did not file in Rhode Island during this period. She testified that upon review of information, the Division determined the Husband was a Rhode Island domiciliary from 2005 to 2008 and should have filed and paid income tax in Rhode Island. She testified that the Taxpayers filed joint Federal income tax returns using their Rhode Island address. See Division's Exhibits Two (2), Seven (7), 12, 17 (2005, 2006, 2007, 2008 Federal returns). In addition, she testified that the Husband's 2005 Georgia income tax return was for married filed jointly as part-time Georgia residents and used their Rhode Island home address and listed Texas and Rhode Island as states where income was earned or reported. See Division's Exhibit Three (3) (Georgia 2005 return). She testified that the Husband's 2005 W-2 IRS Wage and Income statement lists the Husband's Rhode Island and Texas address. See Division's Exhibit Four (4).

testified that she was provided with a 2005 relocation letter (Division's Exhibit Six (6)) from the Husband's employer but that did not change her analysis as the moving expenses would have been a deductible item on the Federal tax return and there was no additional income on the return based on reimbursement by the company for relocation expenses and no deductions were taken because of relocation expenses. She testified that such expenses would have been one of the factors considered in determining domicile but in this matter there were not any such expenses.

further testified that the Taxpayers own the Rhode Island house together and it is where the Wife lived during these years with their minor children. She testified that the Husband had an active Rhode Island driver's license during this time and while it was surrendered at one point, he obtained another Rhode Island license in 2007. Division's Exhibit 25 (DMV record). She testified that there is no dispute that the Husband did live in Georgia and Texas (Division's Exhibit 24) during these years but the Division found he was a Rhode Island domicile. She testified that the Husband was active and eligible to vote in Rhode Island. She testified that while the Husband had an out-of-state driver's license and vehicle that was not unusual if someone is working in another state and did not change the Division's analysis. She testified that the Division found that while the Husband was working outside of Rhode Island, he intended to return to Rhode Island so was domiciled in this State and therefore owes personal taxes for those years. See Division's Exhibit 26 (tax, penalties, interest owed as of November 15, 2013 without the 2005 Georgia credit).

testified that it was determined that the Wife should not have filed married filed separately but should have filed jointly with Husband so the Division's made income tax corrections. See Division's Exhibit Five (5) (2005 corrected notice).[2] See also Division's Exhibits 11 (2006 corrected notice), 16 (2007 corrected notice), and 20 (2008 corrected notice).

On cross-examination, testified that while the relocation letter spoke of "grossing up," there was nothing in the Federal return to indicate that moving expenses

[2] The Division stipulated that the original 2005 correction notice did not include a credit for any tax paid to Georgia. The Division stipulated that if it was found that Husband should have filed in Rhode Island in 2005 then he would receive a credit of for taxes paid to Georgia. testified that the Taxpayers owed tax of for 2005 but that did not include any penalties or interest. R.I. Gen. Laws § 44-30-18 provides credit for income tax paid to other states.

were deducted or included as income. She testified that there is no proof that the Husband voted in Rhode Island during those years.

On re-direct examination, testified that the Husband registered to vote in Georgia in 2001 and was removed in 2009 from the Georgia voting rolls for not voting in two (2) consecutive general elections. See Division's Exhibit 23. She testified that even if it was shown that relocation expenses were paid in 2005 to the Husband that would not change the Division's analysis.

The Wife testified on behalf of the Taxpayers. She testified that Georgia's Department of Motor Vehicles' policy was to collect out-of-state driver's licenses at the time it issued a Georgia license. She testified that relocation expenses were included as part of her Husband's 2005 relocation expenses. She testified that her Husband purchased a car in 2004 while in Georgia using his Georgia address. See Division's Exhibit 25. She testified that her Husband rented an apartment in Georgia and used it as his residence and when he moved to Texas, he also rented an apartment there. See Taxpayers' Exhibits One (1) and Two (2) (2007 and 2008 Texas apartment lease). She testified that her Husband came back to Rhode Island once or twice a month at the weekends. She testified that they discussed moving to Georgia but did not want to take the children out of school and that her Husband did not intend to return to Rhode Island.

