

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



MAY 05 2022

LARRY L. & LISA S. PERKINSON,

Petitioner,

v.

ROBYN A. CRITTENDEN,¹ in her official
capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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Chantal Mathurin, Tax Tribunal Administrator

Docket No. 2116694 & 2118468

DECISION

I. Introduction

Larry Perkinson and his wife, Lisa Perkinson, (“Petitioners”) challenge Official Assessments and Demands for Payment issued by the Georgia Department of Revenue (“Respondent” or “Department”) seeking income tax from Petitioners for tax years 2015, 2016, 2017, 2018, and 2019 (“the tax years” or “Assessment Periods”). The issue in this case is whether Petitioners, specifically Mr. Perkinson, were Georgia residents for Georgia income tax purposes during the tax years. The trial in this matter was held on February 1, 2022. Petitioners were represented by Jeffrey L. Cohen, Esq. and Chirayu (“Charlie”) M. Shah, Esq. Respondent was represented by Joseph Bearden, Esq., and Ron Stay, Esq. For the reasons stated herein, the Assessments and Demands for Payment for tax years 2015, 2016, 2017, 2018, and 2019 are hereby **REVERSED**.

II. Findings of Fact

1.

¹ On July 1, 2021, Robyn A. Crittenden replaced Frank M. O’Connell as Commissioner of the Georgia Department of Revenue. Pursuant to O.C.G.A. § 9-11-25(d)(1), Commissioner Crittenden is automatically substituted as a party, and the case name has been updated accordingly.

At the beginning of 2009, Petitioners resided in Texas. Mr. Perkinson then gained employment with Saudi Aramco, a company based in Saudi Arabia. Later that same year, the Petitioners moved to Saudi Arabia for that employment. (Testimony of Mr. Perkinson.)

2.

Petitioners resided in Saudi Arabia on a more or less full-time basis while using all of Mr. Perkinson's leave time to visit family and friends in the United States. However, as Saudi Arabia lacks any path to permanent residence for foreigners, Petitioners were required to renew their visas every year, which were tied to Mr. Perkinson's employment with Saudi Aramco. (Testimony of Mr. Perkinson; Perkinson Dep. 18:15-16.)

3.

While in Saudi Arabia, Petitioners engaged in activities typical of living long-term in a new location, including renting an apartment from Mr. Perkinson's employer, acquiring furniture for that apartment, acquiring Saudi Arabian driving licenses, and joining local religious organizations. Mr. Perkinson received Form W2s from his employer for tax years 2009 – 2019. Each of the W2 forms listed his Saudi Arabia address. (Testimony of Mr. Perkinson; Petitioners' Exhibit 11.)

4.

In 2014, Mrs. Perkinson's mother, then residing in Texas, began to decline in health. In order to provide her a home closer to family, Petitioners purchased a house in Georgia at 2433 Cain Circle, Dacula, Georgia 30019 ("the Georgia residential property" or "the Georgia property"). Mr. Perkinson gave Mrs. Perkinson power of attorney, to act in his stead in purchasing the Georgia property, which was purchased in, and remains titled in, both Petitioners' names. Petitioners then moved Mrs. Perkinson's mother into that residential property while they remained in Saudi Arabia.

(Testimony of Mr. Perkinson.)

5.

Also in 2014, Petitioners applied for and obtained Georgia driver's licenses and registered to vote in Georgia, using the Georgia residential property as their address. Petitioners similarly relocated their vehicles and vehicle registrations to the Georgia residential property, and began having their bank and credit card statements sent to the Georgia property. Petitioners also began claiming a homestead exemption for the Georgia residential property for property tax purposes. While Mr. Perkinson continued to work for Saudi Aramco in Saudi Arabia, Petitioners continued to file federal returns for their foreign-earned income, however, Petitioners did not file any state income tax returns until 2019 when they filed a part-year resident income tax return in the state of Georgia. Petitioners did not earn any Georgia-sourced income during the Assessment Periods and paid the balance due on the part-year resident return at the time of its filing. (Testimony of Mr. Perkinson; Respondent's Exhibits 3, 4, 5, 6, 8, and 9; Petitioners' Exhibit 16.)

