

Document Number	09-130
Tax Type	Individual Income Tax
Description	The documents provided demonstrate the Taxpayer spent less than 183 days in Virginia
Topic	Domicile, Persons Subject to Tax, Records>Returns/Payments
Date Issued	09-08-2009

September 8, 2009

Re: § 58.1-1821 Application: Individual Income Tax

Dear *****:

This will reply to your letter in which you seek correction of the individual income tax assessments issued to ***** (the "Taxpayer") for the taxable years ended December 31, 2005 through 2007.

FACTS

The Taxpayer is a domiciliary resident of ***** (State A) and filed nonresident Virginia income tax returns for the taxable years at issue. The Taxpayer is the CEO of a Virginia Corporation, owns several investment properties in Virginia, and maintains residences in both State A and Virginia. He travels extensively on behalf of his business and spends significant amounts of time at both his residences.

The Taxpayer was audited for the 2005 through 2007 taxable years. The auditor determined that the Taxpayer was an actual resident of Virginia and assessed additional tax and interest. The Taxpayer contends that he did not spend 183 days in Virginia during any of the taxable years at issue.

DETERMINATION

Two classes of residents, a domiciliary resident and an actual resident, are set forth in *Va. Code* § 58.1-302. The domiciliary residence of a person means the permanent place of residence of a taxpayer is Virginia and the place to which he intends to return is Virginia even though he may actually reside elsewhere. An actual resident of Virginia means a person who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia. A person who is not a domiciliary resident of Virginia, but who stays in Virginia for an aggregate of more than 183 days is also subject to Virginia taxation.

A taxpayer can be an actual resident of Virginia without establishing domicile in the Commonwealth. See Public Document (P.D.) 00-167 (9/8/2000). As such, even though

the Taxpayer is a domiciliary resident of State A, he could be an actual resident of Virginia.

Further, a taxpayer that is a domiciliary resident of a state other than Virginia, but spends significant portions of his time in Virginia (whether for business or personal reasons) should retain records to substantiate where he spent his time. Absent such record, the Department must rely on available information to make a determination.

The Department's auditor determined that the Taxpayer spent more than 183 days in Virginia based, in part, on a credit card statement. While credit card and debit card statements are helpful in determining how much contact a taxpayer has with Virginia, they may not be reliable in determining the precise number of days a taxpayer spends in Virginia. Reasons for this lack of reliability include vendors that may not transmit transactions on the day they occur, cards with multiple users, and banks that may not record a transaction on the date it occurs. However, when a taxpayer fails to keep sufficient records as to the number of days or portions of days spent in Virginia, these statements can be used to estimate such taxpayer's days spent in Virginia.

In this case, the Taxpayer has provided evidence demonstrating that the credit card account was also used by employees of the Taxpayer's Virginia business and by at least one family member in Virginia. This evidence refutes the auditor's assertion that the Taxpayer was in Virginia on the contested days during 2005, 2006, and 2007. The documents provided demonstrate the Taxpayer spent less than 183 days in Virginia and was, therefore, not an actual resident during the 2005 through 2007 taxable years. Accordingly, the assessments of Virginia income tax for the taxable years at issue will be abated.

The *Code of Virginia* sections and public document cited are available on-line at www.tax.virginia.gov in the Tax Policy Library section of the Department's web site. If you have any questions regarding this determination, you may contact ***** in the Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Janie E. Bowen
Tax Commissioner

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