

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 737-12-11 Wrcv

Ugo Quazzo
Appellant

v.

Department of Taxes
Defendant

Decision on Tax Appeal

Appellant-taxpayer Ugo Quazzo seeks judicial review of a decision by the tax commissioner that he is not entitled to an income-sensitive adjustment to his statewide education taxes for the tax years 2007, 2008, and 2009. At issue is whether he was domiciled in this state. Mr. Quazzo argues on appeal that the commissioner erred by: (1) requiring him to prove by clear and convincing evidence that he had changed his domicile from New York City to Vermont; (2) making factual findings that were not supported by the evidence presented during the hearing; (3) allowing improper evidence to be admitted at the hearing; (4) drawing conclusions that were against the manifest weight of the evidence; and (5) violating his constitutional right to travel. For the following reasons, the determination of the tax commissioner is affirmed.

In an on-the-record review from a determination by the tax commissioner, courts apply a deferential standard of review. *World Publications, Inc. v. Dep't of Taxes*, 2012 VT 78, ¶ 8; *Lemieux v. Tri-State Lotto Comm'n*, 164 Vt. 110, 112 (1995). "Absent a clear and convincing showing to the contrary, decisions made within the expertise of administrative agencies are presumed to be correct, valid, and reasonable." *World Publications*, 2012 VT 78, ¶ 8 (quoting *Gasoline Marketers of Vt., Inc. v. Agency of Natural Resources*, 169 Vt. 504, 508 (1999)). The factual findings made by the commissioner are not set aside unless clearly erroneous, and the commissioner's interpretation of the tax statutes is entitled to deference so long as the construction is a permissible one. *Polly's Properties, LLC v. Dep't of Taxes*, 2010 VT 41, ¶ 4, 188 Vt. 157; *Tarrant v. Dep't of Taxes*, 169 Vt. 189, 195 (1999).

Background

Among other eligibility requirements, a claimant seeking an income-sensitive adjustment to his statewide education taxes must ordinarily show by a preponderance of the evidence that he was "domiciled in this state during the entire taxable year." 32 V.S.A. § 6066(c)(1); *Vermont Studio Center, Inc. v. Town of Johnson*, 2010 VT 59, ¶ 7, 188 Vt. 223; *Huddleston v. Univ. of Vermont*, 168 Vt. 249, 252 (1998). A claim of domicile requires a showing that the claimant makes his "permanent home" in this state, "to which, when absent, he intends to return and from

FILED

APR 29 2013

which he has no present purpose to depart.” *Piche v. Dep’t of Taxes*, 152 Vt. 229, 232 (1989) (quoting *Tower v. Tower*, 120 Vt. 213, 221 (1958)).

A domicile inquiry focuses upon the claimant’s connections to this state, with a particular emphasis on the facts and circumstances that are not readily changeable by the taxpayer. *Deluca v. Dep’t of Taxes*, No. 2006-397, 2007 WL 5313339 (Vt. Apr. 2007) (unpub. mem.). On this issue, the tax department has promulgated a regulation explaining that the department gives the most emphasis to the following five factors: (1) the location and use made of the taxpayer’s homes; (2) where and how the individual spends his time, including the frequency and nature of any travel; (3) the location of items near and dear to the taxpayer; (4) the nature and location of the taxpayer’s active business involvements; and (5) family connections. Dep’t Reg. on Domicile 1.5811, § 3.

Other factors may be considered as well, including but not limited to the location of the residence specified on tax returns, voter registrations, driver’s licenses, community activities, and receipt of mail. However, these factors are not given as much weight as the five above-mentioned factors, because they are more readily changeable. Dep’t Reg. on Domicile 1.5811, § 3. In general, the rule is that “[a]ctions speak louder than words, and the courts rely most heavily upon them.” Restatement (Second) of Conflict of Laws 2, Special Note on Evidence for Establishment of A Domicil Of Choice.

