STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF TAXATION

ADMINISTRATIVE HEARING

FINAL DECISION AND ORDER

#2015-07

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.: 14-T-081**
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 November 14, 2014 and issued to the above-captioned taxpayer ("Taxpayer") by the Division of Taxation ("Division") in response to a request for hearing filed with the Division. A hearing was held on February 4, 2015 with the parties resting on the record.[1] The Taxpayer was *pro se* and the Division was represented by counsel.

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 the Taxpayer was a domiciliary of Rhode Island in 2008 and thus subject to Rhode Island personal income tax under R.I. Gen. Laws § 44-30-5.

[1] The record was left open for the Taxpayer to submit a further page from her 2008 Federal tax return; however, the Taxpayer did not submit said document.

IV. MATERIAL FACTS AND TESTIMONY

, Principal Revenue Agent, testified on behalf of the Division. He testified that the Division determined the Taxpayer owed Rhode Island income tax for 2008 since she filed a 2008 Federal income tax return but not a Rhode Island return. He testified the Division issued her a Notice of Deficiency based on her 2008 Federal return. See Division's Exhibits A (Taxpayer's 2008 Federal income tax return); and B (Notice of Deficiency). He testified the Division based its decision on the fact that the Taxpayer had a car registered in Rhode Island in her name in January, 2008 and in October, 2007, that she had the Rhode Island driver's license in 2008, that she was and is registered to vote in Rhode Island, and that she owned property in Rhode Island in 2008 that she bought in February 15, 2000. See Division's Exhibits D (vehicle registration records); E (property records); and F (voting registration). He testified that the Taxpayer ended up owing tax for 2008 but not for 2006 or 2007 because Rhode Island repealed its foreign earned income tax credit. On cross-examination, he testified that Form 2555 attached to the 2008 Federal return gave the Taxpayer's address in the United Kingdom ("UK").

The Taxpayer testified on her behalf. She testified that she traveled for her work and in 2005, she was out of the United States for 165 days for work. She testified that in 2005, she was in a long distance relationship with an Englishman who lived in the UK and who she had known since the 1990's and had been dating since 2003. She testified that her son was in college. She testified that in mid-2005, she requested that her company move her to London in the UK. She testified that at the same time that she requested the move from her company, another company offered her a job in London. She testified that her company offered her a four (4) year – but preferably a two (2) year - "ex-pat" deal in the UK. However, the other company offered a

permanent move to the UK. She testified that she turned down her own company's very good job offer since she wanted to make a permanent move to the UK. She testified that since she wanted to move permanently to the UK, she left a company she had worked at since 1998 and took the permanent job offer. She testified that she moved to the UK in May, 2006. She testified that her plan was to live in the UK for five (5) years so she could become a citizen (permanent resident). She testified that the UK Home Office made changes to work visas in 2008 so she was able to obtain a general work visa rather than one tied to her job. See Taxpayer's Exhibit One (1) (copy of visas). She testified that she worked for a bank and in 2008, the banks failed and she ended up losing her job and had to stop work for three (3) months. She testified that rather than return to the United States, she obtained another job after three (3) months.

The Taxpayer testified that on Form 2555 she indicated she resided in the UK and used the Rhode Island address as a mailing address. She testified that she lived with her boyfriend in a house he purchased before she moved to the UK. She testified that her college-age son lived in the Rhode Island house and her father who lived in Vermont part of the year lived in the Rhode Island house the other part of the year. She testified that she paid the mortgage and insurance on the house. She testified that in 2009, her father had liver failure and she visited him. She testified that her managing director in the UK asked her if she wanted to return to the United States but she was only one (1) year away from getting her citizenship so did not want to. However, she testified that her company reorganized and it needed a business manager in the United States and she was asked in May, 2010 if she would like that position. She testified that she said she would help out but in March, 2011, she ended up making the move permanent because her father deteriorated and went into a nursing home and her son became a father to her grandchild. She testified her son and daughter-in-law live in the Rhode Island house.