6.

Upon moving Mrs. Perkinson's mother into the Georgia residential property in 2014, Petitioners' stated intention became to move into that property once Mr. Perkinson retired from his job with Saudi Aramco. (Testimony of Mr. Perkinson; Perkinson Dep. 25:2-7.)

7.

However, Mrs. Perkinson's mother's health began to decline even further, and Mrs. Perkinson returned to the United States to reside full-time at the Georgia residential property in 2015. During this time, Mr. Perkinson continued to work for Saudi Aramco and reside in Saudi Arabia, more or less on a full time basis, spending approximately 60 to 100 days per year in the United States on leave. Mr. Perkinson retired from his job with Saudi Aramco on June 30, 2019

and moved to the Georgia residential property on July 1, 2019. (Testimony of Mr. Perkinson; Testimony of Tulsi Christiani; Respondent's Exhibit 7.)

8.

At the Department's request, Mr. Perkinson completed a Residency Questionnaire and Document Request on November 3, 2020. (Petitioners' Exhibit 6.)

9.

On November 21, 2020, the Department issued a Notice of Proposed Assessment for tax year 2015, based on their determination that Mr. Perkinson was a legal resident of Georgia for that year. This Notice was followed with additional Notices for tax years 2016, 2017, 2018, and 2019 on December 16, 2020, with similar determinations regarding Mr. Perkinson's legal residence. (Testimony of Tulsi Christiani; Petitioners' Exhibits 4, 5.)

10.

Counsel for Petitioners submitted a formal Protest of Proposed Assessment for the 2015 Notice on December 8, 2020, which was followed by an additional protest for the remaining years of 2016, 2017, 2018, and 2019 on December 30, 2020. (Petitioners' Exhibits 4, 5.)

11.

On January 7, 2021, the Department issued an Official Assessment and Demand for Payment for tax year 2015 to Petitioners, in the amount of \$14,704.72. (Letter ID L1512915240.)

12.

On January 28, 2021, the Department issued multiple Official Assessments and Demands for Payment for tax years 2016, 2017, 2018, and 2019 to Petitioners, in the amounts of \$13,457.08, \$13,516.82, \$14,468.09, and \$7,941.10, respectively. (Letter ID's L0916230600, L0113594056, L1187335880, L0146265480.)

Petitioners filed two separate Petitions with this Tribunal. The first, Docket No. 2116694, was filed on January 12, 2021, for tax year 2015. The second, Docket No. 2118468, was filed on February 15, 2021, for tax years 2016, 2017, 2018, and 2019. Both petitions were consolidated at the trial on February 1, 2022.

III. Conclusions of Law

In all proceedings before the Georgia Tax Tribunal, the standard of review is *de novo*, and the evidence presented is not limited to the evidence considered by the Department. Ga. Comp. R. & Regs. 616-1-3-.11(a). Under *de novo* review, the Tribunal is required to make an “independent determination of the issues.” See United States v. First City Nat’l Bank of Houston, 386 U.S. 361, 368 (1967); see also Marc J. Fleury & Nathalie Mason-Fleury v. Comm’r, TAX-IIT-1532748 & 1552226 (Ga. Tax Tribunal 2015).

The United States taxes its citizens on their world-wide income irrespective of where they reside, subject only to credits or exclusions permitted under the Internal Revenue Code. Cook v. Tait, 265 U.S. 47, 54-56 (1924); see also I.R.C. §§ 861-989. Because Georgia taxable income is derived from federal adjusted gross income, taxpayers who are domiciled in, or who are residents of Georgia, for income tax purposes, are likewise subject to taxation on their world-wide income, subject also to certain state-specific adjustments. See O.C.G.A. §§ 48-7-20, 48-7-27 (imposing tax on Georgia residents on any income, regardless of source). Therefore, Petitioners would be subject to Georgia taxation on their world-wide income, including any income earned while Mr. Perkinson was working in Saudi Arabia during the Assessment Periods, if they both were residents of Georgia, in accordance with the criteria set out in O.C.G.A. § 48-7-1(10)(A).² However, if

² In accordance with Petitioner F-1 v. Comm’r, the terms “legal resident,” and “domiciliary” are synonymous terms that can be used interchangeably. Petitioner F-1 v. Comm’r, TAX-IIT-134974 (Ga. Tax Tribunal 2015).