In a change-of-domicile case, there is an additional presumption that a person’s existing domicile continues unless and until the person shows by clear and convincing evidence that he has changed his domicile. Dep’t Reg. on Domicile 1.5811, §§ 4–5. A person claiming to have changed domicile must show that they intended to change their domicile and that their actions confirm that intention. Dep’t Reg. on Domicile 1.5811, § 4. A change-of-domicile case focuses upon the question of whether the person has given up their old domicile, and the inquiry requires comparison of the taxpayer’s contacts in the former domicile with their contacts in the new one. Dep’t Reg. on Domicile 1.5811, § 4; *Piche*, 152 Vt. at 232; *Walker v. Walker*, 124 Vt. 172, 174 (1964); *Deluca*, No. 2006-397, 2007 WL 5313339.

Commissioner’s Determination

Here, the commissioner made the following factual findings in her written decision. Mr. Quazzo was 89 years old at the time of the administrative hearing. His principal residence for many years was a two-bedroom apartment in a building on West 44th Street in New York City that was owned by one of several family corporations for which Mr. Quazzo was president and chief executive officer.

Mr. Quazzo purchased a home in Chester, Vermont, in 1958. He used the home as a vacation home for many years. He then “partially retired” in 1985 and began to split his time between the Chester home and the West 44th Street apartment. He then retired “more fully, but not completely” in 1992. He testified that he is unable to retire completely from the family businesses because he is “the patriarch of the family, and so, always on call.” Mr. Quazzo testified that he became a permanent resident of Vermont sometime between 1998 and 2000.

Mr. Quazzo has a number of connections to Vermont that tend to support his claim of domicile. Among these, he manages 150 acres of property here and is active in a corporation that works to improve properties for lease. He is licensed to drive here, his cars are registered here, and he is registered to vote here. He maintains a local checking account for receipt of his Social Security checks. He has also moved most of his furniture and personal belongings here from New York City, receives certain items of personal mail at the Chester address, attends church in Chester, and has purchased a burial plot in Chester.

However, Mr. Quazzo retains a number of connections to New York City. Among these, he continues to be involved with the family businesses, four of which had their offices located at the West 44th Street building in which Mr. Quazzo maintained his apartment for many years. In addition, although the apartment is now leased by Mr. Quazzo's son, Mr. Quazzo retains the use of the apartment when he visits the city.

Mr. Quazzo visits the city at least once per month in order to attend his medical appointments, and sometimes twice. All of his doctors are still in the city and he has medical conditions that require two or three appointments each month. Mr. Quazzo plans these visits in such a way that he tends to spend one to three days in the city on each visit. In addition, there have been "quite a few surgical operations" in recent years, after which he spent additional time recuperating at the West 44th Street apartment.

Mr. Quazzo moreover continues to have his important mail sent to the West 44th Street building, including the electric and telephone bills for the Chester property. He also listed this address as his residence during recent litigation in the Vermont Superior Court, at least for the purpose of receiving court papers. All of the mail sent to the West 44th Street address is received and opened by Mr. Quazzo's long-time secretary, who remains in the employ of the family businesses. She opens the mail and prepares the checks for Mr. Quazzo's signature, and he signs the checks when he is in the city.

Mr. Quazzo also travels regularly to Chicago, San Francisco, and London in order to visit family members. Between these trips and the visits to New York City, the commissioner found that Mr. Quazzo was "absent from the Chester house a good deal of the year."

The commissioner also noted that Mr. Quazzo did not present certain pieces of evidence that might have been relevant to his claim of domicile in this state. In particular, Mr. Quazzo declined to provide either bank statements or credit-card statements that might have tended to show patterns with respect to the location of his expenditures. He explained that he "always pays cash," and that he does not use ATM machines because he always gets the money he needs from his son. He also did not show the location of the residence specified on his state and federal tax returns, because he does not file state or federal income taxes. Finally, he declined to provide testimony from the driver who accompanies him on the trips to and from the city, or any medical evidence that might have further elaborated upon the frequency of his trips of the city.

