ILLINOIS INDEPENDENT

TAX TRIBUNAL

JAMES and DOROTHY CORBIN, Petitioners,	)	
v.	)	14 TT 9
	)	Judge Brian F. Barov
THE STATE OF ILLINOIS DEPARTMENT OF REVENUE, Respondent.	)	

SUMMARY JUDGMENT ORDER

The Petitioners, a husband and wife, who filed joint individual income tax returns, are challenging a notice of deficiency issued against them assessing $65,460.31 in additional income taxes for the 2001 tax year. The basis for the claimed deficiency is that the Petitioners were part-year residents of Illinois in 2001. The Department agreed that the Petitioners were Florida residents from January 1, 2001 to April 30, 2001, but claimed that the Petitioners became Illinois residents as of May 1, 2001.

The Petitioners contend that they maintained Florida residency throughout 2001. The parties have filed cross-motions for summary judgment. Because the facts do not show that Petitioners changed their Florida residency as of May 1, 2001, the Petitioners' motion is granted and the Department's motion is denied.

Background

In July 1999, the Petitioners, at the time Illinois residents, purchased a home on Olympia Drive, in West Palm Beach, Florida. In August, they purchased a second Florida home–on West Village Way, Jupiter, Florida, a golf course community, and signed-up for a golf membership in the affiliated Admirals Club.

About two weeks later, they sold their Illinois home on Galloway Drive in Woodstock, Illinois–also a golf course community. James Corbin's parents moved into the Olympia Drive, West Palm Beach property, and the Petitioners moved into the Jupiter, Florida home.

In 1999, the Petitioners registered to vote, and also registered and insured an automobile in Florida. On their registration forms, the Petitioners listed the Jupiter, Florida home as their principal address. In February 2000, the Petitioners applied for a homestead exemption from Florida's ad valorem tax for the Jupiter Florida home.

On October 2, 2000, the Petitioners purchased an additional house, on Autumn Lane in Woodstock, Illinois, which they immediately leased back to the sellers through March 31, 2001. In late March 2001, Dorothy Corbin purchased, registered, and insured a second automobile in Florida. On July 2, 2001, the Petitioners filed a Florida intangible personal property tax return attesting to their Florida residency as of January 1, 2001.

The Petitioners' 2001 year-end credit card statements were addressed to the Olympia Drive property in Florida. These statements reflect that starting in April 2001, and continuing through the summer and fall, Petitioners expended considerable sums on furniture, appliances, and home repair and maintenance supplies in Illinois. Towards the end of May 2001, the Petitioners also began making large payments to the Bull Valley Golf Club, Woodstock, Illinois.

The Petitioners sold their Jupiter Florida house on September 14, 2001 and closed on another home on Sandhill Court in West Palm Beach Florida on December 28, 2001. The closing on the Sandhill Court home was delayed at the request of the sellers, Mr. and Mrs. Harris, according to James Corbin, because Mr. Harris was dying of cancer.

During the course of 2001, the Petitioners spent 186 days in Florida and 170 in Illinois. But between May 1, 2001 and December 31, 2001, the Petitioners spent 156 days in Illinois and 80 days in Florida. The Petitioners spent half of the days in May and half in June 2001 in each state. At the end of June, the Petitioners were

back in Florida for about a two-week period, during which time James Corbin received medical treatment for his recurring back problems, although his primary care physician remained in Illinois.

The Petitioners spent 39 days in Illinois from July 27 to September 3, 2001, and returned to Florida for 11 days on September 4. On September 15, 2001, the Petitioners returned to Illinois for 55 days and on November 9, 2001 traveled back to Florida for about 3 weeks through December 2, 2001. They returned to Illinois on December 3 and stayed until December 26, 2001, when they returned to Florida for the reminder of the year.

At some point after the tax period in question, Petitioners returned to Illinois and to their Galloway Drive home in Woodstock, Illinois. In November 2006, for example, Dorothy Corbin voted in Illinois in the general election.

Analysis

Summary Judgment and Burden of Proof

This matter is before the Tribunal on cross-motions for summary judgment. "Summary judgment is proper where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Cain v. Hamer*, 2012 IL App (1st) 112833, ¶ 11 (internal quotation marks omitted). When both parties file cross-motions for summary judgment they agree that no material facts are in dispute and invite a decision as matter of law. *Irwin Indus. Tool Co. v. Ill. Dep't of Revenue*, 238 Ill. 2d 332, 340 (2010).

