tax notes international
Volume 58, Number 13 ■ June 28, 2010

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by H. Arnold Sherman

Reprinted from *Tax Notes Int'l*, June 28, 2010, p. 1051

PRACTITIONERS' CORNER

Canada Revenue Agency Continues Its Attack on 'Nonresidents'

by H. Arnold Sherman

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Below are interesting Canadian tax cases decided since May 2008, when my last article was published.[1] As will be apparent, the Canada Revenue Agency has been very successful in its prosecution of individuals who have claimed to be nonresidents of Canada and thus not liable for Canadian tax on their worldwide income. Perhaps this is because the CRA has only pursued cases they believed they could win.

Also included are two cases in which an individual claimed to be a Canadian resident in order to be eligible for child tax benefits (which are available only to Canadian residents), and two cases dealing with provincial residence. When provincial residence is disputed by a Canadian taxpayer, the CRA's policy is to apply essentially the same criteria as it does when determining whether an individual is factually resident in Canada.

To summarize the 10 cases discussed below:

- of the six cases in which taxpayers claimed not to be a Canadian resident, the CRA won five;
- in two cases, two individuals claimed to be residents of Canada, but the CRA considered them to be nonresident; the taxpayers lost both; and
- two Canadian resident individuals claimed to be residents of Alberta, rather than of another province, and both won their appeals.

A rather obvious point arose in two of the cases: Do not file a Canadian tax return as a Canadian resident with a Canadian address, if you intend to claim to be a nonresident of Canada! Some tax concepts are hard to grasp; this one is not.

CRA Claimed Canadian Residence

Mullen v. R

In *Mullen v. R*, 2008 TCC 294, Mr. Mullen was assessed by the CRA as a Canadian resident for 2002 and 2003. He appealed both years on the basis that he was a nonresident of Canada and was resident in Costa Rica. He lost. Since the taxpayer admitted in his notice of appeal that he became a Canadian resident on January 7, 2002, only the first week of January 2002 was in dispute. This may have affected the taxation of a capital gain realized during that week.

Mullen claimed that he lived in China from 1994 to 1998 and in Thailand from 1999 to January 2002. He and his spouse kept ownership of a residence in Canada while overseas. The residence was empty from some time in 1996 until he and his spouse returned to Canada in 1998.

[1]For the previous articles, see ''Canada Revenue Agency Continues to Chase Departing Residents,'' *Tax Notes Int'l*, May 12, 2008, p. 489, *Doc 2008-8153*, or *2008 WTD 94-7*; and ''Recent Jurisprudence Regarding Canadian Nonresidents,'' *Tax Notes Int'l*, Oct. 24, 2005, p. 347, *Doc 2005-19683*, or *2005 WTD 206-11*.

Mullen left for China to look for work in March 1999 and went to Thailand in April 1999. His spouse remained in Canada until September 1999, when she joined him in Thailand.

He purchased a condominium in Thailand in May 1999, which he rented out. He reported the rental income to the Thai authorities.

In late April 2001 they returned to Canada from Thailand. In May they went to Costa Rica, where in June 2001 they purchased a condominium, which they retained until 2006.

Mullen and his spouse obtained temporary residence status from the Costa Rican tourism department.

Their Canadian residence was sold to their children in September 1999 and repurchased in November 2003.

Indications of Mullen's Canadian residence included a Canadian international driver's license, continued access to a car in Canada (owned by the family's holding company), a Canadian bank account and credit card, continued Ontario healthcare coverage, as well as a Canadian residence available for his occupancy.

The court's judgment made much of the fact that Mullen had a house in Canada ''readily available to him,'' even though title had been transferred to his son. He was said to have an ''emotional or economic investment in it.'' Mullen was held to be factually resident and therefore ''ordinarily resident'' in Canada for the six-day period.

Comment

Canada has no tax treaty with Costa Rica, so there were no treaty considerations.

Mullen, who represented himself before the tax court, had a very poor case, and judgment was rendered accordingly.

Filipek v. R

In *Filipek v. R*, 2008 TCC 351, Mr. Filipek was an airline pilot, working for Air Canada from its Vancouver base. He claimed to be resident in the Turks and Caicos Islands and consequently claimed to be a nonresident of Canada for income tax purposes from January 1996 through January 1999. The CRA assessed him as a Canadian resident on the basis that he ordinarily resided in Canada throughout this period. He appealed and lost.