Based upon these findings, the commissioner framed the issue as whether Mr. Quazzo had proven by clear and convincing evidence that he had abandoned his former residence and made his new permanent home in Chester, Vermont. She observed that (1) Mr. Quazzo had retained significant connections to the city in the form of his medical appointments, business interests, and retention of a personal secretary in the city; (2) Mr. Quazzo was away from Chester for meaningful portions of the year after taking into account his trips to the city and his travels elsewhere; and (3) Mr. Quazzo had failed to provide persuasive explanations for his decisions not to present other evidence that would have been material to his claim for domicile. She furthermore observed that although Mr. Quazzo had a number of connections to Vermont, the connections were also consistent with use of the Chester home as a vacation home, and were for the most part easily changeable and thus not entitled to as much weight in the overall analysis. After reviewing all of the evidence, therefore, the commissioner concluded that Mr. Quazzo had not met his burden of showing clear and convincing evidence of a change in domicile, and she denied his claim for a tax adjustment.

Issues on Appeal

Mr. Quazzo argues first that the commissioner erred by treating his case as a change-of-domicile case. He points here to a particular wrinkle of his case: the tax department accepted his claims for an income-sensitive tax adjustment on six prior occasions between the years 2000 and 2006. He contends that the tax department accepted his claims of domicile in each of those years, and argues that the commissioner was estopped from “turning back time” on this occasion and pretending that his earlier claims had never been approved. His position is that there are a number of reasons why the tax department should be permitted to raise the issue of a “change of domicile” only when it challenges the first residence-based claim made by a taxpayer, and that his burden of proof in this administrative hearing should have been to prove by a preponderance of the evidence that he maintained his Vermont domicile during the tax years in question.

It is well-settled that the tax authorities are never estopped by their prior treatment of a taxpayer’s claims. *Dixon v. United States*, 381 U.S. 68, 72–73 (1965); *Auto. Club of Michigan v. Commissioner of Internal Revenue*, 353 U.S. 180, 183–84 (1957); *Knights of Columbus Council No. 3660 v. United States*, 783 F.2d 69, 73 (7th Cir. 1986); *Hawkins v. Commissioner of Internal Revenue*, 713 F.2d 347, 351–52 (8th Cir. 1983). “[M]ere acceptance or acquiescence in returns filed by a taxpayer in previous years creates no estoppel against the commissioner.” *Morris v. Commissioner of Internal Revenue*, 2010 WL 5109941 at *2 (U.S. Tax Ct. Dec. 8, 2010) (citing *Dixon* and *Automobile Club of Michigan*, among other authorities). Application of this rule makes sense here because there has been no showing that the department was aware of the facts pertaining to Mr. Quazzo’s living arrangements at the time he filed his earlier claims. Nor could there have been any showing that Mr. Quazzo was himself unaware of his own living arrangements. *Agency of Natural Resources v. Godnick*, 162 Vt. 588, 592–93 (1994); *Fisher v. Poole*, 142 Vt. 162, 168 (1982). As such, this is not one of the rare cases in which estoppel may be asserted against the government. *In re McDonald’s Corp.*, 146 Vt. 380, 383–84 (1985); *My Sister’s Place v. City of Burlington*, 139 Vt. 602, 609 (1981). On the facts of this case, it was reasonable for the commissioner to see the situation as involving a change of domicile, and to

require Mr. Quazzo to show clear and convincing evidence that he had abandoned his former domicile in the city and made his new, permanent home in Vermont.

Mr. Quazzo argues second that the commissioner erred when making the following findings: (1) that he spent at least one to two weeks in the city each month; (2) that the town listers reported to the tax department that the house “did not appear to be occupied for much of the time;” and (3) that Mr. Quazzo appeared to be absent from the Chester home “a good deal of the year.” Here, Mr. Quazzo has somewhat overstated the commissioner’s findings about the specific frequency and duration of his trips to the city (which were that he made three trips per month lasting one to three days each). Even without a finding as to the specific frequency of the trips, however, there was ample support in the record for the fundamental observation that Mr. Quazzo maintained a meaningful connection to the apartment. Similarly, the evidence about Mr. Quazzo’s connections to the city, taken together with the evidence about his regular trips to visit family in Chicago, San Francisco, and London, provided a substantial basis for the observation that Mr. Quazzo was away from Chester for “a good deal of the year.” Finally, the evidence about what the listers said was presented as historical background and played no role in the final analysis. For these reasons, the court’s review of the record shows “no compelling indication of error.” *World Publications, Inc. v. Dep’t of Taxes*, 2012 VT 78, ¶ 10; see also *TD Banknorth, N.A. v. Dep’t of Taxes*, 2008 VT 120, ¶ 26, 185 Vt. 599 (“Judicial review of agency findings is ordinarily limited to whether, on the record developed before the agency, there is any reasonable basis for the finding.”) (quoting *State Dep’t of Taxes v. Tri-State Indus. Laundries, Inc.*, 138 Vt. 292, 294 (1980)).