Petitioners were not residents of Georgia during the Assessment Periods, the State cannot tax income which was “‘earned and collected’ from sources outside the state before the taxpayer became a resident.” Rogers v. Chilivis, 141 Ga. App. 407, 407-08 (1977), see also Forrester v. Culpepper, 194 Ga. 744, 748 (1942) (holding that a taxpayer who became a Georgia resident on June 10, 1940, was not subject to pay tax on income earned and collected outside the state prior to that date).

This case differs from the previous cases before this Court on the question of domicile because unlike in the Fleury and Petitioner F-1 decisions, where both taxpayers argued that they had abandoned their old domicile in the state of Georgia and established new domiciles in other countries, the question here is whether and when Petitioners, specifically Mr. Perkinson,³ established domicile in the state of Georgia during the Assessment Periods. “A person may change his or her domicile by (a) abandoning the old domicile and (b) physically moving to another place with (c) the present intent to remain there permanently or indefinitely.” Petitioner F-1 v. Comm’r, TAX-IIT-134974 (Ga. Tax Tribunal 2015).

a. Petitioners Did Not Establish Domicile in Saudi Arabi

Before answering the question of whether Petitioners are subject to Georgia income tax during the Assessment Periods, the Tribunal will first address the question of whether or not Saudi Arabia ever became Petitioners’ domicile. This Court has previously determined once in favor of, and once against taxpayers that moved abroad and sought to establish domicile in another country. In Petitioner F-1, the court determined that the taxpayers in question had not made the United Kingdom their legal residence based on four factors:

A. The petitioners’ residence in the United Kingdom was temporary and tied to a

³ O.C.G.A. § 19-2-3 states “The domicile of a married person shall not be presumed to be the domicile of that person’s spouse.” O.C.G.A. § 19-2-3.

tour of employment that had a specific end date at which point their visas would expire unless he renewed his position.

- B. The Petitioners did not seek “permanent residence permits,” in the U.K.
- C. The Petitioners did not obtain driver’s licenses in the U.K.
- D. The Petitioners did not pay income taxes in the U.K. because they were not permanent residents and therefore not subject to British income taxes.

Petitioner F-1 v. Comm’r, TAX-IIT-134974 at 8-9.

In Fleury, the court ruled in favor of taxpayers who moved to Spain from Georgia, determining that legal residence had been established there, based on the following factors:

- A. The Petitioners’ living arrangement was not tied to employment, but based on familial roots in Spain. Moreover, they were not limited by visas.
- B. There is no evidence that the Petitioners and their children, as EU citizens, needed any additional permit to remain in Spain indefinitely.
- C. Mr. Fleury obtained a driver’s license in Spain and bought a car there.
- D. The Petitioners obtained tax identification numbers and paid income tax in Spain.

Fleury v. Comm’r, TAX-IIT-1532748 & 1552226 at 11.

In this case, Petitioners’ stay in Saudi Arabia was tied to Mr. Perkinson’s employment with Saudi Aramco, and his visa was dependent on that employment. (Testimony of Mr. Perkinson.) Like the taxpayer in Petitioner F-1, his stay in Saudi Arabia was inextricably linked to his employment with a Saudi company. Unlike the Petitioners in Fleury, who had familial roots in Spain, Mr. Perkinson’s residence in Saudi Arabia expired “upon the occurrence of a certain event.” Id. While Petitioners make much of the steps the Perkinson’s took to make their residence in Saudi Arabia a home, such as acquiring furniture, acquiring driving permits, and joining local religious groups, these actions cannot overcome the fact that it was not possible for Mr. Perkinson to reside

in Saudi Arabia beyond the end date of his employment, as was in the case in Petitioner F-1. Therefore, Petitioners did not establish domicile in Saudi Arabia for Georgia income tax purposes.