The Husband testified on behalf of Taxpayers. He testified that his employer ("Company") relocated in 2004 to Georgia and offered him a senior level position. He testified the position required that he relocate to Georgia and his intent was to move to Georgia, grow with the Company, and live there. He testified he obtained a driver's license in Georgia and turned in his Rhode Island license. He testified that he registered

to vote in Georgia and leased an apartment in Georgia and registered his car in Georgia. He testified he could not remember if he voted in Georgia because he frequently traveled but he did register to vote. He testified that "his intent was to move to Georgia with the company and grow and stay there."[3]

The Husband testified that his Company acquired other companies and his position was eliminated so he took a job with another company ("Second Company") in Texas which was developing products in Latin America. He testified he started in 2005 in Texas at the Second Company and worked there for three (3) or four (4) years and for his job, he worked a lot in Mexico so that after three (3) years, he was "basically living in Mexico all the time and it was getting very difficult to get home at all. I asked the company in Austin if I could work in their domestic side of the business. They had nothing available so I made that choice to move home at that point in time to Rhode Island."[4] He testified that he still is in contact with the Second Company and if its domestic business increases, he would seek to move back to Austin, Texas.

On-cross examination, the Husband testified that "I would try to get home on a monthly basis"[5] or at least for a special occasions. He testified that it was hard because he traveled for his job. He testified that during this time his wife and children lived in Rhode Island. He testified that with the job in Texas "it was difficult to travel to Rhode Island."[6] He testified he did obtain his driver's license again in Rhode Island.

[3] Second day hearing recording, approximately five (5) minutes.
[4] Second day of hearing recording, approximately eight (8) minutes.
[5] Second day hearing recording, approximately ten (10) minutes.
[6] Second day of hearing recording, approximately 11 minutes.

On re-direct examination, the Husband testified that his home was in Georgia and Texas. When asked if his home was Rhode Island or Texas, the Husband testified that "I was living in Texas."

Cranston testified on behalf of Taxpayers as a "friend." He testified that he was aware the Husband was living and working in Georgia and Texas during the period in question and he does not understand why the Husband is considered a Rhode Island resident for tax purposes.

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.

C. The Arguments

The Division argued that while the Husband resided in Georgia or Texas from 2005 to 2008, he failed to establish by a preponderance of the evidence, that he possessed the requisite intent to establish a domicile in another state besides Rhode Island for those years. The Division relied on case law including *Flather v. Norberg*, 119 R.I. 276 (1977) which found that in order to establish domicile a person must have an actual abode in the state with the intention in good faith to live there permanently and without any present intention of changing the home in the future. The Division argued residence without intent is not sufficient to establish domicile. The Division argued that the Husband's testimony about "home" and his jobs and the objective manifestations of intent demonstrated that the Husband's domicile was Rhode Island.

The Taxpayers argued that the Husband's employment took him to Georgia where he intended to move but he subsequently took a job in Texas. They argued that the Husband maintained residences in Texas and Georgia and obtained a Georgia driver's

license. They argued that the Husband purchased and registered a car in the Georgia. The Taxpayers argued that the Husband registered to vote in Georgia. The Taxpayers argued that the Husband used "home" in testimony to refer to Rhode Island as it was his childhood home and he really meant the United States. The Taxpayers argued that the Husband intended to live permanently in Georgia and Texas because of the job opportunities and he would return to Texas if the opportunity presented itself.

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.'").

***

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.").

***

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 testimony and 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.

a. Objective Manifestations of Intent

i. Voting

The Husband moved to Georgia in 2004. He apparently was already registered there to vote in 2001 and never voted there and was removed from the Georgia voting rolls in 2009 for not voting in two (2) consecutive general elections. See Division's Exhibit 23. The Husband remained registered to vote in Rhode Island but did not vote in Rhode Island. *Id.* Upon the Husband's move to Texas, there was no evidence that he registered to vote in Texas between 2005 and 2008.