The Taxpayer testified that in January, 2000, she and her son purchased a car together and she had not realized it but it was registered in her name so that when it needed a plate change in 2008, she needed to make the change. She testified she had leased a car in 2004 for three (3) years so she bought it when the lease was up in 2007 and registered it her name and let her sister use it. She testified that she renewed her driver's license in 2004 and then moved to the UK where she did not need a driver's license because she walked or took the train everywhere. Additionally, she testified that obtaining a driver's license in the UK is a very long process. She testified that she usually voted and had voted in the primary and general election in 1998, the general election in 2002 election, the 2004 primary and general election but that she did not vote again in the United States until 2010 when she actually back in the United States. She testified that she did not vote in the 2008 general election because she was considering herself a resident of the UK. See Taxpayer Exhibit One (1) (voting history). She testified that she established a bank account at a UK bank. See Taxpayer's Exhibit Three (3). She testified that she had a retirement and pension plan in the UK during that time. She testified that she paid taxes to the UK. See Taxpayer's Exhibit Four (4). She testified that if she had taken the "ex-pat" deal, she would not have to have paid UK taxes but she was planning to permanently stay in the UK.

On cross-examination, the Taxpayer testified that she did have a bank account in Rhode Island which she put money in so her son could pay for the car and the house. She testified that she did have retirement funds in the US but not for the years she lived in the UK.

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 Statute

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 the Taxpayer had enough contacts – driver's license, house, car registration, bank account – with Rhode Island in 2008 to be considered a domicile.

The Taxpayer argued that while she had contacts with Rhode Island in 2008, she did not have the intent to return to Rhode Island so was not a domicile.

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 (R.I. 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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> ***
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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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> ***
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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. Interestingly, after the Tax decision but prior to the Supreme Court decision (overturning the District Court), R.I. Gen. Laws § 44-30-5 was amended to exclude the geographic location of medical, financial, and other advisors from being considered when determining domiciliary.[2]

However, *DeBlois*' holding is to consider more than just relying on legalisms. It held 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.

[2] P.L. 1998 ch. 267 §1. The statute was further amended by P.L. 2007 ch. 7 § 1 and P.L. 2007, ch. 8 § 1 to exclude charitable contributions made to Rhode Island organizations from being considered.

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.

a. Objective Manifestations of Intent

i. Voting

The Taxpayer is registered to vote in Rhode Island (using her house where her son was living). She voted prior to and subsequent to living in the UK. Her testimony was she did not vote in the United States when living in the UK as she planned to permanently stay in the UK.

The issue of voting is not as relevant in determining domiciliary for an American citizen living overseas as it would be for a Rhode Island domiciliary moving to another State in which he or she can vote. For US presidential elections, the votes are counted via the states and not nationally. Thus, presumably, US overseas' voters need a state via which to vote. If a taxpayer moves from Rhode Island to Florida and continues to vote in Rhode Island that would weigh heavily on the domiciliary intent in that presumably one is more concerned with the politics and governance of one's permanent place of abode. However, a taxpayer who moves overseas cannot register to vote in a foreign country for US elections.

So unlike in *DeBlois*, the Taxpayer was unable to switch her voter registration to another state upon moving out of Rhode Island. However, despite being registered to vote in Rhode Island, she did not vote in Rhode Island while living in the UK when she apparently consistently voted prior to moving to the UK.

ii. Driver's License

The Taxpayer first obtained a driver's license in Rhode Island as a teenager in 1981 and it then expired in 1993. She obtained another Rhode Island driver's license in 1998. See Division's Exhibit D. Unlike when the DeBloises moved to Florida and obtained another State's driver's license, the Taxpayer has not moved to another State. Unlike if the Taxpayer had moved to another State, the status of a Rhode Island license is not as relevant in obtaining a driver's license overseas. For example, if someone from another state moves to Rhode Island and holds an out-of-state driver's license, that person is exempted from taking a road test when becoming licensed in Rhode Island. See R.I. Gen. Laws § 31-10-24. Thus, a new Rhode Island resident exchanges his/her old other-state driver's license for a new Rhode Island license. Here, the Taxpayer testified that she did not drive while living in the UK.

iii. Banks

DeBlois found that the DeBloises banked in Florida. In this matter, the Taxpayer banked in the UK and maintained a Rhode Island bank account. She testified that the Rhode Island bank account was for convenience in that she gave money to her son to pay for the house and car.

iv. Property

In *DeBlois*, the DeBloises registered their car in Florida. The Taxpayer owned no property in the UK. She lived in her boyfriend's house. She explained that the 2008 car registration was a plate change for her son's car (the plate change is indicated on the Division of Motor Vehicles print-out). She purchased a car in 2007 when her car lease expired while she was in the UK and let her sister use it.

