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0	1	BEFORE THE STATE BOARD OF TAX APPEALS	
	2	STATE OF ARIZONA Bank of America Tower	
	3	101 North First Avenue - Suite 2340 Phoenix, Arizona 85003	
	4	(602) 528-3966	
	5	VIRGIL R. and NINA C. MADSEN,	
	6	Appellants,	
	7	vs.)	
	8	ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:) FINDINGS OF FACT AND	
	9	Appellee.) <u>CONCLUSIONS OF LAW</u>	
	10	The State Board of Tax Appeals, having considered all evidence and arguments presented, and	d
	11	having taken the matter under advisement, finds and concludes as follows:	
	12	FINDINGS OF FACT	
	13	Virgil R. and Nina C. Madsen ("Appellants," with the singular referring to Virgil R. Madsen) file	d
	14	Arizona resident income tax returns from 1987 through 1992 and from 1994 through 1996. ¹ Appellant	s
	15	filed a part-year resident Arizona income tax return and a part-year California income tax return for 1993	3.
	16	Appellants filed their 1993 federal income tax return using a Texas address.	
	17	The Arizona Department of Revenue (the "Department") determined that Appellants were ful	1-
	18	year Arizona residents for tax year 1993 and issued an assessment of income tax, including a lat	e
	19	payment penalty and interest, against them. Appellants protested the assessment to the Department'	s
	20	hearing officer who upheld the assessment. Appellants now appeal to this Board.	
	21	DISCUSSION	
	22	The issue before the Board is whether Appellants were Arizona residents for tax year 1993.	
	23	"It is the intent of the legislature [t]o impose on each resident of this state a tax measured b	У
	24		
	25		
	26	¹ Appellants maintain that their tax preparer erroneously filed Arizona resident returns for tax years 1994 throug 1996 and they have filed amended returns for these years.	h
	27	1000 and they have med amended returns for these years.	
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taxable income wherever derived." A.R.S. § 43-102(A)(4). "Resident" is defined, in part, as "[e]very individual who is domiciled in this state and who is outside the state for a temporary or transitory purpose. Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state." A.R.S. § 43-104(19)(b). A new residence can be established only by an intent to establish a new residence and acts evidencing this intention. *Kauzlarich v. Board of 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.

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

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

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

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

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1	CONCLUSIONS OF LAW		
2	Appellants were not Arizona residents for tax year 1993; therefore, they are not liable for the tax		
3	assessed. See A.R.S. §§ 43-102(A)(4); 43-104(19)(b), see also Kauzlarich v. Board of Trustees, 78 Ariz.		
4	267, 278 P.2d 888 (1955).		
5	ORDER		
6	THEREFORE, IT IS HEREBY ORDERED that the appeal is granted, and the final order of the		
7	Department is vacated.		
8	This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer		
9	unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254		
10	(formerly A.R.S. § 42-124).		
11	DATED this 22nd day of February , 2000.		
12			
13	STATE BOARD OF TAX APPEALS		
14			
15	HAT ON		
16	Slepher Josenzer		
17	Stephen P?Linzer, Chairman		
18	SPL:AW		
19	CERTIFIED		
20	Copies of the foregoing		
21 mailed or delivered to:			
22	Robert E. Ciancola 3020 E. Camelback Road		
23	Suite 397 Phoenix, Arizona 85016		
24	Christine Cassetta		
25	Assistant Attorney General Civil Division, Tax Section		
26	1275 West Washington Street Phoenix, Arizona 85007		
27			
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