The Department remarks that its notice of deficiency is prima facie true and correct and suggests that the shifting burdens of proof generally applicable in tax proceedings favors its case. *See* Dep't Br. in Supp. of Mot. for Summ. J. at 5. But, it has conceded the Petitioners' Florida residency as of April 30, 2001, and "[o]nce a residence has been established the presumption is that it continues, and the burden of proof is on the party claiming that it has been changed." *Maksym v. Bd. of*

Election Comm'rs, 242 Ill. 2d 303, 327 (2011) (citing *Estate of Moir*, 207 Ill. 180, 186 (1904)). Thus, the question before the Tribunal is simply whether the agreed facts support a legal conclusion that the Petitioners changed their residence from Florida to Illinois as of May 1, 2001. *See Cain*, 2012 IL App (1st) 112833, at ¶ 12.

The Residency Standard and Its Application Here

Section 201(a) of the Illinois Income Tax Act imposes income tax "on the privilege of earning or receiving income in or as a resident of this State." 35 ILCS 5/201(a). A part-year resident is an individual who "became a resident during the taxable year or ceased to be a resident during the taxable year." 35 ILCS 5/1501(a)(17). A "resident" is defined as either "an individual (i) who is in this State for other than a temporary or transitory purpose during the taxable year; or (ii) who is domiciled in this State but is absent from the State for a temporary or transitory purpose during the taxable year." 35 ILCS 5/1501(a)(20)(A).

The Department relies on the first prong of the residency test claiming that as of May 1, 2001, the Petitioners were present in Illinois for more than "a temporary or transitory purpose." Dep't Br. in Supp. of Summ J. at 5. Department Rule 100.3020(c) describes the temporary or transitory purpose test in more detail:

> if an individual is simply passing through Illinois on his or her way to another state, or is here for a brief rest or vacation or to complete a particular transaction, perform a particular contract, or fulfill a particular engagement that will require his or her presence in Illinois for but a short period, he or she is in Illinois for temporary or transitory purposes and will not be a resident by virtue of his or her presence here.

86 Ill. Admin. Code § 100.3020(c).

On the other hand, if an:

> individual is in Illinois to improve his or her health and his or her illness is of such a character as to require a relatively long or indefinite period to recuperate, or he or she is here for business purposes that will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely, or has retired from business and moved to Illinois with no definite intention of leaving shortly thereafter, he or she is in Illinois for other than temporary or transitory purposes and, accordingly, is a resident

> taxable upon his or her entire net income even though he or she may also maintain an abode in some other state

Id.

The temporary or transitory purpose test for residency can be harmonized with the traditional notion of domicile. *See Cain*, 2012 IL App (1st) 112833, at ¶ 20. Generally, a change in domicile is shown by "physical abandonment of the first domicile, "'an intent not to return . . . physical presence in the new domicile,'" and an intent to remain. *Id*. at ¶ 18 (quoting *Viking Dodge, Inc. v. Hoffman*, 147 Ill. App. 3d 203, 205 (3d Dist. 1986)). Rule 100.3020(d) explains the concept of abandonment:

> if an individual who has acquired a domicile in California, for example, comes to Illinois for a rest or vacation or on business or for some other purpose, but intends either to return to California or to go elsewhere as soon as his or her purpose in Illinois is achieved, he or she retains domicile in California and does not acquire domicile in Illinois. Likewise, an individual who is domiciled in Illinois and leaves the State retains Illinois domicile as long as he or she has the definite intention of returning to Illinois. On the other hand, an individual domiciled in California who comes to Illinois with the intention of remaining indefinitely and with no fixed intention of returning to California loses his or her California domicile and acquires Illinois domicile the moment he or she enters the State.

86 Ill. Admin. Code § 100.3020(d). Thus, abandonment, like the temporary or transitory purpose test turns on where a person intends, if not to make a permanent home, at least to stay indefinitely. *See Cain*, 2012 IL App (1st) 112833, ¶ 19.

Cain illustrates these principles' application. There, the plaintiffs, longtime Illinois residents declared themselves Florida residents and began to split their time between Illinois and Florida over a multi-year period, owning homes in both states and regularly spending 5 to 6 month stretches of time in each state. *See* 2012 IL App (1st) 112833, at ¶¶ 3-4. The plaintiffs acquired Florida drivers and firearms licenses, voted in Florida, spent most of their money in Florida (particularly on social clubs), had a Florida telephone number, and purchased burial plots in Florida. *Id.* at 4, 22. But they also maintained ties to Illinois, including business connections and professional licenses. *Id.* at 8-9.

