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BEFORE THE STATE BOARD OF TAX APPEALS  
STATE OF ARIZONA  
Bank of America Tower  
101 North First Avenue - Suite 2340  
Phoenix, Arizona 85003  
(602) 528-3966

VIRGIL R. and NINA C. MADSEN,	)	
Appellants,	)	
vs.	)	Docket No. 1813-99-1
ARIZONA DEPARTMENT OF REVENUE,	)	
Appellee.	)	NOTICE OF DECISION: FINDINGS OF FACT AND <u>CONCLUSIONS OF LAW</u>

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

Virgil R. and Nina C. Madsen ("Appellants," with the singular referring to Virgil R. Madsen) filed Arizona resident income tax returns from 1987 through 1992 and from 1994 through 1996.<sup>1</sup> Appellants filed a part-year resident Arizona income tax return and a part-year California income tax return for 1993. Appellants filed their 1993 federal income tax return using a Texas address.

The Arizona Department of Revenue (the "Department") determined that Appellants were full-year Arizona residents for tax year 1993 and issued an assessment of income tax, including a late payment penalty and interest, against them. Appellants protested the assessment to the Department's hearing officer who upheld the assessment. Appellants now appeal to this Board.

DISCUSSION

The issue before the Board is whether Appellants were Arizona residents for tax year 1993. "It is the intent of the legislature . . . [t]o impose on each resident of this state a tax measured by

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<sup>1</sup> Appellants maintain that their tax preparer erroneously filed Arizona resident returns for tax years 1994 through 1996 and they have filed amended returns for these years.

1 taxable income wherever derived." A.R.S. § 43-102(A)(4). "Resident" is defined, in part, as "[e]very  
2 individual who is domiciled in this state and who is outside the state for a temporary or transitory  
3 purpose. Any individual who is a resident of this state continues to be a resident even though  
4 temporarily absent from the state." A.R.S. § 43-104(19)(b). A new residence can be established only by  
5 an intent to establish a new residence and acts evidencing this intention. *Kauzlarich v. Board of*  
6 *Trustees*, 78 Ariz. 267, 278 P.2d 888 (1955).

7 The Department argues that, although Appellants moved to Texas in 1993, they failed to  
8 establish a Texas domicile because they did not abandon their Arizona domicile. As evidence, the  
9 Department points to the facts that, while living in Texas, Appellants held Arizona drivers licenses, had a  
10 vehicle registered in Arizona and retained ownership of their Arizona home.

11 Appellants acknowledge that they did not sell their Arizona home but testify that it has been  
12 occupied since 1993 by their son or an independent grandchild. Appellants have not lived in the house  
13 since they moved to Texas. Further, Appellants maintain that they did not immediately obtain Texas  
14 driver's licenses because their Arizona licenses had not expired. In any event, Appellants argue that  
15 they did not remain Arizona residents after moving to Texas. The Board agrees.

16 In July 1993, Appellant obtained employment in Texas as a surface excavation superintendent  
17 on the federal government's Superconducting Supercollider Project (the "Project"). His employment on  
18 the Project was expected to last for five to eight years.

19 Appellant accepted the position and relocated, with his wife and two dependent grandchildren, to  
20 Italy, Texas in July 1993. Appellants opened bank accounts, obtained credit cards and a bank loan in  
21 Texas and subsequently purchased a mobile home in Italy, Texas. Appellant's employment was  
22 terminated in late 1993 when the Project was unexpectedly canceled. Appellants sold their mobile home  
23 and moved to California, where Appellant had secured new employment.

24 Having reviewed all the evidence, the Board concludes that Appellants' move to Texas, with  
25 their grandchildren, to live and work for at least five years was not for a temporary or transitory purpose.  
26 The evidence indicates Appellants intended to establish a new domicile in Texas; therefore, Appellants  
27 were not Arizona residents in 1993 and are not liable for the tax assessed.

28 . . .

