

NO. CV 02 0515337

ROBERT AND CLAUDIA AMEN : SUPERIOR COURT

: TAX SESSION

v. : JUDICIAL DISTRICT OF
: NEW BRITAIN

PAMELA LAW, COMMISSIONER OF
REVENUE SERVICES : APRIL 14, 2005

MEMORANDUM OF DECISION

This is a tax appeal case arising from an assessment made by the commissioner of revenue services (commissioner) imposing a personal income tax liability against the plaintiffs, Robert Amen and Claudia Amen (collectively, the Amens) for the tax years of 1996 and 1997. The assessment is a result of the commissioner's determination that the Amens were domiciled in the state of Connecticut during those tax years.

The Amens claim that they moved to Belgium in 1996 and simultaneously abandoned Connecticut as their domicile. For this reason, the Amens filed Connecticut income tax returns as "part-year residents" in 1996 and as "nonresidents" in 1997.¹ The commissioner's position is that the Amens never abandoned Connecticut as their domicile. The Amens further claim that, in the alternative, if the court concludes that

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See General Statutes § 12-701 (a) (2) and (3).

they were domiciled in Connecticut in 1997, they were still "nonresidents" for that year for tax reporting purposes.

Since 1986, the Amens owned a home at 451 Michigan Road in New Canaan, Connecticut. At the time of their departure for Belgium in 1996, the Amens lived in their New Canaan residence with their daughter Caroline, a son Peter of high school age and three older children attending college outside of Connecticut.

Robert Amen (Amen) was employed continuously by International Paper Company since October 1, 1980. He presently serves as president of that company. In January 1996, Robert Amen was offered a position in Brussels, Belgium, to serve as the president of International Paper Europe, a management unit of International Paper Company headquartered in Brussels. Amen immediately accepted the position and went to Belgium that same month. Claudia Amen and Caroline, then ten years old, moved to Belgium in April of 1996. At that time, the Amens' son, Peter, was a junior at New Canaan high school and remained in New Canaan for the 1996-1997 school year, living at the home of family friends. Peter graduated high school in 1997.

A "Letter of Understanding" was entered into between Robert Amen and International Paper Company, which set forth the terms and conditions of Amen's employment in Belgium. (See Joint Exhibit 1.) This letter also served the purpose of allowing Amen to obtain a work visa from the Belgium authority. The letter of understanding provided that the period of Robert Amen's expatriate assignment was "expected" to be three to five years. The letter further provided that if Amen's

assignment continued beyond three years, the foreign service premium would be reduced by 20 percent each year thereafter and finally phased out after seven years.

Senior executives with International Paper, such as Robert Amen, are often transferred from one location to another, whether within the United States, or to locations in Europe, Asia or the Pacific. International Paper did not make commitments to their senior officers with respect to how long each assignment would be. Rather, the future needs of the company dictated the duration and location of the assignment. As the plaintiffs' brief points out, since Robert Amen began his employment with International Paper, he has been assigned to Manhattan, New York, Dallas, Texas, and then to Purchase, New York, before being assigned to Belgium in 1996. (Plaintiffs' Post-Trial Brief, dated December 3, 2004, p. 14.) After spending four years in Belgium, Amen's progression through the ranks of the company led him to Stamford, Connecticut as president of International Paper in the fall of 2000. The duration of the assignments were contingent upon the needs of the Company, not the needs of the individual employee.

When the Amens moved to Belgium, they retained ownership of their house in New Canaan. The house was leased to a married couple from September 1, 1996 to July, 31, 1998. A second lease to another couple was entered into on August 1, 1998 for a duration of two years, but the lease was terminated in early 2000 by the tenants. The house was next leased to a couple on a short term basis from February 1, 2000 to the end of June 2000. Beginning in September of 2000, the Amens made substantial renovations to the house at a cost of over \$700,000.

The Amens had two stated reasons for not selling their house upon the move to Belgium in 1996. The first reason was the loss of tax benefits associated with the sale of a residence and the repurchase of another residence. The second reason was their belief that the ownership of the house was a good long term investment. As it later turned out, the Amens' reoccupation of the house as their residence and the short term rentals fulfilled neither expectation.