Despite the fact that the plaintiffs continued to spend half the year here, the *Cain* court found that they had abandoned Illinois for Florida, because the strength of their ties to Florida outweighed those with Illinois. *Id.* at 22. The "regularity and duration" of their Illinois stays did not make them Illinois residents. *Id.* Rather, their domicile was in Florida and they were mere seasonal visitors to Illinois. *Id.*[1]

The *Cain* court rested its decision on the disparity of plaintiffs' connections with Florida and Illinois, rather than on "the level of time-splitting" in each state. *See id.* at 22. In this regard, it is consistent with other Illinois cases, which, in deciding whether an earlier domicile was abandoned in favor of a later one, rely on the nature and quality of contacts with each state and not just the amount of time spent there.

For example, in *In re Estate of Elson*, 120 Ill. App. 3d 649, 651 (2d Dist. 1983), a probate matter, less than a week's presence in Pennsylvania was sufficient to establish the decedent's abandonment of her Illinois domicile. The change of domicile was evidenced by the fact that decedent left Illinois to pursue an education in horse training and brought along her horse, her personal belongs, and important papers. She closed her Illinois bank accounts, and opened new ones near her Pennsylvania residence. *Id.* at 653, 656. Further, decedent made an express statement of "moving" to Pennsylvania and gave her dog to friends in Illinois. *Id.* at 653, 656.

On the other hand, almost two years of nearly continuous physically presence in Washington D.C., while serving as a federal political appointee, did not alter a prospective candidate's Illinois residency under state election laws. *See Maksym*, 242 Ill. 2d at 307. The candidate did not abandon his Illinois residency, despite the lack of time spent here, because in addition to repeatedly expressing an intent to make his Washington D.C. service temporary, he maintained substantial Illinois

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[1] Both parties also discuss a similar case of *Dods v. Hamer*, No. 1-09-2538 (1st Dist. 2010), in their legal memoranda. But that was a Rule 23 decision and is not useful precedent. Ill. Sup. Ct. R. 23.

contacts, such as owning property and paying property taxes on an Illinois residence; maintaining an Illinois driver's license and automobile registration; registering to vote in Illinois; keeping an Illinois checking account; and keeping important personal property, such as books and family heirlooms, in Illinois. *Id.* at 307, 327-29. He also timed the expiration of his lease in Washington D.C. to coincide with the end of the lease term for his Illinois residence. *Id.* at 327. Thus, even a prolonged presence outside the state did not alter his Illinois residency. *See id.* at 330.

In sum, to effect a change in residency, the facts must show that Petitioners simultaneously abandoned Florida by leaving that state for an indefinite period, and establishing an Illinois presence that was more than temporary or transitory. *See id.* at 327; *Cain*, 2012 IL App (1st) 112833, at ¶ 22. And whether they abandoned Florida for Illinois will depend on the strength of the connections with each state.

Here, we begin with the presumption that the Petitioners were Florida residents on April 30, 2001. The Department relies on May 1, 2001 as the effective date that they abandoned their Florida domicile and returned to Illinois. *See* Dep't Br. in Supp. of Mot for Summ. J. at 5. But what changed on that date? On May 1, 2001, the Petitioners did not alter any of the Florida contacts on which the Department admits Florida residency. There was no change in their declaration of domicile. They maintained their home in Jupiter, Florida and their parent's house in West Palm Beach. They maintained their Florida vehicle registration, voter registration, country club membership, and the billing address for their credit cards.

According to the Department what mainly changed is how much time and money the Petitioners spent in Illinois after May 1, 2001. As the Department points out, from January 1 to April 30, 2001 the Petitioners spent 106 days in Florida and only 14 days in Illinois, but from May 1, 2011 to December 31, 2001 they spent almost twice as much time in Illinois as in Florida−156 days to 80 days. Dep't Ex. 9; *see also* Dep't Reply Br. at 4.

To be sure, the Petitioners made numerous trips between Florida and Illinois in the spring and summer 2001.[2] In May, they spent the first 17 days in Illinois followed by 13 in Florida. They spent the first half of June in Illinois, returning to Florida for 5 days, were back to Illinois for 7 days and spent the remaining 3 days in Florida. The first 11 days of July were spent in Florida, the next 7 apparently in neither state, followed by a return to Florida for 8 days. The Petitioners spent the remaining 4 days of July in Illinois, stayed through the entire month of August and into early September–for a total of 39 days before returning to Florida for 11 days. *See* Dep't Mot. Ex. 9

But the greater amount of time spent here after May 1 is not determinative of residency. *See Maksym*, 242 Ill. 3d at 330; *Cain*, at ¶ 22. Bouncing between Florida and Illinois is not indicative of intent to abandon their existing domicile; rather, it indicates the opposite–throughout this period the Petitioners always intended to return to Florida. *See* 86 Ill. Admin. Code § 100.3020(d). Further, nothing in the record indicates that the Petitioners stays in Illinois were for indefinite business, health or other reasons. In fact, James Corbin received medical treatment in Florida in July 2001, even though he also received treatment and his primary care physician was in Illinois. Petitioners' travel pattern did not manifest their intent to remain in Illinois for anything other than temporary or transitory purposes. *See* 86 Ill. Admin. Code § 100.3020(c).