b. Physically Moving to a Place With the Present Intent to Remain Indefinitely is a Fundamentally Essential Element that is Required in Order to Establish Domicile in Georgia

During the trial, both parties focus much of their attention on “intent,” and which factors from the Petitioner F-1 and Fleury cases support their arguments. However, as stated earlier, this case differs from both the Petitioner F-1 and Fleury cases because the question is not about whether a Georgia domicile was abandoned, but whether and when a Georgia domicile was established. The Tribunal finds that the earliest date that Mr. Perkinson could have established domicile in Georgia was July 1, 2019, when he physically moved here with the present intent to remain indefinitely.

Pursuant to O.C.G.A. § 48-7-20, “[a] tax is imposed upon every resident of this state with respect to the Georgia taxable net income of the taxpayer as defined in Code Section 48-7-27.” O.C.G.A. § 48-7-20. The Georgia Supreme Court, however, has held that the State cannot tax a resident on income earned and received from sources outside of the state prior to that person becoming a resident.⁴ See Forrester v. Culpepper, 194 Ga. at 748. O.C.G.A. § 48-7-1(10)(A) provides a statutory definition of resident. Under that statute, “Resident” means:

- (i) Every individual who is a legal resident of this state on income tax day;
- (ii) Every individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the

⁴ The taxability of a nonresident is governed by O.C.G.A. § 48-7-30 and generally requires the nonresident’s income to be derived from a source within the state of Georgia; this is not at issue in this case as there has been no allegation that the income earned by Petitioners during the Assessment Periods were sourced within Georgia. O.C.G.A. § 48-7-30.

temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day; and

(iii) Every individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.

i. Mr. Perkinson Does Not Meet the Statutory Definition of Resident Under O.C.G.A. § 48-7-1(10)(A)(i) For Tax Years 2015, 2016, 2017, and 2018

Under O.C.G.A. § 48-7-1(10)(A)(i), resident means “[e]very individual who is a legal resident of this state on income tax day.” O.C.G.A. § 48-7-1(10)(A)(i). “Legal resident” is not defined in the statute, but as noted in footnote 1 above, “legal resident” and “domiciliary” have been held to be synonymous terms that are interchangeable.⁵ Therefore, in order for Mr. Perkinson to be considered a “legal resident” of Georgia, it would need to be determined that he had initially established domicile here, and had not abandoned it, prior to the Assessment Periods. As stated previously, “[a] person may change his or her domicile by (a) abandoning the old domicile and (b) physically moving to another place with (c) the present intent to remain there permanently or indefinitely.” Petitioner F-1 v. Comm’r, TAX-IIT-134974 at 7.

The Department argues that Mr. Perkinson’s domicile changed to Georgia through affirmative actions that he took starting in 2014. They point to three distinct actions that he took that represented to the state that he was a legal resident of Georgia. These actions are that Mr. Perkinson obtained a Georgia driver’s license, registered to vote and voted in Georgia, and that he claimed the homestead exemption on the Georgia residential property Petitioners owned.

While these three actions can certainly be viewed as evidence of Mr. Perkinson’s intent to change his domicile to Georgia, either as the Department argues, in 2014, or at some point in the

⁵ Supra footnote 1.