ii. Driver's License

The Husband apparently obtained a Georgia driver's license in 2001 and renewed it on June 9, 2005. See Division's Exhibit 25. Later in the summer of 2005, the Husband moved to Texas. See Division's Exhibit Six (6). The Husband did not obtain a Texas

driver's license. Instead, on April 4, 2007, he again obtained a Rhode Island driver's license. See Exhibits 22 and 25.

iii. Property

In *DeBlois*, the DeBloises registered their car in Florida and owned a condominium in Florida that was bigger than their condominium in Rhode Island. In this matter, the Taxpayers owned a house in Providence, Rhode Island and the Husband did not own a home in Georgia or Texas but rather rented an apartment in each state on annual leases.[7] The Second Company offered the Husband relocation expenses to move from Providence, Rhode Island to Texas. See Division's Exhibit Six (6) (relocation letter). The Husband purchased a car in Georgia in 2004 and registered it in Georgia. See Division's Exhibit 25. There was no evidence that he registered a car in Texas while he was living there.

iv. Declarations

In *DeBlois*, the Court found that the DeBloises had treated the sale of their Florida condominium as the sale of their principal residence for Federal income tax purposes. In contrast, the Taxpayers did not produce any evidence containing declarations of the Husband's intent to become a Georgia or Texas domicile prior to receiving their Rhode Island tax notice. The Taxpayers' Federal income tax returns for 2005 through 2008 all use the Taxpayers' Rhode Island address for filing purposes. The Company's W-2 form for the Husband's W-2 form provided by the Internal Revenue Service ("IRS") lists the Taxpayers' Rhode Island address for salary payments. See Division's Exhibit Four (4).

[7] The Taxpayers argued that they did not sell their Rhode Island home because their mortgage was too high; however, there was nothing in the record either by testimony or by exhibit to support this argument.

v. 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 visiting family, etc. In this matter, the Husband resided elsewhere for work purposes. The Taxpayers own a house in Rhode Island where the Wife was raising their children and who he visited at weekends especially for important family events.

b. Testimony

The Husband testified that he formed the necessary domiciliary intent when he relocated to Georgia and then to Texas because his goal was always to grow with the companies and follow career opportunities. However, Husband's testimony was not always consistent with these broad verbal declarations about his intent. First, Husband used the word "home" when referring to visiting his Wife and their children in Rhode Island. Second, Husband used the words "home" in his testimony about his request that the Second Company find a position on the "domestic side" of their operations. The Taxpayers argued that the Husband's testimony about "home" referred to Rhode Island as his home as it was his childhood home and he meant the United States as his home. There was no testimony supporting this assertion. The Husband requested a domestic position because it was difficult to travel home (to Rhode Island, not to the United States). When one was not available, he left the Second Company and testified that he returned "home" to Rhode Island. He did not stay in Texas and find another job there.

c. Other Prior Administrative Tax Decisions

The *Administrative 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, and the wife still resided 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 decision, a 2003 *Administrative Tax Decision*, 2003 WL 2170033 applied *DeBlois* to find that a taxpayer was not a domiciliary of Rhode Island. In that situation, the taxpayer lived overseas, previously had been a student in Rhode Island, and kept his Rhode Island address because his family was there. Said decision found that the taxpayer's only contacts 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.

d. 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 him continuing to be a Rhode Island domiciliary (house in Rhode Island, cars registered in Rhode Island, voting in Rhode Island, etc.).

This decision has discussed the various types of "objective manifestations" of intent as discussed in *DeBlois*. Domicile is decided on a case-by-case basis. In this matter, the Husband moved to Georgia and Texas for jobs. When the jobs ended, he returned to Rhode Island. His relocation for the Second Company was from Rhode Island, not Georgia. He registered to vote in Georgia and registered a car in Georgia and obtained a Georgia driver's license. He rented an apartment in Georgia. Despite the contacts with Georgia via his car, voting registration, driver's license, and apartment, he left Georgia when the job ended. The Husband's contacts with Georgia were limited to his job and there was no good faith intent to live there permanently.

The Husband had fewer contacts with Texas than with Georgia. Indeed, while living in Texas, he obtained a Rhode Island driver's license. He never registered to vote in Texas, never registered a car in Texas, and never obtained a Texas driver's license. He relocated to Texas from Rhode Island and his only contact there was the job and the apartment. While working in Texas, the Husband travelled a lot and found it "difficult" to travel home and after not being able to obtain a job based in the United States, he returned "home," to Rhode Island.