While residents of New Canaan, prior to the move to Belgium, the Amens were congregants of St. Aloysius Church in New Canaan. Upon their move to Belgium, they registered as members of Our Lady of Mercy in Brussels. As members of the Brussels church, the Amens fully participated in church life and activities. While in Belgium, the Amens continued to fulfill their pledge obligations previously made to St. Aloysius. Upon their return to the states from Belgium, the Amens joined St. Patrick's in Armonk, New York, where they resided for a short period of time, and later rejoined St. Aloysius.

The Amens' daughter, Caroline, moved to Belgium with her parents and enrolled in the International School of Brussels from April 26, 1996 to June 21, 2000. The Amens also opened a bank account in Belgium to attend to their banking needs. Claudia Amen retained her New Canaan bank account so that she could write checks to her son Peter, who was attending high school in New Canaan. The Amens also surrendered their Connecticut driver's licences in favor of obtaining Belgium licences.

The Amens filed a 1996 Belgian income tax return that was prepared by Ernst & Young, reflecting the Amens' Belgian address. Robert Amen received special tax

treatment under Belgian law that offered lower taxes to employees of foreign-owned corporations who are not citizens of Belgium, but are residents of Belgium. For this reason, the Amens filed their Belgian tax returns as nonresidents under a special tax regime.

While a resident of New Canaan, Robert Amen was a member of the Woodway Country Club in Darien, Connecticut. Woodway is an exclusive country club where one must wait some seven years to gain golfing privileges. Rather than forfeit his membership at Woodway, upon moving to Belgium, Robert Amen chose to change his membership to an inactive non-resident status so that it could be reinstated in the future.

The parties have divergent views as to the degree of proof that is necessary for the plaintiffs to establish that they changed their domicile from Connecticut to Belgium in 1996. The plaintiffs' claim that their burden is by the preponderance of the evidence. The Commissioner claims that the plaintiffs' burden must be by clear and convincing evidence.

The plaintiffs argue that neither the statutes, General Statutes §§ 12-700 and 12-701, or the Regulations of Connecticut State Agencies articulate the degree of the burden of proof required to establish a change of domicile. As an example, section 12-701 (a) (1)-1 (d) (2) of the Regulations of Connecticut State Agencies provides in relevant part: "The burden is upon an individual asserting a change of domicile to show that the necessary intention existed." Section 12-701 (a) (1)-1 (b) of the Regulations of Connecticut State Agencies provides in pertinent part: "An individual who is a

Connecticut domiciliary bears the burden of demonstrating that the conditions set forth above have been met when claiming to be a nonresident during the taxable year." The plaintiffs further argue that the burden of proof is by a preponderance of the evidence in other tax matters, citing Sears, Roebuck & Co. v. Board of Tax Review, 241 Conn. 749, 756, 699 A.2d 81 (1997) (burden of establishing overvaluation of property in appeal from property tax assessment is by preponderance of the evidence); New Haven v. East Haven, 47 Conn. Sup. 594, 609, 822 A.2d 376 (2001), *aff'd*, 263 Conn. 108, 818 A.2d 741 (2003) (burden to prove by preponderance of the evidence that properties were exempt from taxation under §§ 12-74 and 12-81 (4)); Constantine v. Commissioner of Revenue Services, Superior Court, judicial district of Hartford, Docket No. CV 91 0390484 (May 23, 1994, *Aronson, J.T.R.*) (preponderance of evidence applied in taxpayer's claim of exemption from the cabaret tax).