future, the Department does not cite any legal precedent linking any of these actions to the definition of “resident” under O.C.G.A. § 48-7-1(10)(A). It is well established under Georgia law, that when considering the meaning of a statute, “we must presume that the General Assembly meant what it said and said what it meant.” Deal v. Coleman, 294 Ga. 170, 172-73 (2013) quoting Arby's Restaurant Group, Inc. v. McRae, 292 Ga. 243, 245 (1) (734 SE2d 55) (2012) (citation omitted). The Georgia statute defining “resident” for income tax purposes does not reference O.C.G.A. § 40-5-1(15), which defines “resident” for purposes of obtaining a driver’s license, nor does it mention O.C.G.A. § 21-2-217, which lays out the rules for determining residency for voting purposes, nor O.C.G.A. § 48-5-40, which defines “resident” for purposes of claiming the homestead exemption.⁶ The General Assembly’s intention was clear in O.C.G.A. § 48-7-1(10)(A), where it defined what is required to be considered a “resident” of Georgia for income tax purposes, and the Tribunal “must give effect to the unambiguously expressed intent of the legislature.” Floyd Healthcare Management, Inc. v. Comm’r, TAX-CIT-200300 (Ga. Tax Tribunal 2021); see Sewon America, Inc. v. Comm’r, TAX-OTHER-1627180. Absent words of expansion broadening the definition of resident for income tax purposes, the Tribunal finds that regardless of what Mr. Perkinson’s intent was, he could not establish domicile in Georgia until he physically moved here.

The “present intent to remain permanently or indefinitely” is a basic requirement that must be met for one to establish a domicile, but it is also a basic requirement that one physically moves to that intended domicile first. See Petitioner F-1 v. Comm’r, TAX-IIT-134974 at 7. Mr. Perkinson

⁶ The homestead exemption can be used by all married couples, whether living together or separately. See Masters v. DeKalb County Bd. of Tax Assessors, 288 Ga. 241, 242, (2010). “The term ‘homestead’ includes the following qualifications: ... (C) [w]here the building is occupied primarily as a dwelling.” Subsection (6) follows stating that “[o]ccupied primarily as a dwelling” means “[t]he applicant or members of his family occupy a portion of the property as a home.” O.C.G.A. § 48-5-40 (emphasis added). Further, subsection (E) states “[w]here a husband or wife occupies a dwelling and the title of the homestead is in the name of the wife.” Id. (emphasis added). It would appear that Petitioners likely were qualified to claim the homestead exemption during the Assessment Periods, however, even if they were not qualified to claim the exemption, the Tribunal’s analysis would remain the same.

stated that it was Petitioners' intent to move to Georgia after they retired. Perkinson Dep. 25:4-7. While Mrs. Perkinson eventually moved to Georgia prior to Mr. Perkinson, he did not move to Georgia until after his final day of employment with Saudi Aramco. (Testimony of Mr. Perkinson). An absurd result would be produced if intent alone is all that is required to establish a new domicile.⁷ Thus, Mr. Perkinson was not a legal resident of Georgia during the Assessment Periods, prior to July 1, 2019, in accordance with the criteria set out in O.C.G.A. § 48-7-1(10)(A)(i).

ii. Mr. Perkinson Does Not Meet the Statutory Definition of “Resident” Under O.C.G.A. § 48-7-1(10)(A)(ii) For Tax Years 2015, 2016, 2017, and 2018

O.C.G.A. § 48-7-1(10)(A)(ii) states that resident means “[e]very individual who, though not necessarily a legal resident of this state, nevertheless resides within this state on a more or less regular or permanent basis and not on the temporary or transitory basis of a visitor or sojourner and who so resides within this state on income tax day.” O.C.G.A. § 48-7-1(10)(A)(ii). Based on the evidence in this case, it would not be accurate to describe Mr. Perkinson as having resided in the state on a “more or less regular or permanent basis” as opposed to describing his stays as being more “temporary or transitory.”

Mr. Perkinson worked in Saudi Arabia, maintained an apartment in Saudi Arabia, was a member of a church in Saudi Arabia, had a valid driving license and owned a vehicle with insurance in Saudi Arabia, received W2s from his employer that listed his address as being in Saudi Arabia, and used his Saudi Arabian address when he filed his federal income tax returns in the United States. Conversely, in his deposition, Mr. Perkinson stated that all of his leave time was spent in the United States. Perkinson Dep. 18:15-16. Mr. Perkinson also testified that on the days

⁷ Although one may have many homes, one may only have one domicile, which is the place where he or she intends to remain. Fleury at 10, see also Avery v. Bower, 170 Ga. 202, 204 (1930).

that he was in the United States, about half of that time was spent in Georgia at the residential property that Petitioners owned, and the other half was spent at different vacation locations like Florida, Lake Tahoe, and Canada. (Testimony of Mr. Perkinson). While Mr. Perkinson certainly had ties to the state of Georgia, those ties do not rise to the level of one who resides here on a “more or less regular or permanent basis.” Thus, the Tribunal finds that Mr. Perkinson’s stays in Georgia were “temporary or transitory” during the Assessment Periods prior to July 1, 2019.

