



COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. S334744

TAE MAN KIM,

Appellant.

COMMISSIONER OF REVENUE,

Appellee.

DECISION WITH FINDINGS

The Decision is for the appellant. Abatements are granted in the amounts of \$6,113.30 for tax year 2012 and \$4,321.17 for tax year 2013, plus interest and penalties.

On the basis of the testimony and the exhibits offered, the presiding commissioner finds and rules that there is sufficient evidence to support a determination that the appellant was domiciled in South Korea and, therefore, was not taxable on the income which he earned in South Korea for the tax years 2012 and 2013.

At the hearing, the appellant testified to the following facts. In 2011, the taxpayer moved back to South Korea with the intention to remain there permanently because his employment in Massachusetts was not secure. In 2011, he began working for YL Instrument, and in 2013, he became a Principal Scientist for Bioneer Corporation. The appellant lived in an apartment in South Korea rented for him by Bioneer. His wife and two children remained in the United States living in their jointly-owned single-family residence in Westford, Mass. Taxpayer's wife visits the taxpayer in South Korea as often as possible. On her latest visit she has stayed for three months.

The appellant testified that their plan was to sell the house when the children were settled and for the wife to also move to South Korea to be with him. Both the son and daughter attended school in Westford, and the son graduated from the University of Toronto and is employed as a site manager for a pharmaceutical company. The daughter, who also testified and translated for her father as needed, also graduated college and hopes to find a job in Massachusetts soon. Both wish to remain in the United States.

During the tax years at issue, the appellant's wife had earned \$4,000 per year teaching the Korean language at the Korean School of New England. The appellant was a Director of that school but in name only since he had moved to South Korea and never

attended any meetings. At the Board's request, following the hearing the appellant submitted copies of their federal joint income tax returns for 2012 and 2013 which verified the wife's earnings and reported the appellant's foreign income of \$124,220 for 2012 and \$96,100 for 2013 as nontaxable. The appellee produced no evidence regarding a federal audit or deficiency assessment for those years.

The appellant also testified that his accountant located in Los Angeles, CA filed the 2012 and 2013 tax returns with Massachusetts as a non-resident. The appellant thought that the accountant had resolved any issues with the Massachusetts DOR but there may have been a communication problem. He did not file returns after 2013.

Appellant also testified that he had abandoned his permanent U.S. resident status and that both he and his wife are citizens of South Korea. Appellant stated further that he acquired a driver's license in South Korea for the tax years at issue and had allowed his Massachusetts license to expire. He also filed resident tax returns in South Korea for the tax years at issue. Appellant indicated he had bank accounts in South Korea and a joint account with his wife in Massachusetts. Appellant's Exhibit 1 contains Certificates of Income for 2012 and 2013 indicating he paid taxes to South Korea. Exhibit 1 also contains the number of days he spent in Massachusetts, 28 days total in 2012 and 26 days total in 2013.

The presiding commissioner found that the appellant and his daughter were credible witnesses, and the appellant provided evidence to corroborate the testimony. Appellee presented only evidence regarding jurisdiction but failed to provide any evidence to rebut or refute the appellant's claim that he was domiciled in South Korea during the years at issue.

In *Commonwealth v. Davis*, 284 Mass. 41, 50 (1933), the Supreme Judicial Court defined domicile "to be the place of actual residence with intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode." Everyone has a domicile, and that domicile is not lost until a new domicile is actually acquired. "A new domicile 'is acquired only by a clear and honest purpose to change, which is carried into actual execution.'" *Mellon Nat'l Bank & Trust Co. v. Comm'r of Corps. & Taxation*, 327 Mass. 631, 641 (1951) (quoting *Thayer v. Boston*, 124 Mass. 132, 147 (1878)). "A change of domicile takes place when a person with capacity to change his domicile is physically present in a place and intends to make that place his home for the time at least" *Hershkoff v. Bd. of Registrars of Voters*, 366 Mass. 570, 576-77 (1974).

In *Reiersen v. Commissioner of Revenue*, 26 Mass. App. Ct. 124 (1988), the Supreme Judicial Court articulated these principles as follows:

Although where a person is domiciled is mainly a question of fact, the elements to be considered in locating a domicile present a question of law. . . . "A person's domicile is usually the place where he has his home." Home, in turn, is "the place where a person dwells and which is the center of his domestic, social and civil life." A change of domicile occurs "when a person with capacity to change his domicile is physically present in a place

and intends to make that place his home for the time at least;
'the fact and intent must concur.'"

Reiersen v. Comm'r of Revenue, 26 Mass. App. Ct. at 125 (quoting Restatement (Second) of Conflict of Laws (1969); *Hershkoff v. Bd. of Registrars of Voters*, 366 Mass. at 576-77.

The appellant presented sufficient evidence to prove that he had changed his domicile to South Korea in 2011. Accordingly, the decision is for the appellant and abatements are granted in the amounts of \$6,113.30 for tax year 2012 and \$4,321.17 for tax year 2013, plus interest and penalties.

This is a single member decision promulgated in accordance with G.L. c. 58A, § 1A.

APPELLATE TAX BOARD

By Frank J. Scharaffa Commissioner
Frank J. Scharaffa

Attest: Stephanie B. Miller Clerk of the Board

Date: SEP 21 2018

(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.