

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**KENT BERGER & ESTELLA YOUNGBLOOD,
Petitioners,**

VERSUS

DOCKET NO. C05763A

**DEPARTMENT OF REVENUE, STATE
OF LOUISIANA,
Respondent.**

JUDGMENT

This case came before the Board for hearing on June 13, 2019 on the merits of the Petition of Kent Berger and Estella Youngblood, (the "Taxpayers") with Judge Tony Graphia (Ret.), presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Robert E. Tarcza, for the Taxpayers and Adrienne Quillen, attorney for Tim Barfield, Secretary, Department of Revenue, State of Louisiana (the "Secretary"). After the hearing, the matter was taken under advisement. The Board now renders Judgment unanimously in accordance with the written reasons attached herewith.

IT IS ORDERED, ADJUDGED AND DECREED that the Taxpayers' Petition BE AND IS HEREBY DISMISSED, with prejudice, and that Judgment be rendered in favor of the Secretary of the Department of Revenue and against the Taxpayers, Kent Berger and Estella Youngblood.

Judgment Rendered and Signed at Baton Rouge, Louisiana this 14 day of August, 2019.

For the Board:



**Judge Tony Graphia (Ret.), Chairman
Louisiana Board of Tax Appeals**

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WRITTEN REASONS FOR JUDGMENT

This case came before the Board for hearing on June 13, 2019 on the merits of the Petition of Kent Berger and Estella Youngblood, (the “Taxpayers”) with Judge Tony Graphia (Ret.), presiding and Board Members Cade R. Cole and Jay Lobrano present. Participating in the hearing were Robert E. Tarcza, for the Taxpayers and Adrienne Quillen, attorney for Tim Barfield, Secretary, Department of Revenue, State of Louisiana (the “Secretary”). After the hearing, the matter was taken under advisement. The Board now renders Judgment unanimously in accordance with the following written reasons.

The facts of this case are largely undisputed. The Taxpayers are a married couple who filed a joint Louisiana resident return for their 2016 individual income taxes on or about October 16, 2017. The return was prepared and signed by Mr. Berger. During 2016, Mr. Berger resided in New Orleans, Louisiana. In 2016, and until early 2017, Mrs. Youngblood worked for Medicus Management Team (“Medicus”) in Houston, Texas. The Taxpayers reported Mrs. Youngblood’s income earned while working in Houston on Schedule E of their Joint Return. Nevertheless, the Taxpayers believe that that income is not taxable in Louisiana

because Mrs. Youngblood was not a Louisiana resident in 2016 and the income is from a source in Texas.

Mrs. Youngblood was allegedly required to establish residence in Houston as a condition of her employment with Medicus. To this end, she entered into a lease for an apartment in Houston, which she maintained until the end of her employment. The utility bills for the Houston apartment were issued to Mrs. Youngblood in her name. Her vehicle was registered in Texas. In addition, she and Mr. Berger maintained a membership in a Houston tennis club. Mrs. Youngblood occasionally visited Mr. Berger, and vice-versa. However, throughout 2016, Mrs. Youngblood spent no more than 30 days in Louisiana. Mrs. Youngblood's employment ultimately came to an end in January 2017 when she and Medicus reached an impasse over a financial dispute related to a bonus.

The Taxpayers argue that Mrs. Youngblood was not a resident of Louisiana during 2016 for purposes of state income tax. However, the Secretary points out that during 2016 Mrs. Youngblood's name remained on the title to her home in New Orleans. She and her husband also claimed a homestead exemption on their New Orleans home on their return. As of the date of hearing, Taxpayers still resided at their New Orleans home. The Secretary also notes that Mrs. Youngblood's W-2 from Medicus is addressed to her New Orleans address. However, Mr. Berger testified at the hearing that this was because when Mrs. Youngblood filled out her W-4 during when she first got the job still resided at the New Orleans home. In addition, by the time Medicus sent the W-2 in 2017, Mrs. Youngblood was again residing in New Orleans. Mr. Berger further pointed out that Medicus attributed the income on the W-2 to Texas.

When questioned by the Chairman, Mr. Berger explained that Mrs. Youngblood's original decision to take the job in Houston was primarily motivated

by assurances of substantial compensation. According to Mr. Berger, Mrs. Youngblood decided that she would take the job for four to five years. Afterwards, the couple might or might not resume living together in New Orleans. Although they had no plans to separate, Mr. Berger testified that he might have retired by that time, and they could have moved elsewhere.