Further, the statute states that in addition to residing in the state on a more or less regular or permanent basis, a “resident” must also reside within the state on income tax day. “Income tax day” is defined as December 31 of each calendar year.” O.C.G.A. § 48-7-1(5). According to the uncontroverted evidence presented in this case, the Tribunal finds that Mr. Perkinson was never in Georgia any income tax day during the Assessment Periods prior to December 31, 2019. Accordingly, Mr. Perkinson was not a resident of Georgia during the Assessment Periods, prior to July 1, 2019, in accordance with the criteria set out in O.C.G.A. § 48-7-1(10)(A)(ii).

iii. Mr. Perkinson Does Not Meet the Statutory Definition of Resident Under O.C.G.A. § 48-7-1(10)(A)(iii) For Tax Years 2015, 2016, 2017, and 2018

O.C.G.A. § 48-7-1(10)(A)(iii) states that resident means “[e]very individual who on income tax day has been residing within this state for 183 days or part-days or longer, in the aggregate, of the immediately preceding 365 day period.” O.C.G.A. § 48-7-1(10)(A)(iii). According to Respondent’s Exhibit 7⁸ – the calendar of travel – Mr. Perkinson was in the United States for 63 days in 2015, 86 days in 2016, 92 days in 2017, 79 days in 2018, and 29 days in 2019

⁸ The Department submitted a calendar (hereinafter “calendar of travel”) into evidence that was created by Mr. Perkinson showing where he was – either working/off day in Saudi Arabia, off day in the United States, or international travel day between countries – each calendar day of the year for the entire Assessment Period (January 1, 2015, to July 1, 2019). Respondent’s Exhibit 7.

(prior to July 1, 2019). Respondent's Exhibit 7. Respondent witness Tulsi Christiani testified that she calculated, by using both the calendar of travel and Petitioner's Federal income tax returns, the total days that Mr. Perkinson was in the United States as 83 days for 2015, 101 days for 2016, 108 days for 2018, and 33 days for 2019. (Testimony of Tulsi Christiani).

Even taking the higher numbers, as calculated by Respondent witness Ms. Christiani, prior to 2019, Mr. Perkinson never comes close to residing in the state of Georgia for the 183 days or part-days of the immediately preceding 365 day period needed to be considered a resident of Georgia under O.C.G.A. § 48-7-1(10)(A)(iii). Thus, Mr. Perkinson was not a resident of Georgia, during the Assessment Periods of 2015, 2016, 2017, and 2018, in accordance with the criteria set out in O.C.G.A. § 48-7-1(10)(A)(iii). Therefore, Mr. Perkinson was not a "resident" under any of the three definitions listed in O.C.G.A. § 48-7-1(10)(A), except for the portion of tax year 2019 beginning July 1, 2019, and ending December 31, 2019.

iv. Tax Year 2019

The Tribunal finds that Mr. Perkinson became a "resident" of Georgia for income tax purposes and changed his domicile to Georgia when he physically moved to Georgia on July 1, 2019, with the present intent to remain indefinitely. Evidence of his residency starting on this date is supported by Mr. Perkinson's own words in his deposition and at trial, the filing of a part-year resident Georgia income tax return for tax year 2019, which listed July 1, 2019, as the start date of his residency in Georgia, and the fact that Mr. Perkinson was physically present and residing in Georgia on December 31, 2019 – income tax day. Respondent's Exhibit 7; Petitioners' Exhibit 16.