The facts were complex. One set of facts was unique: Filipek claimed that he never actually stayed in Vancouver because he camped regularly in a tent in the bush in Point Roberts. Point Roberts is an oddity. It is a peninsula just south of Vancouver that is part of the U.S. state of Washington, but is accessible only through Canada.

During the hearing the court discovered that Filipek's in-laws lived in Canada within walking distance of Point Roberts:

> I do not believe Mr. Filipek that all his time in the Vancouver/Point Roberts area was spent camping in Point Roberts. . . . I find it is more likely he spent considerable time with his in-laws.

Filipek lost his appeal because the court did not believe his testimony. The judge noted that he was vague about how he spent his time in Vancouver. Because he changed his testimony on the third day of giving evidence, contradicting earlier testimony, his general creditability was doubted by the court.

He presented a three-year calendar of his travels as evidence, agreed that it was wrong, and provided an amended one the next day. To confirm that he camped in Point Roberts, he presented a few invoices of his purchases there. One was for 48 rolls of toilet paper. The court suggested that this did not make sense for someone who ''only camped a few days, purportedly, at a time.''

The court said that Filipek's explanations ''further muddy an already murky picture of his lifestyle and cast greater doubt on his credibility'' and that ''he entangled himself in a web of exaggerations, falsehoods and deception.''

Filipek's appeal was dismissed.

Comment

Canada has no tax treaty with the Turks and Caicos Islands.

The lesson is obvious. The judge did everything but call Filipek a liar. The court did not believe his testimony, and accordingly decided that Filipek's approach ''has dealt a death blow to successfully demolishing the [Crown's] assumptions.''

Minin v. R

In *Minin v. R*, 2008 TCC 429, Mr. Minin, who represented himself, claimed that he ceased to be a Canadian resident in April 2000, when he moved to the United States. He lost. The judgment also dealt with other matters, specifically the deductibility of some expenses, on which he had mixed results.

He and his wife separated in 2000. His wife and children remained in Canada, and his mother lived with them. He took a job in California in April 2000 and moved to accommodations paid for by his employer. His employment contract ended in August 2000. Minin then took other jobs in the United States, staying in hotels and other short-term accommodations.

A major problem for Minin (described by the court as a ''very significant fact'') was that he filed his personal tax return for 2000 as a resident of Canada. He explained that he did so because he was attempting to sponsor his mother for immigration to Canada, and could only do this if he was a Canadian resident.

The court reviewed the relevant immigration legislation and regulations to confirm that Minin had a valid

concern. The court concluded that his sponsorship required that he reside in Canada, and that therefore he did not cease to be a resident of Canada in 2000.

Other problems were that he maintained his Ontario healthcare coverage (available only to Ontario residents), kept his Canadian credit cards, and moved no personal belongings to the United States.

Minin spent more than half of 2000 in the United States, with what he described as ''a North American trade visa that was valid for one year (but could be renewed).'' The court considered Article IV(2) of the Canada-U.S. income tax treaty, making its decision on the basis of where Minin had a permanent home available to him. The court ruled that he did not have a permanent home available to him in the United States because he used only short-term accommodations during the year, including a hotel, an apartment paid for by his employer that he described as ''temp. lodging,'' and a furnished condominium he rented. He purchased a piece of vacant land in California, on which he said he intended to build a home, but there was no evidence of construction.

The decision by the court that he had a permanent home available to him in Canada is interesting. The home in question was the house where his (separated) wife, children, and his mother resided. Minin testified that he did not have a key to the house and that whether he stayed there depended on the mood of his wife. The court decided that the property was available to him because:

> The Appellant was supporting the home and his mother, who was a former Russian general, was staying at this home. It does not seem plausible that his mother, as a former Russian general, would take orders from the Appellant's spouse (her daughter-in-law) if the Appellant's spouse should attempt to deny him entry to the home. The Appellant clearly stated that his mother would allow him access. Therefore it is more likely than not that his mother would have allowed the Appellant access to the property whenever he wanted even if his spouse would have objected and therefore I find that this home was available to him.

Consequently, the court decided that under the treaty's tiebreaker rule, Minin remained a resident of Canada in 2000, because he had a permanent home in Canada but did not have one in the United States.

Comment

Minin could not demonstrate to the satisfaction of the court that he had a permanent home available to him in the United States, so his ''permanent home'' in Canada (protected by a former Russian general) resulted in his being deemed a tax resident of Canada in accordance with Article IV(2)(a) of the Canada-U.S. tax treaty.

One wonders whether the decision would have been different if Minin's mother had been a Russian housewife.