The Husband's testimony was that he wanted to grow with the Company in Georgia and live there and the same with the Second Company in Texas. Such plans do not preclude an intent to return to Rhode Island. While in Georgia and Texas, the Husband owned a house in Rhode Island with his Wife and their minor children and they filed married joint Federal returns using their Rhode Island address. He returned home at

weekends especially for special events. He did not establish any contacts with either Georgia or Texas beyond working in those states.

DeBlois found that a taxpayer must demonstrate a change in domicile by a preponderance of evidence. Based on the totality of objective manifestations of intent and testimony and considering them in this matter, the Husband has not demonstrated by a preponderance of evidence that he was not a domiciliary of Rhode Island for tax years 2005, 2006, 2007, and 2008. Thus, the Husband/Taxpayers owe personal income tax to the State of Rhode Island for those years.

E. Penalties

The Division's records indicate the taxes, interest, and penalties owed by the Taxpayers. See Division's Exhibit 26 (Taxpayers' accounts receivables summary). See also Division's Exhibits Five (5), 11, 16, 20 (corrected income tax returns).[8] R.I. Gen. Laws § 44-30-85(a)(1) provides for a penalty for late filing for personal income tax and R.I. Gen. Laws § 44-30-85(a)(2) provides for a penalty for late payment for personal income tax.[9] R.I. Gen. Laws § 44-30-84[10] provides for interest on the underpayment of income tax.

[8] 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.

[9] 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

VI. FINDINGS OF FACT

1. On or about April 24, 2012, the Division issued a Notice of Hearing and Appointment of Hearing Officer to the Taxpayers.

2. A hearing in this matter was held on November 19, 2013 and January 6, 2014. The parties timely filed briefs by June 10, 2014.

3. The Taxpayers filed married joint Federal returns using their Rhode Island address for 2005 through 2008.

4. The Husband rented an apartment in Georgia in 2005.

5. The Husband rented an apartment in Texas during 2005 through 2008.

6. The Husband registered to vote in Georgia in 2001 and was removed for the Georgia voting rolls in 2009.

7. In 2004, the Husband purchased a car in Georgia and registered it in Georgia.

8. The Husband's 2005 part-year Georgia return used the Taxpayers' Rhode Island address.

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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 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.

[10] 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).

9. The Husband's 2006 nonresident Georgia return used the Rhode Island Taxpayers' address.

10. The Husband relocated from Rhode Island to Texas in 2005.

11. The Husband did not register a car in Texas from 2005 to 2008.

12. The Husband did not register to vote in Texas from 2005 to 2008.

13. The Husband obtained a Georgia's driver's license in 2001 and again in 2005.

14. The Husband did not obtain a driver's license in Texas from 2005 to 2008.

15. The Husband obtained his Rhode Island driver's license again in 2007.

16. The Husband owned a house in Rhode Island with his Wife and minor children during the period of 2005 to 2008.

17. The Husband visited Rhode Island at weekends during the period of 2005 to 2008.

18. The Husband left his job in Texas in 2008 when it got too difficult to visit his home in Rhode Island and returned to Rhode Island.

19. 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 Husband was a domiciliary of Rhode Island for 2005, 2006, 2007, and 2008.

3. Therefore, the Husband/Taxpayers owe personal income tax to Rhode Island for 2005, 2006, 2007, and 2008 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.

VIII. RECOMMENDATION

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

Pursuant to R.I. Gen. Laws § 44-30-5, the Husband was a domiciliary of Rhode Island for 2005, 2006, 2007, and 2008 and Taxpayers owe personal income tax for those years 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.

Date: August 7, 2014

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: September 12, 2014

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 12th day Sept., 2014, a copy of the above Decision and Notice of Appellate Rights were sent by first class mail, postage prepaid and return receipt requested to Taxpayers' address and Taxpayers' representative's address on file with the Division of Taxation and by hand delivery to Linda Riordan, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.

Gail Belasco