

Massachusetts Appellate Tax Board Decides Two Domicile Cases

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The Massachusetts Appellate Tax Board (“ATB”) recently decided two cases on the issue of whether an individual taxpayer had properly established non-residency for Massachusetts tax purposes. Non-resident status allows a taxpayer to be subject to tax only on Massachusetts “sourced” income, versus all income as is typically the case with residents.

The first case was *Swartz v. Commissioner of Revenue*¹. The taxpayer in *Swartz* maintained two homes, one in Florida and one in Massachusetts. The ATB explained that for Massachusetts personal income tax purposes an individual can be considered a resident of Massachusetts if they are either (1) domiciled in Massachusetts or (2) maintain a permanent place of abode in Massachusetts and also spend more than 183 days in Massachusetts. Importantly, the ATB concluded that although the taxpayer spent less than 183 days in the Commonwealth, the taxpayer was considered domiciled in Massachusetts because “family, social and personal ties” to Massachusetts had not been sufficiently severed. The ATB weighed factors that included the timing of the filing of the homestead election in Florida, where the taxpayer sought medical attention (both in Massachusetts and Florida), and that the taxpayer received mail in Massachusetts relating to Florida real estate and other activities. Taxpayers should be mindful, after the *Swartz* decision, that “domicile” is defined as the “place where a person dwells and which is the center of domestic, social and civil life”.² Although a taxpayer may think that spending more than 183 days out of Massachusetts results in non-residency for Massachusetts tax purposes, there is, in fact, a second “domicile” analysis to undertake which focuses more on the practical aspects of living and the true center of one’s social and family life.

The second recent case was *Mee v. Commissioner of Revenue*.³ In *Mee*, the taxpayer, as in the *Swartz* case, maintained two residences, one in Massachusetts and one in Florida. The ATB stated that a taxpayer need not divest themselves of all remaining links to Massachusetts in order to establish a change of domicile. However, the ATB did weigh several factors in deciding that the taxpayer was a non-resident for Massachusetts tax purposes. The taxpayer received a Florida driver’s license and surrendered a Massachusetts driver’s license; the taxpayer’s business activities in Massachusetts were significantly reduced during the year; and social and family ties were stronger in Florida than in Massachusetts during the tax years at issue.

A change from resident to non-resident for Massachusetts tax purposes, as with most states, should include a full and thorough analysis of the factors considered in the Swartz and Mee cases.

¹Docket No. C287671, Promulgated April 1, 2010.

²See *Reierson v. Commissioner*, 26 Mass. App. Ct. 124, 125 (1988).

³Docket No. C287787, Promulgated April 12, 2010.