Had the court decided that Minin did not have a permanent home in either country, the next test (center of vital interests) might also have failed, because although he was working in the United States, most of his other ties were to Canada.

The next test is habitual abode. This was discussed in a later case. (See *Lingle* below.) It is possible that the determination of his habitual abode may have depended on the number of days spent in each country by Minin during the period. In 2000 the evidence was that he spent more than half of the year in the United States, so he would likely have been held to have his habitual abode in the United States. The final test (citizenship) would have resulted in Minin being deemed a Canadian resident.

Mahmood v. R

In *Mahmood v. R*, 2009 TCC 89, the CRA claimed that Mr. Mahmood was a Canadian resident for the 1999-2001 tax years. He appealed to the Tax Court of Canada and won, claiming to be a resident of Guyana and not a resident of Canada. (For the text of the judgment, see *Doc 2009-3833* or *2009 WTD 33-15*.)

The court noted that Mahmood was ''not completely truthful when he testified'' and pointed out the large discrepancy between the small amount of income he reported in Guyana (for example, $5,580 for 1999) and the many millions of dollars of payments he made to suppliers through the Canadian banking system. The court ''suggested to the Appellant that perhaps he was understating the amount of net income that he declared to the Guyanese tax authorities. . . . [T]he Appellant finally admitted, rather hesitantly, that perhaps he was understating the income that he reported to the Guyanese tax authorities.''

The CRA alleged that Mahmood was engaged in illicit money laundering activities in Canada. However, he had not been charged for these activities. The allegation was not accepted by the court, which indicated, however, that nothing in the decision turned on whether his business activities were legal or illegal. The court surmised that Mahmood's ''alleged criminal activities may have influenced the CRA in its pursuit of these proceedings.'' Mahmood had some ties to Canada, including a Canadian condominium that he owned, occupied by his mother, his sisters, and his oldest son (from 2001 to 2005), and where he stayed while visiting Canada. Other ties included his use of the Canadian financial system, four Canadian bank accounts and five Canadian credit cards, a car parked at the condo available for his use, and his attendance at a local mosque. He had applied for, and been issued, a Canadian social insurance number in 1976.

However, the court decided that these points were offset by the fact that he entered Canada under a

multiple-entry visa (renewal of which was later refused) and that he never applied for landed immigrant status. His permanent home was in Guyana, where his wife and children lived; this was confirmed by documentary evidence. Independent evidence indicated that he was carrying on business in Guyana. His Canadian activities were ''similar to the activities of other nonresidents carrying on business in Canada.'' The court referred to the tiebreaker rule in the Canada-Guyana tax treaty (article 4(2)(a)) and stated that if ''Canada is the Appellant's home in the same way Guyana is,'' that rule makes Mahmood a resident of Guyana because his ''family and economic interests are more closely tied to Guyana than to Canada.'' The court suggested to counsel for the CRA that had the CRA assessed on the basis that Mahmood was carrying on business in Canada, rather than asserting that he was a Canadian resident, there would have been a stronger foundation for the assessments. Mahmood's appeal was allowed.

Comment

It seems that Mahmood was carrying on business in Canada, so it is not clear why the CRA did not assess him as a nonresident carrying on business in Canada.

On the facts, despite some difficulties the court had with Mahmood's truthfulness, he was clearly a nonresident of Canada under the treaty.

The fact that Mahmood may have been engaged in illegal activities (he carried large amounts of cash across the border — $6.25 million during the years under appeal) and that he was probably untruthful when giving evidence did not prevent the court from finding him to be a nonresident of Canada. This seems to be the correct decision.

Lingle v. R

In *Lingle v. R*, 2009 TCC 435, Mr. Lingle, a U.S. citizen, claimed to be a nonresident of Canada in 2004 and during most of 2005. The CRA assessed him as a resident of Canada because his habitual abode was in Canada, not in the United States. His appeal was dismissed with costs.

The parties agreed that he was ''liable to tax'' in both countries within the meaning of Article IV(1) of the Canada-U.S. tax treaty.

The agreed statement of facts included that Lingle had a permanent home in both countries, that it was not possible to determine in which country he had his ''centre of vital interests,'' and that he had a habitual abode in Canada. However, Lingle appealed on the basis that he also had a habitual abode in the United States. Had he been successful in his claim, he would have won his case, as the next test was citizenship. As noted above, he was a U.S. citizen. His claim to have a habitual abode in both countries was therefore the only matter to be decided in the appeal.

Also agreed were the facts that Lingle spent 321 days in Canada in 2004 and 233 days in Canada in the period from January 1 to September 14, 2005.