The same holds true for the 55 consecutive days spent in Illinois after Petitioners sold their Jupiter, Florida home on September 14, 2001. This more extended stay was not indefinite, as James Corbin averred that the Petitioners delayed closing on the purchase of their new Florida home period due to the seller's terminal illness. Corbin Aff. at ¶ 7. Even so, they spent an additional 3 weeks in Florida from mid-November to early December before the time for closing on the

[2] In fact, this pattern began before the May 1, 2001 date on which the Department relies. The Petitioners also spent the first 17 days of April in Illinois, and the last 13 in Florida, which was the period immediately after the lease expired on their Autumn Lane, Woodstock house.

new Florida home. Finally, even if Petitioners' Illinois sojourn after September 14, 2001 could be construed as indefinite, that fact does not establish that they abandoned Florida as of May 1, 2001.

The Department's reliance on the disparity in Illinois spending after May 1, 2001 is equally unconvincing to show that they abandoned Florida as of that date. The Department focuses on the considerable amounts the Petitioners expended on home materials, furnishings and appliances, presumably to repair, refurnish or remodel their Autumn Lane house after their tenants (the former owners) moved out. But second homes need to be furnished and maintained too. And those who can afford multiple homes can usually afford to spend considerable sums to maintain or remodel them. *See, e.g., State of Texas v. State of Florida*, 306 U.S. 398, 422-23 (1939) (noting decedent's $1.5 million expenditure to purchase land, and build and furnish Florida vacation home). The fact that Petitioners spent a lot more money in Illinois than Florida in the spring and summer of 2001 to repair, remodel, or refurnish the Autumn Lane house after the prior owners moved out does not demonstrate that they relocated to Illinois as of May 1, 2001.

Likewise, that Petitioners began spending large amounts on an Illinois country club at the end of May does not support a May 1, 2015, change of residency. Given that they had a golf membership in a Florida country club too (and the record does not indicate that they left it) joining an Illinois country club is entirely consistent with treating the Autumn Lane property as vacation or secondary home.

Only a few of the Department's remaining arguments bear commenting on. While comparative house size may be relevant in considering questions of domicile, *see State of Texas*, 306 U.S. at 425-26 (noting the comparable size of decedent's principal resident to his secondary abodes), the difference in size between the Petitioners' Autumn Lane property (over 5300 square feet house on a 2 acre lot) and Sandhill Court, West Palm Beach, Florida home (about 3200 square feet on a quarter acre), *see* Dep't Summ. J. Mot. at 3, is not material. Both houses were more than adequate to provide ample living space for a couple.

And the Department's observation that that where a person keeps their "artwork" and "personal goods" is a significant measure of domicile, *see id.*, is consistent with the case law, s*ee, e.g., State of Texas*, 306 U.S. at 426 (finding domicile where decedent centered "his chief interests" such as "his mechanical and scientific experiments"); *Maksym*, 242 Ill. 2d at 307, 329 (noting that location of books and family heirlooms in Illinois supported residency claim). But it offers no proof on this point of comparison. The Department's contention that Woodstock is a semi-rural community and therefore more conducive to residential living than the "glitzy tourist" town of West Palm Beach, with its "large number of luxurious hotels," Dep't Br. in Supp. of Mot. for Summ J. at 6, is both unsupported and speculative and merits no further discussion.

Conclusion

In sum, the Department has not provided facts to support its position that Petitioners established an Illinois residency as of May 1, 2001. The Petitioners' motion for summary judgment is GRANTED. The Department's motion for summary judgment is DENIED. The notice of deficiency is cancelled.

This is a final order subject to appeal under section 3-113 of the Administrative Review Law, and service by email is service under section 3-113(a). *See* 35 ILCS 1010/1-90; 86 Ill. Admin. Code § 5000.330. The Tribunal is a necessary party to this appeal.

s/ *Brian Barov*
BRIAN F. BAROV
Administrative Law Judge

Dated: July 15, 2015