The Commissioner argues to the contrary, that the burden of proof should be by clear and convincing evidence, citing Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 822 A.2d 1184 (2003) (challenge to a tax deficiency assessment). The Commissioner also points to New York decisions finding that the amount of proof applicable to a change of domicile case under New York's state income tax law is by clear and convincing evidence.²

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See In the Matter of Buzzard v. Tax Appeals Tribunal, 205 A.D.2d 852, 613 N.Y.S.2d 294 (1994); In the Matter of Kornblum v. Tax Appeals Tribunal, 194 A.D.2d 882, 599 N.Y.S.2d 158 (1993); In the Matter of Mercer v. State Tax Commission, 92 A.D.2d 636, 459 N.Y.S.2d 938 (1983); In the Matter of Minsky v. Tully, 78 A.D.2d 955, 433 N.Y.S.2d 276 (1980).

The issue in this case is whether the Amens changed their domicile from this country to a foreign country. The change of one's domicile from a country of origin to a foreign country raises important considerations involving the individual rights of the plaintiffs as well as the rights of their children. Of key importance here is that the power of a state to tax its residents' personal income, regardless of whether the source of the income is within or without the state, rests on residence.³ For this reason, domicile is of no small moment. When important individual rights are involved, as here, a higher degree of proof represented by the clear and convincing standard should be applied. C. Tait, Handbook of Connecticut Evidence (3d Ed. 2001) § 3.5.2, p. 142. See also In the Matter of Babbin v. State Tax Commission, 67 A.D.2d 762, 412 N.Y.S.2d 455 (1979), aff'd, 49 N.Y.2d 846, 404 N.E.2d 1329, 427 N.Y.S.2d 788 (1980) (change of domicile from New York to the Netherlands required clear and convincing evidence to show an intent to change one's domicile). New York courts go so far as to hold that there is a presumption against a change to a foreign domicile from a domestic domicile. See In the Matter of Bodfish v. Gallman, 50 A.D.2d 457, 458, 378 N.Y.S.2d 138 (1976); In the

Note, however, that not every state uses the New York standard of proof when considering the issue of domicile. See DeBlois v. Clark, 764 A.2d 727, 737 (R.I. 2001) (domicile established by a preponderance of the evidence).

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States "are constitutionally restrained, however, from taxing nonresident's personal income, except insofar as it is derived from sources within the state. The determination of a taxpayer's residence is therefore a crucial factor in delimiting the extent of a taxpayer's personal income tax liability." 2 J. Hellerstein & W. Hellerstein, State Taxation (3d Ed. 1998) § 20.03, p. 20-13.

Matter of Klein v. State Tax Commission, 55 A.D.2d 982, 390 N.Y.S.2d 686, aff'd, 43 N.Y.2d 812, 373 N.E.2d 290, 402 N.Y.S.2d 396 (1977).

General Statutes § 12-701 (a) defines the terms "resident of this state," "nonresident of this state" and "part-year resident of this state." As provided in General Statutes § 12-701 (a) (1), for personal income tax purposes, a resident of Connecticut is "any natural person (A) who is domiciled in this state, unless (i) the person maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere and spends in the aggregate not more than thirty days of the taxable year in this state"

Although our statutes do not define "domicile," our regulations do. Section 12-701 (a) (1)-1 (d) of the Regulations of Connecticut State Agencies defines domicile as follows: "Domicile, in general, is the place which an individual intends to be his or her permanent home and to which such individual intends to return whenever absent."

The plaintiffs contend that this is the first domicile case relating to Connecticut's income tax law, and because Connecticut regulations on domicile closely mirror New York's statutory scheme, it is appropriate to look at New York case law applying similar regulations, citing SLI International Corporation v. Crystal, 236 Conn. 156, 164-65, 671 A.2d 813 (1996). In that regard, the plaintiffs place great emphasis on McKone v. State Tax Commission, 111 A.D.2d 1051, 490 N.Y.S.2d 628 (1985), aff'd, 68 N.Y.2d 638, 496 N.E.2d 230, 505 N.Y.S.2d 71 (1986) in support of their position that their move to Belgium was a change of domicile. In McKone, the taxpayer was employed by Albany