O.C.G.A. § 48-7-85 grants the commissioner the authority to prorate the amount of tax due for a person moving into or out of the state. O.C.G.A. § 48-7-85. This statute also states that "[t]he commissioner in his reasonable discretion shall be the sole judge as to when this Code section shall

apply.” Id. However, Department Regulation 560-7-8-.27 states that a taxpayer who is “not liable to Georgia for an entire year because of moving into this State... shall include in his return only his income received while a resident of this State.” Ga. Comp. R. & Regs. 560-7-8-.27. Further, the Georgia Supreme Court has spoken directly to the issue of the commissioner’s discretion in Forrester v. Culpepper, when it stated that “[the commissioner] being the sole judge of the facts to apply in a particular case does not mean that he may act arbitrarily and withhold the benefits of the law from a taxpayer clearly entitled thereto.” Forrester v. Culpepper, 194 Ga. at 750.

As stated above, the Tribunal has found that Mr. Perkinson became a resident of Georgia under O.C.G.A. § 48-7-1(10)(A) on July 1, 2019. Also stated above, is that the State cannot tax a resident on income earned and received from sources outside of the state prior to that person becoming a resident. See Forrester v. Culpepper, 194 Ga. at 748. Thus, Mr. Perkinson’s filing of a part-year resident Georgia income tax return, in which taxpayers are instructed to prorate⁹ their income based on the amount earned while a resident of the state was proper. Mr. Perkinson testified that upon filing the part-year resident Georgia income tax return, payment of the tax due on all income earned from July 1, 2019, through December 31, 2019, was made to the commissioner. (Testimony of Mr. Perkinson). Thus, the Tribunal finds that Mr. Perkinson filed in accordance with Department Regulation 560-7-8-.27 and Georgia law when he excluded the income he earned while working in Saudi Arabia from January 1, 2019, to June 30, 2019.

⁹ Georgia tax liabilities are computed by filling out Georgia Form 500 – Individual Income Tax Return. Every year since 2007 the Georgia Department of Revenue publishes the IT-511 Individual Income Tax Booklet. This booklet, which can be accessed via the Georgia Department of Revenue’s website, provides instructions to Georgia taxpayers on who is required to file and the steps they must take to file correctly. <https://dor.georgia.gov/it-511-individual-income-tax-booklet>. The instructions for Line 9 (Adjustments from Form 500 Schedule 1), under the heading “Income Computations,” of the Georgia Form 500, refer taxpayers to the IT-511 Individual Income Tax Booklet which states that “[y]ou must adjust your Federal adjusted gross income if you have income that is taxable by the Federal Government but not taxable to Georgia or vice versa.” Id. at p. 12. The instruction also state that part-year residents and nonresidents must fill out Schedule 3 of the Georgia Form 500. Id. The instructions for schedule 3 require taxpayers to calculate the ratio of Georgia income to total income, excluding non-Georgia sourced income. Id. at p. 18.

c. Department Regulation 560-7-6-.01(a) Requires a Georgia Resident That is Married to a Nonresident to File Separate Income Tax Returns and Compute Their Tax Liabilities Separately Even if They Filed Joint Federal Tax Returns

Under Georgia law, the filing status of taxpayers' Federal return, whether joint or separate, generally determines the filing status on the Georgia return as well. Ga. Comp. R. & Regs. 560-7-6-.01. However, there is an exception to this general rule. Department Regulation 560-7-6-.01(a) states that "if either husband or wife is a resident and the other is a non-resident with no Georgia [sourced] income... [s]uch taxpayers shall file separate income tax returns in this State, in which event their tax liabilities shall be separate... and they shall compute their tax based upon married filing separate status." Ga. Comp. R. & Regs. 560-7-6-.01(a).

Petitioners filed joint federal tax returns during the Assessment Periods, and neither Mr. Perkinson nor Mrs. Perkinson filed any Georgia income tax returns during the Assessment Periods until tax year 2019. This Court has found that Mr. Perkinson was not a resident of Georgia, within the meaning of O.C.G.A. § 48-7-1(10)(A), during the Assessment Periods, prior to July 1, 2019. Further, it is an undisputed fact that the income earned by Mr. Perkinson during the Assessment Periods is non-Georgia sourced income. Therefore, if Mrs. Perkinson was a Georgia resident during the Assessment Periods, and if she had a filing requirement, she would have needed to file a Georgia return separately from Mr. Perkinson and compute her tax liability based on married filing separate status.

