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2001 Survey of Rhode Island Law: Cases: Tax Law

Marjorie A. Connelly

Roger Williams University School of Law

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Tax. *DeBlois v. Clark*, 764 A.2d 727 (R.I. 2001). The appropriate burden of proof for a determination of domicile in a state income tax case is the preponderance of the evidence test as outlined in section 8-8-25 of the Rhode Island General Laws.

FACTS AND TRAVEL

This is an appeal of a tax deficiency judgment at the district court holding petitioner was a resident of Rhode Island and owed Rhode Island income taxes.¹ In the district court the Department of Revenue initially raised two arguments: first, the petitioner is a domiciliary of Rhode Island, and second, the source of income rules mandated the income be treated as Rhode Island income subject to tax at a resident's rate.² However, the argument regarding source of income was not addressed in the district court's opinion.³

Petitioner was a resident of Rhode Island for many years.⁴ However, in 1988 he decided to relocate to Florida.⁵ In the decision making process the petitioner contacted a tax expert to determine how to appropriately make Florida his permanent residence.⁶ Petitioner retained a condominium in Warren, as well as buying a condominium in Florida.⁷ Petitioner spent late May to early October and late November and December in Rhode Island and the remaining months in Florida. The parties stipulated that the petitioner spent less than 183 days in Rhode Island.⁸ While he was not using the condominium in Rhode Island, other family members, who were non-residents of Rhode Island, used it for a get away location.⁹ Family and business ties to Rhode Island remained.¹⁰ However, petitioner did resign from several civic and business groups explaining that he moved his residence to the State of Florida.¹¹ After filing non-resident income tax returns for

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1. *DeBlois v. Clark*, 764 A.2d 727, 730 (R.I. 2001).
 2. *Id.*
 3. *Id.* at 731 n.1.
 4. *Id.* at 730.
 5. *Id.*
 6. *Id.* at 734.
 7. *Id.* at 730.
 8. *Id.* at 730 n.1.
 9. *Id.* at 730.
 10. *Id.* at 733.
 11. *Id.* at 736.

the years 1991, 1992 and 1993, petitioner received notices from the tax assessor stating that the tax was due in 10 days.¹²

The tax division determined that the petitioner was a Rhode Island resident, subject to the resident income taxes.¹³ The tax administrator affirmed the hearing officer.¹⁴ The district court held utilizing the clear and convincing standard that the petitioner was unsuccessful in changing his domicile and that the deficiency notices were valid since any deficiencies were *de minimis*.¹⁵

The main issue is whether the domicile must be established by a clear and convincing standard or by a preponderance of the evidence standard.¹⁶ The procedural issue is the validity of the deficiency notices received.¹⁷

BACKGROUND

A resident for state income tax purposes is defined in R.I. General Laws section 44-30-5(a) as either someone who is domiciled in the state, or someone who is not domiciled in this state, that meets the following conditions: they own a permanent residence in the state and they are actually present in the state for more than 183 days.¹⁸

An additional method for the state to tax at resident rates, is the source of income theory that is set forth in R.I. General Laws section 44-30-32.¹⁹ However, this theory was not addressed in the district court's opinion.²⁰

ANALYSIS AND HOLDING

The supreme court held that the correct burden of proof is the preponderance of evidence standard.²¹ Applying that standard, the court found that the petitioner was successful in changing his

12. *Id.*

13. *Id.*

14. *Id.* at 731.

15. *Id.*

16. *Id.* at 730.

17. *Id.*

18. The 183-day limit is not an issue in this case because the parties stipulated that the petitioner was not located in the state for more than 183 days.

19. *Id.* at 731 n.1.

20. *Id.*

21. *Id.* at 730.

domicile to the state of Florida.²² The court also held that the notices of deficiencies received by the taxpayer were defective.²³

The court stated that R.I. General Laws section 8-8-28 governs the burden of proof in tax cases.²⁴ That statute states that a "preponderance of evidence shall suffice to sustain the burden of proof".²⁵ The statute goes on to say that if the issue is one of fraud, then the standard is the clear and convincing standard.²⁶ The court held that because the Department of Revenue did not assert fraud, the petitioner needed only to show by a preponderance of the evidence the change in domicile state.²⁷ The tax administrator argued that the statute allows both the burden of proof and the burden of production to shift.²⁸ The court held that the burden of proof lies with the party looking for affirmative relief.²⁹ The court went on to explain that the burden of production shifts as the case proceeds in the same manner as any other civil suit.³⁰ Once the court decided the appropriate legal standard, it went on to resolve the case, as all the facts were uncontroverted.³¹ To resolve the case, the court needed to address the domicile of the petitioner and the validity of the notices.³²

