

**BOARD OF TAX APPEALS
STATE OF LOUISIANA**

**MARK R. BUESE AND
SUSAN BUESE**

Petitioners

VERSUS

DOCKET NO. 7511

**DEPARTMENT OF REVENUE, STATE
OF LOUISIANA**

Respondent

ORDER WITH WRITTEN REASONS

This matter was heard on the merits by the Board on November 19, 2014 with Judge Tony Graphia (ret.), Chairman; Cade R. Cole and Kernan A. Hand present and no member absent. Present before the Board were: Cloyd F. Van Hook, attorney for Mark R. Buese and Susan Buese (Taxpayers), and Brian DeJean, attorney for the Secretary, Department of Revenue (Secretary). After the presentation of evidence and argument of counsel, the case was taken under advisement, and the Board subsequently adopted this Order with no member dissenting.

The Taxpayers appeal from an assessment of income tax in the amount of \$88,644.00 for 2008, plus interest and penalties.

The question is the Taxpayers' taxable status during the year 2008.

During 2008 Taxpayers owned a house located at 2921 Tangley Road, Houston, Texas and a condominium located at 474 Walnut Street in New Orleans, Louisiana. As of January 1, 2008 the taxpayers resided in the house in Houston, and Mark Buese worked in Houston. Mark Buese was employed by Kirby Corporation and had been employed by that company since 1978. His job was mergers and acquisitions. The testimony and evidence produced at trial show that the nature of Mark Buese's work required that he travel extensively to locations outside of Texas and outside of the United States.

In early January 2008, Susan Buese left Houston and moved to the condominium in New Orleans. Between January 2008 and May 2008 it appears that Susan Buese frequently went to Houston and spent some time there. During same time, Mark Buese made a number of trips to New Orleans to be with his wife.

On May 20, 2008, the Taxpayers closed on the sale of their house in Houston. The record revealed that Mr. Buese had been spending extended periods of time in Louisiana earlier in that year, and his own testimony established that on May 10, 2008 Mark Buese moved all of the furnishings and personal effects that had been in Houston to Louisiana (just in advance of the official closing).

The Board rules that Susan Buese was resident and maintained a permanent place of abode in Louisiana from early January 2008 through the end of 2008, and Mark Buese was resident and maintained a permanent place of abode of Louisiana from May 10, 2008 through the end of 2008.

Mark Buese terminated his employment with Kirby Corporation on June 23, 2008 and entered into a Consulting Agreement with the same company for the term July 2008 until June 30, 2009.

La. R.S. 47:31 states in relevant part:

“...There shall be levied, collected and paid for each taxable year a tax on the net income of residents...as hereinafter provided.

(1) Resident individuals. Every person within the state...shall pay a tax on the net income from whatever source derived, excepted has hereinafter exempted.

Every 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, shall be deemed to be a resident of this state for the purpose of determining liability of for income taxes under this Chapter...”

Mark Buese was the only one of the Taxpayers who earned any income, during 2008. Due to the nature of Mark Buese’s employment, he spent a substantial amount of time outside of the state of Texas while he was domiciled and primarily resident there. We find that he was a domiciliary and resident of Texas until May 10, 2008 when he left that state and moved all of his belongings to Louisiana. Although he completed the sale of his Houston house on May 20, 2008, he evidenced his intent to abandon that place of abode when he moved out of it on May 10, 2008 (having already established his Louisiana residence).

After May 10, 2008 Mark Buese was as a resident of Louisiana, it was his only permanent place of abode after that date. During some of this time Mark Buese was physically outside of Louisiana working for Kirby Corporation as either an employee or as a contractor, but the fact that this might reduce the period from May 10 to December 31, 2008 to less than six months does not affect his status as a part-year resident for tax

purposes. The statute is written in the disjunctive, and Mr. Buese's permanent place of abode was Louisiana and he was resident here for tax purposes.¹

In this case, after May 10, 2008, Mark Buese had moved to and was a resident of Louisiana. His only dwelling was in Louisiana, he claimed a homestead exemption here, his wife was already residing here full-time, and all of his personal property was in Louisiana. When he was out of Louisiana it was on business. When he left Louisiana it was with the intention of returning to his wife, his home and possessions in Louisiana. Taxpayers remained in Louisiana as residents until December 2011 when they moved to Florida.

The third page of Exhibit 2 of petitioner's post-trial memo correctly quotes the officially promulgated instructions of the Secretary. These instructions, directed to the issue of allocation, provide that "individuals who were residents for part of the year and nonresidents the remainder of the year must report income from all sources for that portion of the year that they were residents, and all income from Louisiana sources for the portion of the year during which they were nonresidents." 2008 Form IT-540B.

The Board finds that all of the taxpayer's income after May 10, 2008 shall be taxed as Louisiana income, together with all Louisiana source income for the earlier part of the year.

IT IS ORDERED that the parties submit a proposed Judgment in favor of the Taxpayer and against the Secretary granting in part the Petition for Redetermination of An Assessment and reducing the assessment in conformance with these Written Reasons, and that this Judgment shall contain proper dollar amounts resulting from the changes provided for in these Written Reasons.

IT IS FURTHER ORDERED that if the Taxpayers and the Secretary cannot agree on the form of a proposed Judgment within 20 days, then each party may submit a proposed Judgment together with a Memorandum in support thereof. The opposing party shall be given 10 days to file any Memorandum in response.

¹ Although that analysis is not necessary in this case, the Board takes notice of the concurrence in *Vivano v. Bridges* where Judge Saunders states that you should amalgamate the time of the two spouses. 87 So.3d 1007, 1014 (La. App. 3 Cir. 2012). These taxpayers would far surpass the 50% threshold under that test.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and 1434.

Baton Rouge, Louisiana, this 22 day of January, 2015.

FOR THE BOARD



JUDGE TONY GRAPHIA (Ret.)
CHARIMAN