The only evidence regarding Mrs. Perkinson's residency status during the Assessment Periods comes from Mr. Perkinson's deposition, conducted on October 4, 2021, Mr. Perkinson's testimony at trial, and various exhibits filed by the parties. Mr. Perkinson stated during the trial that Mrs. Perkinson moved with him to Saudi Arabia in 2009. (Testimony of Mr. Perkinson). In

his deposition, Mr. Perkinson stated that due to concerns about his mother-in-law's health, Mrs. Perkinson "started traveling back and forth." Perkinson Dep. 16:19-22. By the end of 2015, after the residential property in Georgia was purchased, Petitioners decided that Mrs. Perkinson would live in Georgia to be with her mother and travel back and forth to Saudi Arabia. Id. at 17:10-17, 20:10-16. If the Tribunal accepts these statements from the deposition and trial as an admission that Mrs. Perkinson became a Georgia resident in 2015, Petitioners would fall squarely into the exception provided by Department Regulation 560-7-6-.01(a). Thus, Mrs. Perkinson, if required to file a Georgia income tax return at all, would have done so filing separately, thus excluding the income earned by Mr. Perkinson while working in Saudi Arabia during the Assessment Periods.

Regarding income earned by Mrs. Perkinson, Mr. Perkinson's testimony that Mrs. Perkinson did not earn any income during the Assessment Periods was undisputed. (Testimony of Mr. Perkinson).

Under Georgia law, an income tax return is required to be filed by every:

- (1) Resident who is required to file a federal income tax return for the taxable year;
- (2) Nonresident who has federal gross income from sources within this state;
- (3) Resident estate or trust that is required to file a federal income tax return;
- (4) Nonresident estate or trust that has federal gross income from sources within this state; and (5) Resident or nonresident who has taxable income subject to Georgia income tax for the taxable year who does not have taxable income subject to federal income tax for the same taxable year.

O.C.G.A. § 48-7-50.

26 U.S. Code § 6012 requires individuals who, for the taxable year, have gross income which equals or exceeds the exemption amount¹⁰ to file a federal income tax return. 26 U.S. Code § 6012(a)(1)(A). Since the Tribunal is not aware of any evidence that Mrs. Perkinson earned any income, whether world-wide or Georgia-sourced, during any of the tax years of the Assessment Periods, she likely did not have a federal filing requirement during the Assessment Periods. Further, there is no evidence that either Petitioner, individually or jointly, earned income that was sourced in Georgia, or that this case involves an estate or trust that would give rise to a filing requirement under O.C.G.A. § 48-7-50(a). Thus, Mrs. Perkinson likely did not have a filing requirement for the state of Georgia. Even if she did or still does have a filing requirement, as a resident married to a nonresident with no Georgia sourced income, she would be required to file separately, excluding her nonresident spouse's non-Georgia sourced income.

IV. Conclusion

In accordance with the Findings of Facts and Conclusions of Law, the Respondent's Official Assessments and Demands for Payment for tax years 2015, 2016, 2017, 2018, and 2019 are hereby **REVERSED**.

SO ORDERED this 5th day of May, 2022.



LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL

¹⁰ The federal exemption amount was \$4,000 in 2015, \$4,050 in 2016, and \$4,050 in 2017. <https://www.irs.gov/pub/irs-prior/p501--2015.pdf>; <https://www.irs.gov/pub/irs-prior/p501--2016.pdf>; <https://www.irs.gov/pub/irs-prior/p501--2017.pdf>. Under 26 U.S. Code § 6012(f), Special Rule for Taxable Years 2018 through 2025, individuals who have gross income, subject to a few exceptions, are required to file a return. 26 U.S. Code § 6012(f).