The court stated a person can have only one domicile, although he can have several residences.³³ The court defined the test to change a domicile, as consisting of two prongs.³⁴ The first prong mandates that the person must have a physical abode in the new location.³⁵ The second prong requires that the person have the intent to stay permanently in the new location.³⁶ The court held that the petitioner was able to demonstrate both prongs of the above test. The petitioner's ownership of the condominium in Florida

22. *Id.*

23. *Id.*

24. *Id.* at 731.

25. *Id.* at 732.

26. *Id.*

27. *Id.* at 732-33.

28. *Id.* at 732.

29. *Id.*

30. *Id.* at 733.

31. *Id.*

32. *Id.* at 733-38.

33. *Id.* at 734.

34. *Id.*

35. *Id.*

36. *Id.*

satisfied the first prong.³⁷ The second test must be determined on a case-by-case basis.³⁸ The district court relied heavily on the fact that petitioner decided that their final resting-place would be in Rhode Island.³⁹ The supreme court stated that while this is a factor, it should be weighed lightly because there are many reasons a person would choose a final resting-place.⁴⁰ Many of these reasons do not reflect where the person is interested in remaining while alive.⁴¹ The supreme court looked to the fact that the petitioner told people that he was changing his domicile to the state of Florida when resigning from civic and business groups.⁴²

The supreme court also looked at the location of household items.⁴³ The higher percentage of overall personal belongings in a residence, the more of an indication it is of which location the petitioner intended to be their domicile.⁴⁴ In this case, the petitioner had over three-quarters of his possessions in the state of Florida, and had been granted a homestead exemption.⁴⁵ Other factors the court considered included: voter registrations intangible taxes, driver's licenses, car registrations, churches, country club memberships and wills, which the petitioner had changed to Florida.⁴⁶ The above factors caused the court to decide that the petitioner had intended his domicile to be in the State of Florida, thus meeting the second test.⁴⁷ It is not required that the petitioner abandon the old location completely.⁴⁸

The final issue raised in the case is the validity of the deficiency notices.⁴⁹ The petitioners received deficiency notices that indicated "Federal Tax Liability Appears Incorrect Rhode Island Tax Computed Incorrectly."⁵⁰ The deficiency notice mandated that

37. *Id.* at 735.

38. *Id.* at 734.

39. *Id.*

40. *Id.* at 735.

41. *Id.*

42. *Id.* at 736.

43. *Id.* at 735.

44. *Id.*

45. *Id.* at 735-36.

46. *Id.* at 736.

47. *Id.*

48. *Id.* at 737.

49. *Id.* at 736.

50. *Id.*

the tax was due within 10 days of the notice being mailed.⁵¹ The notices contained no other information.⁵² If the deficiencies in the notice do not comply with R.I. General Laws section 44-30-81 but are de minimis, the notices can stand.⁵³ However, if the deficiencies are not de minimis then the court has the right to void the assessments.⁵⁴ The R.I. General Laws section 44-31-81(b) states that the notice of deficiency will turn into an assessment after 30 days.⁵⁵ At that time the tax can be collected.⁵⁶ These notices contradicted that statute by demanding payment in ten days, therefore the court held them to be invalid.⁵⁷ The notices were also held to be invalid because the reason for the deficiency was too vague and possibly misleading.⁵⁸ From the notation on the deficiency, the petitioner could not tell that the issue was one of residency. It appeared to be that the Department of Revenue felt that the petitioner had calculated his federal income tax incorrectly.⁵⁹ Since Rhode Island income tax is based on the federal income tax, this was a misleading comment.⁶⁰ As such, this notice was held to be invalid and the assessments were unlawful.⁶¹

CONCLUSION

The supreme court held that the petitioner was successful in changing his domicile, that the correct burden of proof is the preponderance of evidence standard and that the notice of deficiencies received by the taxpayers were defective.

Marjorie A. Connelly

51. *Id.* at 737.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 737-38.

58. *Id.*

59. *Id.* at 738.

60. *Id.*

61. *Id.*