International Corporation (AIC) as an executive in the corporation's Albany headquarters. In 1973, the taxpayer became the general manager of a subsidiary of AIC in Collinsville, Quebec. The taxpayer and his wife sold their house in Albany and severed all relationship with their former residence. *Id.*, 1052. The taxpayer and his wife purchased a home in Collinsville, enrolled all of their children in local schools, obtained Quebec driver's licences, registered their motor vehicles in Quebec and paid Canadian income taxes. *Id.* The taxpayer and his wife entered Canada on a permanent resident visa and thereby became landed immigrants. *Id.* The taxpayer and his wife terminated their memberships in New York organizations and took out membership in Quebec organizations. *Id.* Neither the taxpayer nor his wife were born or raised in New York, nor did they have any relatives or friends of long standing in New York. *Id.* The taxpayer's wife was born in Canada and had relatives in Canada. *Id.* The taxpayer and his wife did not vote in the United States after their move to Canada. *Id.*

In McKone, the court concluded that there was nothing in the actions of the taxpayer or his wife that indicated that their stay in Canada would be anything other than permanent. The McKone court, in finding that the taxpayer and his wife had established domicile in Quebec, concluded that domicile is not making a home with a present intention of never moving from that location, but rather making a home without a present intention of moving at some particular time in the future.

There are similarities between the McKones and the Amens. However, there are also significant differences. In contrast to the McKones, the Amens never really severed

their contact with Connecticut. Of key importance is the fact that the Amens did not sell their family home in New Canaan. Although the Amens claim that tax considerations and investment interests caused them to retain their ownership of the home, taxes never became a consideration because the home was never sold. Secondly, the Amens entered into three successive short term leases of their home, over a four year period, with agreements in the last two leases entitled "Early Return of Landlord." (See Joint Exhibit 5; Plaintiffs' Exhibit Q.) In these "early return" clauses, the Amens reserved the right with the tenants to terminate the lease. In addition, in August of 2000, while the Amens were still living in Brussels, they began an engagement with a decorator, an architect and a general contractor to extensively redesign and remake the interior and exterior of their New Canaan home. The total cost of renovations exceeded \$700,000. Also contrary to the McKones, who purchased a new residence in Canada, the Amens home in Belgium was leased and paid for by International Paper, not the Amens.

With regard to personal connections, the Amens' four sons were located in the United States, although all except the youngest were in colleges outside of the state of Connecticut. The youngest was still going to high school in New Canaan during the 1996 - 1997 tax years. Whereas the McKones had no personal ties to New York, Claudia Amen was born in Connecticut and her elderly mother lived in Connecticut. As to Robert Amen, he never gave up his connection with the Woodway country club, recognizing that returning to the area after severing his relationship with Woodway would deprive him of being able to immediately rejoin the club. In addition, whereas the McKones did not

participate in voting for candidates in the United States while residents of Collinsville, Quebec, the Amens did vote in the 1996 presidential election.

Our Supreme Court, in Adame v. Adame, 154 Conn. 389, 391, 225 A.2d 188 (1966), defines domicile in terms of residence coupled with the intention of making it the home of the party permanently. This definition is consistent with the commissioner's regulation defining domicile.

Our case law recognizes that while a person can have many residences, he or she can have only one domicile. Smith v. Smith, 174 Conn. 434, 439, 389 A.2d 756 (1978). However, permanent in the context of domicile does not mean forever, since a person may, at any time, establish a new domicile upon the abandonment of the prior domicile. Adame v. Adame, supra, 154 Conn. at 391. In the last analysis, domicile requires an "actual residence coupled with the intention of permanently remaining [there]." *Id.*

In analyzing the facts in this case, it is important to consider the Amens' intention as it existed at the time of their change of residence in 1996 and whether that intention was to make Belgium a permanent home. Several salient factors stand out as to this issue:

1. The Amens did not sell their family home in New Canaan but rather leased the home for relatively short periods of time, never beyond the three to five year period specified in the letter of understanding. When the Amens did return to the United States, after a short period of time, they moved back to the same home they used as their permanent residence prior to moving to Belgium. Although domicile deals with the

present intention to change one's residence permanently, they undertook a major renovation of the home in New Canaan prior to their return. In both McKone and Babbin, a factor in the determination of domicile was the sale of the family home upon moving to a foreign location, thus showing an intention to sever ties to the prior residence. This did not happen in the present case.