The treaty has no definition of habitual abode, so the court made extensive reference to case law, the meaning of the words, and the intention of the parties drafting the treaty. Reference was also made to the OECD model tax convention, to the pertinent commentaries relevant to the interpretation, to a published article on the subject of dual residence, to the French-language version of the convention, to the dictionary definition of habitual, as well as to the Vienna Convention on the Law of Treaties.

The court concluded that Lingle did not have a habitual abode in the United States, so he was deemed a Canadian resident under Article IV(2)(b) of the treaty.

Comment

This case was discussed in an in-depth article by Jack Bernstein and Ron Choudhury.[2] I agree with their analysis, which concluded that the case could have been decided (and the same conclusion reached) solely based on the number of days Lingle spent in Canada.

Bensouilah v. R

In *Bensouilah v. R*, 2009 TCC 440, Mr. Bensouilah claimed to be a nonresident of Canada for the years 2001, 2002, and 2003. He lost.

The CRA reassessments for the three years, which included penalties, were regarding unreported income. A few weeks before the court hearing, the agent for Bensouilah advised counsel for the CRA by telephone that he intended to claim that his client was not resident in Canada during the three-year period, although the subject was not raised in the original notice of appeal, nor was an amended notice of appeal filed. However, the court allowed Bensouilah's agent to raise the argument as this was an ''informal procedure'' appeal.

Bensouilah immigrated to Canada in 1995 with his wife and three children. He had filed a Canadian income tax return for every year since 1995 as a Canadian resident. The tax returns for the three years under appeal were filed electronically by H&R Block, stating that he was a resident of Canada and indicating Quebec as his province of residence with his Montreal home address. In each year he reported no income, although he was working in Saudi Arabia and had realized a capital gain in 2001 and other income in 2003.

Bensouilah became a Canadian citizen in 2000. He also held a Saudi Arabian passport. Later that year he returned to Saudi Arabia to work, but his wife and

[2] *See* Jack Bernstein and Ron Choudhury, ''*Lingle v. The Queen*: How Subjective Is Canada's Habitual Abode Test?'' *Tax Notes Int'l*, Nov. 30, 2009, p. 671, *Doc 2009-23478*, or *2009 WTD 227-12*.

three children remained at the family home in Canada. He returned to Canada to spend his 30 days of vacation a year with his family.

The court, in a lengthy judgment, took into account the following matters in reaching its conclusion that Bensouilah was a Canadian resident during the three-year period:

- his family remained in Canada at all times;
- he owned a residence in Canada, which he sold in 2004 to purchase another;
- he had a pool put in his residence and obtained a bank loan for that purpose;
- he had a joint Canadian bank account with his wife, in which his foreign employment income was deposited;
- he borrowed from a Canadian bank to make a loan to his daughter so she could buy a car, and he made payments on the loan;
- he had a Canadian mailing address and always stated that he was a resident of Canada in his tax returns;
- he used his Canadian passport;
- he kept his Quebec Health Card, even though he claimed that he did not use it; and
- he only went to Saudi Arabia to work.

In the court's opinion, he ''never severed his ties with Canada, nor did he ever intend to do so.'' The court held that he was ordinarily resident in Canada during the years at issue and dismissed the appeal. The penalties were upheld.

Comment

Canada does not have a tax treaty with Saudi Arabia.

The residence claim was a lost cause. Bensouilah claimed that ''he did not consider it normal to report the income he earned in Saudi Arabia.'' The court stated, ''He chose not to report his income. When the omission was discovered, his agent apparently raised the residence question as a last resort.'' His case was clearly hopeless. It seems that he or his agent realized that having failed to report any income in the period without any reasonable excuse, the residence claim was the only possible argument to raise.

Individual Claimed Canadian Residence

In the two cases discussed below, the appellants had no taxable income, but would have been eligible to receive Canada child tax benefits (CCTBs) if held to be resident in Canada. The CRA successfully resisted the claims of Canadian residence.

Nedelcu v. R

In *Nedelcu v. R*, 2008 TCC 417, the taxpayer claimed to be a resident of Canada, but the CRA denied that she was a resident. She lost her appeal.

Ms. Nedelcu became a resident of Canada in 1979 and remained until 1993, when she, her husband, and three Canadian-born children moved to Romania to a residence owned by her husband's family.

Nedelcu appealed because she was denied CCTBs regarding the 2003-2005 base taxation years, on the grounds that she was not a Canadian resident. She had been receiving CCTBs since 1993.