v. Physical Presence

The Taxpayer lived in the UK from 2006 to 2011. In 2008, she lived in the UK. There was no evidence that she spent any time in 2008 in Rhode Island or the United States. *DeBlois* found that a taxpayer may retain contacts and spend significant time in Rhode Island and still not be a domiciliary.

vi. Testimony

The Taxpayer testified that in 2008 she did not intend to return to Rhode Island. In 2008, she obtained a general work visa for the UK. She took a job in the UK that was to be permanent as opposed to a temporary "ex-pat" deal. She lost her job in 2008 but rather than return to the United States, she took another job in London. She lived with her boyfriend while in the UK. She ensured that her son had a place to live and a car while he was in college in Rhode Island.

b. Prior Administrative Tax Decisions

Tax Administrative 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 Rhode Island bank account. 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.

Tax Administrative Decision 2011 WL 3013841 (R.I.Div.Tax.) applied *DeBlois* to find that a taxpayer was not a Rhode Island domiciliary. In that situation, the taxpayer lived overseas

but used her mother's Rhode Island address for voting and shared a bank account with her mother and had a Rhode Island driver's license. The taxpayer had moved overseas as soon as she graduated from college but visited family in Rhode Island at the holidays.

c. 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 (wife lived in Rhode Island, house in Rhode Island, cars registered in Rhode Island, voting in Rhode Island, etc.). In contrast, the 2011 decision is more akin to the Taxpayer in this matter. That taxpayer lived overseas and had some contacts with Rhode Island including family and a driver's license. The 2011 taxpayer left Rhode Island as a college graduate but kept contact with her mother. Similarly this Taxpayer kept contact with her college age son allowing him to live in her house and paying for the house and car.

This decision discusses the various types of "objective manifestations" discussed in *DeBlois*. This is not an exhaustive list. Indeed, *DeBlois* indicates that this type of decision is a case-by-case decision. In this matter, the Taxpayer owned property in Rhode Island. Her son and father lived in the Rhode Island house and her sister used the car. The Taxpayer maintained her Rhode Island driver's license and voting registration. However, she banked in the UK and chose to take a permanent job in the UK and chose to pay tax to the UK in order to move permanently to the UK. She obtained a general work visa in 2008 in the UK to facilitate working in the UK. She took a new job in 2008 in the UK rather than to return to Rhode Island. In 2008, the Taxpayer intended to stay in the UK. While she eventually returned to Rhode Island due to a

family situation and a job change, her intent in 2008 as demonstrated by objective manifestations and testimony was not to return to Rhode Island.

DeBlois found that under R.I. Gen. Laws § 8-8-28, a taxpayer must demonstrate a change in domicile by the preponderance of evidence. The Taxpayer has demonstrated by a preponderance of evidence that she was not a domiciliary of Rhode Island in 2008 so does not owe personal income tax to the State of Rhode Island for the year 2008.

VI. FINDINGS OF FACT

1. On or about November 14, 2014, the Division issued a Notice of Hearing and Appointment of Hearing Officer.

2. A hearing in this matter was held on February 4, 2015.

3. The parties rested on the record.

4. 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 not a domiciliary of Rhode Island for 2008.

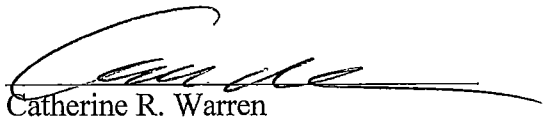
3. Therefore, the Taxpayer does not owe personal income tax to the State of Rhode Island for 2008 as issued in the Notice of Deficiency for 2008. See Division's Exhibit B.

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 not a domiciliary of Rhode Island for 2008 and does not owe personal income tax for 2008 to the State of Rhode Island. Therefore, said Notice shall be withdrawn.

Date: 2/27/15



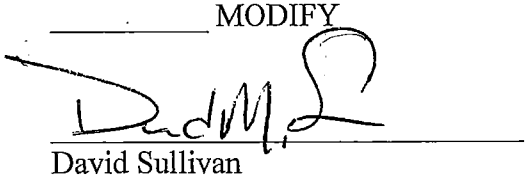
Catherine R. Warren
Hearing Officer

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: 3/9/15



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 18th day of March, 2015, 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 authorized representative's address on file with the Division of Taxation and by hand delivery to Meaghan Kelly, Esquire, Department of Revenue, One Capitol Hill, Providence, Rhode Island, 02908.