2. Robert Amen never terminated his membership at the Woodway Country Club, but rather retained a link to that club for the purpose of renewing his active membership upon his return to New Canaan. Retaining this link to Woodway negates an intention to permanently remove oneself to Belgium.

3. Robert Amen was on a growth tract with International Paper reflected by the letter of understanding that the assignment in Brussels was expected to last three to five years. Amen himself acknowledged that the assignment in Belgium was contingent upon the needs of the company and therefore the three to five year period in the letter of understanding could be shorter than three years or longer than five years. These facts indicate that, although the exact extent of the assignment in Belgium was unknown, it was only temporary in nature.

4. The house that the Amens used as a residence in Brussels was leased initially for a period of nine years. However, the lease contained a provision for an earlier termination after the third year of the lease.

5. The lease of the Belgium house was paid for by International Paper not the Amens. This is consistent with Robert Amen's understanding that he was residing in Belgium at the whim of the company, not because of any desire on his part to locate there.

Although the Amens stated at trial that it was their intention to change their domicile from Connecticut to Belgium, it is clear from the facts in this case that their move to Belgium was based upon the promotion of Robert Amen to a major European position within his company, not with a desire to change their domicile from Connecticut to Belgium. This promotion required a change of residence for the benefit of the company, not the Amens. Robert Amen, in July of 2000, was subsequently offered a promotion to the position of executive vice-president of International Paper, effective August 1, 2000, requiring another change of residence. This promotion required Amen to terminate his expatriate assignment in Belgium on September 30, 2000. Subsequently, the Amens returned to their New Canaan home in April, 2001.

Section 12-701 (a) (1)-1 (d) (3) of the Regulations of Connecticut State Agencies provides: "Domicile is not dependent on citizenship; that is, an immigrant who has permanently established his or her home in Connecticut is domiciled here regardless of whether such individual has become a United States citizen or has applied for citizenship. However, a United States citizen shall not ordinarily be deemed to have changed domicile by going to a foreign country unless it is clearly shown that such individual intends to remain there permanently. For example, a United States citizen domiciled in Connecticut who goes abroad because of an assignment in connection with employment or for study, research or recreation does not lose her Connecticut domicile unless it is clearly shown that she intends to remain abroad permanently and not to return."

It should be noted that "[a]gency regulations, appropriately issued, have the force and effect of a statute . . . [and should be construed] in accordance with accepted rules of

statutory construction." Gianetti v. Norwalk Hospital, 211 Conn. 51, 60, 557 A.2d 1249 (1989). As applied to the facts in this case, the key elements of this regulation (sec. 12-701(a)(1) - 1(d)(3)) are: (1) did the Amens go abroad because of Robert Amen's assignment in connection with his employment and (2) did the Amens clearly intend to remain abroad permanently and not to return.

The only conclusion that can be drawn from the facts in this case is that the reason for the change in residence from Connecticut to Belgium was because Robert Amen was given a company assignment that required him to relocate to Belgium. Secondly, it is not clear that the Amens intended to remain in Belgium permanently, and not return to the United States. On the contrary, even though Robert Amen accepted the assignment in Belgium and the obligation to stay there at the pleasure of his company, the personal ties to Connecticut were not severed. Also, the subsequent return of the Amens to their residence in New Canaan confirms an intent not to change their domicile, but rather to eventually return to their home in Connecticut. Of the cases dealing with a change of domicile to a foreign country, all involved the sale of the house in this country and the purchase or rental of a house in the foreign country. See In the Matter of Bodfish v. Gallman, supra, 50 A.D.2d 457 (sale of home in New York and the leasing of a home in Pakistan in addition to obtaining a four year visa); In the Matter of Babbin v. State Tax Commission, supra, 67 A.D.2d at 765 (Sale of home in New York and renting of a home in the Netherlands not sufficient to establish change of domicile. The dissent would have found domicile stating: "I conclude that the determination of the Tax Commission should be modified. To change one's domicile requires an intent to give up the old and take up

the new, coupled with an actual acquisition of a new residence in the new locality. . . ."); Matter of Mercer v. State Tax Commission, supra, 92 A.D.2d 636 (sale of home in New York and purchase of home in England, enrollment of son in an English school and daughter in a European school, at the loss of a New York state scholarship, not sufficient to establish change of domicile). In the present case, the Amens neither sold their home in Connecticut nor did they pay for the rental of their home in Belgium.