The Minister of National Revenue (MNR) advised Nedelcu by letter in August 2000 and in a second letter dated April 8, 2002, that she and her family would be considered ''factual residents of Canada.'' On that basis, she filed her Canadian tax returns for 2002 through 2005 as a resident of Canada. She claimed that the factual situation had not changed, yet the MNR reversed himself by notice of redetermination dated September 20, 2006. That was essentially the basis of her appeal.

The court had ''no doubt that the Canada Revenue Agency was entitled to reverse the earlier decision and there is no question of estoppel.'' The court found that Nedelcu ''packed up all that she owned . . . and moved with her husband and children to Romania more than 10 years before the period in question.'' She visited Canada for perhaps 50 days in the 1,000-day period covered by the appeal. She had no property or other residence in Canada, and her only means of support were the CCTBs.

The court held ''without hesitation'' that Nedelcu was not a resident of Canada during the years under appeal.

Nedelcu appeared without counsel.

Comment

This was a case in which a nonresident of Canada claimed to be a Canadian resident, with no basis for her claim, except for two letters from the MNR. In my view, her chances of success were close to zero, unless she could persuade the court that the MNR was estopped from reversing his 2000 and 2002 determinations. The court dismissed the estoppel argument in one sentence. Estoppel claims virtually never succeed in the Tax Court of Canada; the CRA is never bound by what it says and can always change its position.

It seems that the MNR's letters were not supported by the facts. The court said that ''the assumptions of fact relied on by the Minister are of little assistance.''

Song v. R

In *Song v. R*, 2009 FCA 278 (leave to appeal to Supreme Court of Canada denied March 25, 2010), Ms. Song claimed to be a resident of Canada, and consequently entitled to CCTBs, from July 2006 to June 2007. She lost.

Mr. and Mrs. Song and their three children obtained Canadian permanent resident status in March 2006 and arrived in Vancouver the following month. Her

claim was that she was ordinarily resident in Canada from April 3, 2006, her arrival date.

Ms. Song and the children stayed in Canada for 21 days and then returned to Japan, where she continued her full-time university studies and the children attended school and day care. Mr. Song remained in Canada to study at the University of British Columbia.

Ms. Song and the children returned to Canada in November 2006, stayed for 59 days and then returned to Japan, where Ms. Song resumed her studies. The children were enrolled at a school in Vancouver for one month during this period. While in Japan, she lived with her children in a Japanese government-sponsored residence. Her husband lived with them when he returned to Japan.

Mr. Song traveled to Japan in June 2007, stayed until September 2007, then returned to his studies in Canada. He went back to Japan and spent the December 2007 holiday break with his family there.

From 2006 Mr. Song rented a townhouse in Vancouver. His family stayed there when in Canada. At other times, he rented out the second bedroom to a series of roommates, who were asked to leave when his family visited. His wife's and children's belongings were almost all at their residence in Japan.

In September 2008 Ms. Song and the children moved to Canada, as she had completed her PhD in Japan.

Ms. Song opened a Canadian bank account in April 2006, but did not use it until September 2008. She banked in Japan, and had a Japanese credit card and a Japanese mailing address. She held no driver's license, was covered by Japanese public medical insurance, and had no Canadian medical insurance coverage until December 2008.

The tax court noted that to be eligible for CCTBs, the person must be resident in Canada at the beginning of each month for which the benefit is payable.

The tax court was not satisfied that Ms. Song ''regularly or customarily lived in Canada'' at any point during the period under appeal. Her two visits to Canada in 2006 did not establish a home in Canada; she expected in each case to return to Japan to continue her studies. Her husband's ties to Canada were outweighed by the permanence of her residential, economic, and social ties to Japan, including her year-round residence. Ms. Song spent less than 10 percent of her time in Canada between April 2006 and September 2008.

The fact that Ms. Song planned to live permanently in Canada, but not until 2008, was not considered a strong tie to Canada.

The tax court held that she was not resident in Canada during the period under appeal, and that she was consequently ineligible for CCTBs.

Ms. Song appealed to the Federal Court of Appeal, which upheld the tax court's decision with the very briefest of reasons, ruling that the tax court was entitled to make the factual findings it did based on the evidence before it.

Ms. Song then sought leave to appeal to the Supreme Court of Canada, which was denied because her appeal raised no issues of national importance that would be appropriate for consideration by the Supreme Court.

Comment

The CRA's policy, as set out in Interpretation Bulletin IT-221R3, is that if a married individual leaves Canada, but her spouse remains in Canada, that spouse will usually be a significant residential tie with Canada.