Mr. Quazzo argues third that inadmissible evidence was admitted during the hearing in the form of (1) an expert opinion from a tax examiner about whether the electric bills for the Chester home showed sporadic or consistent use of the home and (2) a hearsay statement attributable to the town clerk about whether his voting had been done in person or by absentee ballot. Here, the commissioner expressly found that the tax examiner’s testimony “added no clarity” to the issues before her, and thus admission of the testimony was entirely harmless. Moreover, even assuming that it was error for the commissioner to rely upon hearsay evidence in concluding that Mr. Quazzo had voted by absentee ballot on occasion, the court is not persuaded that an alternative finding on this point would have made any difference to the overall outcome. Admission of the testimony was harmless. *Passion v. Dep’t of Social and Rehabilitation Services*, 166 Vt. 596, 597 (1997) (mem.).

Mr. Quazzo similarly argues that the commissioner erred by considering an argument of counsel that was not supported by the evidence presented at trial. However, the real issue here was not whether Mr. Quazzo had actually given or rescinded permission for the tax examiners to speak with the doctors (which was the substance of the unsupported argument), but rather whether Mr. Quazzo had failed to present evidence that might have revealed more about the frequency of his trips to the city. Given that it was Mr. Quazzo’s burden of proof on this issue, it was fair for the commissioner to point out that he had failed to present evidence that might have been relevant to his claim, and to draw an adverse inference from his failure to present such evidence. *Vosburgh v. Kimball*, 130 Vt. 27, 33 (1971).

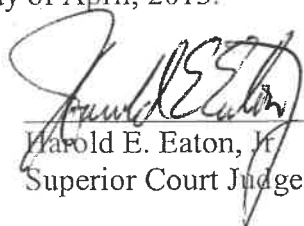
Mr. Quazzo argues fourth that the commissioner's determination was against the manifest weight of the evidence. Here, a review of the record shows that the commissioner gave weight to the evidence of Mr. Quazzo's connections to the city, the observation that he was absent from the Chester home for meaningful portions of the year, and that he had failed to present evidence that might have revealed more about the nature of his living arrangements. Against this, the commissioner noted that the factors supporting Mr. Quazzo's claim of domicile in Vermont were also consistent with use of the Chester home as a second home, and that most of the factors were also of the "readily changeable" nature that is given less weight than other factors under the department's regulations. After reviewing the record, the court is persuaded that it was reasonable for the commissioner to conclude that Mr. Quazzo had failed to show clear and convincing evidence that he intended to abandon his residence in the city and establish a new residence in Vermont. *Piche*, 152 Vt. 232.

Mr. Quazzo argues finally that the use of domicile to determine eligibility for the income-sensitive adjustment to the statewide education tax violates his constitutional right to travel, but this claim finds no support in the law. See *Rubin v. Glaser*, 416 A.2d 382, 386 (N.J. 1980) (finding no constitutional invalidity to statute using domicile to determine eligibility for statewide property-tax rebate). For these reasons, the commissioner's determination is affirmed.

ORDER

The Commissioner's Determination, dated November 2, 2011, is *affirmed*.

Dated at Woodstock, Vermont this 20 day of April, 2013.


Harold E. Eaton, Jr.
Superior Court Judge

FILED

APR 29 2013

VERMONT SUPERIOR COURT
WINDSOR UNIT