The plaintiffs argue in the alternative that even if the court concludes they were domiciliaries of Connecticut for the tax year of 1997, they are still deemed to be nonresidents for that year for income tax purposes pursuant to General Statutes § 12-701 (a) (1) and section 12-701 (a) (1)-1 (b) of the Regulations of Connecticut State Agencies. This is because they: (1) maintained no permanent place of abode in the state of Connecticut; (2) maintained a permanent place of abode in Belgium; and (3) spent not more than 30 days of 1997 in Connecticut.

Domicile, residence and abode are terms used interchangeably. The Tennessee court in In Re: The Estate of Harley Timothy Price, Court of Appeals of Tennessee at Nashville, Docket No. M2002-00332-COA (December 31, 2002) noted that "[d]omicile and residence, although at times used interchangeably, are not synonymous. Tennessee courts have long recognized the distinction between one's legal residence or domicile and a residence, meaning a person's place of abode. . . . In addition, our courts have held that a person may have two or more residences but only one domicile." (Citations omitted; internal quotation marks omitted.) Our own Connecticut courts express the same distinction. "Residence, when used in a sense other than domicile, is one of the most

nebulous terms in the legal dictionary and can have many different meanings depending on the context in which it is used. . . . Residence is less inclusive than domicile, importing merely having an abode at a particular place which may be one of any number of such places at which one is, at the least from time to time, physically present." Phillips v. Phillips, Superior Court, judicial district of Windham at Putnam, Docket No. CV 03 0070077 (February 25, 2004, Cosgrove, J.), citing, In re Frame, 120 B.R. 718, 723 (Bankr. S.D.N.Y. 1990).

From our findings of facts in this case, it is clear that the Amens did not maintain a permanent place of abode in Connecticut during the calendar year of 1997. As previously noted, abode is synonymous with residence.

The Amens moved to Belgium in 1996 with the intention of living there during the period of time required by International Paper. It is clear that during the year 1997, the Amens resided in and had their place of abode in Belgium, not in New Canaan, Connecticut.

The commissioner's objection to the Amens' claim that they were nonresidents of Connecticut during the calendar year of 1997 is based upon her argument that the Amens did not prove that they came within the key elements of section 12-701 (a) (1)-1 (b) of the Regulations of Connecticut State Agencies. Specifically, the commissioner argues that the Amens did not meet their burden of showing that they did not maintain a permanent place abode in Belgium or that they were in Connecticut less than thirty days during the calendar year of 1997. On the contrary, the Amens moved to Belgium in 1996 with their young daughter. As previously noted, in 1997, the Amens resided in Belgium, not in

Connecticut, and further gave up full possession of their home in New Canaan during 1997 through 2000. The Amens' residency in Belgium was complete during the year of 1997, with the Amens immersing themselves fully into the Belgian community life in which they resided.

Considering the requirement of spending no more than thirty days in Connecticut in 1997, Robert Amen visited Connecticut one day in June, 1997, for his son Peter's high school graduation and in October 1997 to see his sons play in a lacrosse tournament. Claudia Amen visited Connecticut in May and June of 1997 for no more than a total of eight days.

The Amens fulfilled all three requirements of § 12-701 (a) (1) (A) (i), showing that they properly filed as "nonresidents" for state income tax purposes for the tax year of 1997.

Accordingly, as to the Amens' appeal that they were not domiciled in Connecticut during the tax years in issue, their appeal is denied. As to the Amens' appeal that they were "nonresidents" during the 1997 tax year for state income tax purposes, their appeal is sustained without costs to either party.

Arnold W. Aronson
Judge Trial Referee