When the shoe is on the other foot, and one spouse claims residence on the basis of her partner's Canadian residence, the CRA takes a different approach. This seems unreasonable. However, there is no indication in the judgment that this specific point was raised by her husband, who acted as agent for Ms. Song in the appeal. Whether it would have made any difference seems unlikely, given how little time Ms. Song spent in Canada and the fact that her children were with her in Japan. It is also possible that, although it may not be politically correct to admit it, the CRA and the courts reach different conclusions about a husband being away from his family in Canada (where the husband will still be presumed Canadian resident) and a wife being away from her husband.

Provincial Residence

The income taxation of Canadian resident individuals has two elements: a federal tax and a provincial tax. Each province and territory sets its own tax rates, allowances, and credits. However, all the provinces and territories, except Quebec, have an agreement with the federal government by which the federal government collects the provincial tax on behalf of the province on the federal tax return.

There are significant differences in the tax rates between provinces and territories. For some years, the Alberta provincial tax rate has been significantly lower than that in most other provinces. This leads to cases such as those described below. These disputes are taken to the superior court of the province to which the taxpayer objects to paying tax, rather than to the Tax Court of Canada.

In Interpretation Bulletin IT-221R3 the CRA stated, ''Many of the comments in this Bulletin apply to determination of residence status for provincial, as well as federal, tax purposes.'' The bulletin goes on to explain that provincial tax depends on the province in which an individual is resident on December 31 of the particular taxation year. However, if an individual is considered resident in more than one province on December 31 of a taxation year, and so is a ''dual resident,''

he will be considered resident only in the province where he has the most significant residential ties.

The CRA reviews the individual taxpayer's residence on behalf of the provinces and territories.

Smolensky v. R

In *Smolensky v. R*, 2008 BCSC 1509, Mr. Smolensky was a resident of both Alberta and British Columbia during the 2002 and 2003 tax years. He was assessed tax as a resident of British Columbia and appealed to the B.C. Supreme Court, claiming to be taxable in Alberta. He won.

During the two years in dispute, Smolensky had two residences. He lived in Alberta, while his wife and family lived in B.C. In 2002 he spent about 200 days in B.C. and about 150 days in Alberta.

The B.C. Supreme Court held that Smolensky's principal place of residence was in Calgary, Alberta. The deciding factor was that he could carry out most of his business activities from his office in Calgary. That was his primary reason for residing in that city. Other reasons for the decision were that he had Alberta healthcare and an Alberta driver's license, and his family roots were in Calgary. His vehicles were registered and insured in Alberta, and his pilot's license showed an Alberta residential address.

Smolensky's appeal was therefore allowed. In a discussion about the awarding of costs, the Court said that ''this result was close.''

Comment

This decision could have gone either way but seems reasonable in light of the facts described by the court.

Smale v. R

In *Smale v. R*, 2009 SKQB 114, the CRA reassessed Mr. Smale as a resident of the province of Saskatchewan for 2005, rather than as a resident of Alberta. Smale appealed to the Saskatchewan Court of Queen's Bench and was successful in claiming Alberta residence.

Smale, a lifelong resident of Saskatchewan, signed an employment contract for an indefinite term with an Alberta company in November 2005. He immediately moved to Alberta, while his wife and family remained in Saskatchewan. His family never moved to Alberta; his marriage later broke down. He filed his personal tax return for 2005 as a resident of Alberta, since he was resident in Alberta on December 31, 2005.

In determining provincial residence, the court referred to the same factors as are considered when Canadian residence is at issue.

Facts in Smale's favor were that he found permanent accommodation in Alberta on December 1, 2005; he obtained an Alberta driver's license and car registration within the three-month period required by the province after becoming resident in Alberta; and he changed the address on his credit cards, and bank account in November 2005.

The court held, on the facts, that his move was ''unconditional and permanent,'' not a temporary move. He was held to have moved in ''mind and fact'' in November 2005, so that he was resident in Alberta thereafter. The fact the he visited his family and friends in Saskatchewan periodically was held to be consistent with his Alberta residence. The court also held that he was not a dual resident; Smale had made a ''bona fide permanent move from one province to another.'' The appeal was accordingly allowed.

Comment

In this case, the decision was based on Smale's province of residence on December 31 in the year of assessment because the court held that he was not a dual resident.

By doing everything possible to demonstrate that he was an Alberta resident on December 31, Smale achieved his intended result. ◆