Under La. R.S. 47:31, a Louisiana resident must pay tax on net income “from whatever source derived.” For this purpose, a Louisiana resident is defined as: “[e]very natural person domiciled in the state, and every other natural person who maintains a permanent place of abode within the state or who spends in the aggregate more than six months of the taxable year within the state” La. R.S. 47:31(1). Taxpayers point out that under Louisiana’s civil code, a married woman’s domicile is *not* automatically deemed to be the same as her husband’s. Taxpayers argue that this principle has been enshrined in Louisiana law since the Civil Code underwent substantial revisions in the 1980’s.

Indeed, under Louisiana law, the domicile of a natural person is the place of their habitual residence. La. Civ. Code art. 38. In case law, courts have held that domicile entails both residence and an intent to remain. *Landiak v. Richmond*, 2005-0758, p. 9-10 (La. 3/24/05); 899 So.2d 535, 543. Further, there is a legal presumption against a change of domicile, and a party seeking to show that domicile has been changed must present “positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile.” *Becker v. Dean*, 03–2493, p. 11 (La.9/18/03), 854 So.2d 864, 871; *Russell v. Goldsby*, 00–2595, p. 5 (La.9/22/00), 780 So.2d 1048, 1051. Proof of one's intent to change domicile depends on the circumstances. La. Civ. Code art. 45.

The Board finds it more likely than not that Mrs. Youngblood intended to work in Texas temporarily and then return to Louisiana. Mr. Berger testified that Mrs. Youngblood intended to work in Houston for a few years and then leave. Mrs. Youngblood's name was on the title to her New Orleans home during 2016. Retaining title to her New Orleans home allowed Mrs. Youngblood to return to Louisiana whenever she wished. Mrs. Youngblood also claimed a homestead exemption on that property. Courts have considered a homestead exemption as evidence in determining domicile. *Landiak*, 2005-0758, at 10; 899 So.2d at 543. Further, Mrs. Youngblood did in fact return to New Orleans upon termination of her employment. Mr. Berger's testimony that the couple might take up residence in another state appears speculative.

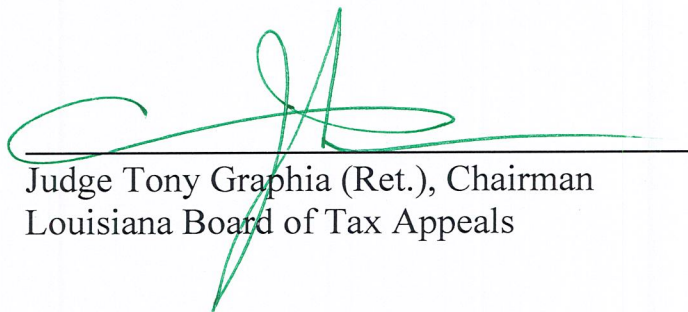
In addition, Mrs. Youngblood fell within the scope of persons subject to the individual income tax by maintaining a permanent place of abode in this state. "Permanent place of abode" is not defined in any statutory provision of Louisiana law. However, our Supreme Court has held that "[r]esidence and place of abode are synonymous." *Taylor v. State Farm Mut. Auto Ins. Co.*, 178 So.2d 238 (La. 1965); *Viviano v. Bridges*, 2011-1474, p. 5 (La. App. 3 Cir. 4/4/12); 87 So.3d 1007, 1013 (Saunders, J. concurring), *writ denied*, 2012-1362 (La. 9/28/12); 98 So.3d 847. In addition, Black's Law Dictionary defines "permanent abode" as "the place at which a person is physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." *Viviano*, 2011-1474, at 5 (La. App. 3 Cir. 4/4/12); 87 So.3d at 1013; *Black's Law Dictionary* 558-59 (9th ed. 2009).

Although living in Texas, Mrs. Youngblood maintained title to a home in New Orleans. The Board finds that the Taxpayer did not carry its burden to establish otherwise, and that it met the definition of her permanent place of abode. During

2016, Mrs. Youngblood was a domiciliary of Louisiana, and also maintained a permanent place of abode in this state. Under La. R.S. 47:31, she is a Louisiana resident for income tax purposes and her income was subject to tax even though it came from a Texas source. The Taxpayers' contention that her income is not taxable in this state is not supported by the applicable law. The Assessment was therefore proper and must be upheld. The Taxpayers' prayer for relief will accordingly be denied.

Baton Rouge, Louisiana this 16 day of August, 2019.

For the Board:



Judge Tony Graphia (Ret.), Chairman
Louisiana Board of Tax Appeals