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STATE OF NORTH CAROLINA 2012 DEC 31 PM 2:37 IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
COUNTY OF WAKE Office of Administrative Hearings 11 REV 14832

**STEVE W. FOWLER, and
ELIZABETH P. FOWLER,**

Petitioners,

v.

**NORTH CAROLINA DEPARTMENT OF
REVENUE,**

Respondent.

DECISION

This matter coming before Beecher R. Gray, Administrative Law Judge, who, after considering the entire record in this case, hereby enters the following decision. This matter was tried on November 13-16 and 27-28, 2012 in Raleigh, North Carolina. Petitioners filed a proposed decision on December 07, 2012. Respondent filed comments and exceptions to Petitioners' draft decision on December 21, 2012.

Petitioners were present throughout the hearing and were represented by John R. Wester and Thomas Holderness of Robinson, Bradshaw, & Hinson, P.A. and W. Curtis Elliott, Jr. of Culp, Elliott, & Carpenter PLLC. Respondent was represented by Perry Pelaez and Andrew Furuseth of the North Carolina Attorney General's office.

At issue in this contested case is Respondent's assessment of income tax against Petitioners for income earned by Petitioners in tax years 2006 and 2007. Also at issue is Respondent's assessment of gift tax against Petitioners for gifts made in 2006. All of Respondent's assessments are based on Respondent's conclusion that Petitioners were residents of North Carolina for all of 2006 and 2007. Petitioners claimed not to be residents of North Carolina after January 19, 2006, and therefore that Respondent's assessments were incorrect.

Thus, the sole issue presented in this case is whether Petitioners were residents, *i.e.*, domiciled, in North Carolina after January 19, 2006 and in 2007.

The applicable statute is N.C. Gen. Stat. § 105-134.1(12), and the applicable portion of the Administrative Code is 17 NCAC 06B.3901.

FINDINGS OF FACT

Petitioners introduced evidence through the testimony of Lynwood Mallard, William Graef, Victoria Harrison, Kim Dennis, Graham Clements, Robert Pearce, Cooper Pulliam, Judy Shelton, and Robert Fowler. Both Petitioners testified. Petitioners also introduced testimony from three Department of Revenue officials (Gail Beamon, Rhonda Smith, and Carolina Krause-Iafrate). Several of these witnesses spoke to or sponsored documents that were admitted into evidence and will be referred to below.

Based on a review of all the evidence, and after evaluating the credibility of the witnesses, I make the following findings of fact.

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing and each stipulated on the record that notice was proper.
2. Petitioners filed a timely appeal to the Office of Administrative Hearings ("OAH") from the Notices of Final Determination issued October 27, 2011 by Respondent.
3. In the 1990s, Petitioners began considering Florida as a potential location for their eventual retirement.
4. Over several years, Petitioners visited several cities in Florida, including Naples, before deciding to buy a house in Naples. In 2002, Petitioners bought a three-bedroom, 3,400 square-foot house in Naples (the "Tiburon House") for approximately \$1.6 million. In 2003, Petitioners furnished the Tiburon House with furniture from

- their North Carolina home that was being sold. Furniture moved from North Carolina to the Tiburon House included furniture considered by Petitioners to be family heirlooms and favorite furniture not to be disposed of. *See* Pet. Ex. 55.
5. In 2003, Petitioners discarded their architecturally-drawn plans for an 11,000 square-foot house on their Old Stage Road property in Raleigh, North Carolina, (*see* Pet. Ex. 26), instead designing and building a one-bedroom, 2,080 square-foot house there. Petitioners built the smaller house primarily because of their decision that Florida would be their retirement home and they had no need for a large house in Raleigh.
 6. As explained by Petitioner Elizabeth Fowler and Interior Designer Judy Shelton at trial, Petitioners decorated their houses in Florida and South Carolina in a contemporary style which Ms. Fowler preferred. Petitioners decorated their house at Old Stage Road in Raleigh in a traditional manner to make it easier to sell.
 7. For many years starting in 1984, both Petitioners devoted extraordinary time and effort into building Fowler Contracting into a highly successful enterprise.
 8. In 2004, Steve Fowler was diagnosed with kidney cancer. In September 2004, he underwent surgery that removed his kidney. As a result of that illness, Petitioners resolved to accelerate two features of their lives: their sale of Commercial Grading, Inc., (a/k/a Fowler Contracting), and their retirement to Florida.
 9. In January 2005, with the assistance of Florida counsel, Petitioners created Fowler Aviation, Inc., a Florida company, to sell a new type of private jet identified as a Sino-Swearingen SJ30-2. *See* Pet. Exs. 27, 29. This enterprise was to serve as Steve Fowler's post-Fowler Contracting pursuit, consistent with his love of airplanes and his not having developed a significant hobby to occupy his retirement days.

Petitioners invested \$1.775 million to purchase sales territories throughout the southeastern United States, created a website, and sent individuals for training regarding these jets. *See* Pet. Exs. 29 & 54. As explained by Petitioners, Robert Fowler, and Robert Pearce, Steve Fowler was to cover the Florida territory with other states in Petitioners' territories assigned to others who would work for Fowler Aviation. The Sino-Swearingen SJ30-2 aircraft failed to achieve FAA Type Certification prior to 2006, which it was required to obtain prior to being commercially produced and sold. After that development, Fowler Aviation ceased operations in January, 2006.

10. In early 2005, Petitioners engaged The Orr Group, an investment banking firm, to solicit buyers for Fowler Contracting.
11. Also in 2005, anticipating selling Fowler Contracting and retiring in Florida, Petitioners searched for a larger house in Naples, one that had an additional bedroom to accommodate Petitioners' brothers when they visited and a fenced-in yard for their dog.
12. On October 25, 2005, Steve Fowler signed a Letter of Intent with a private equity firm, Long Point Capital, to sell controlling interest in Fowler Contracting. *See* Pet. Ex. 30. Lynwood Mallard, an experienced transactional lawyer, served as counsel to Petitioners throughout the process of their selling Fowler Contracting.
13. Within a week of securing the Letter of Intent on October 25, 2005, Petitioners contracted to buy a four-bedroom, 9,300 square foot house in Naples, Florida (the "Quail West House"). *See* Pet. Ex. 37. At that time, Petitioners paid a \$576,750 deposit toward the Quail West House, which then was being built. *See* Pet. Ex. 49.

Petitioners closed on their purchase of the Quail West House in August 2006, having listed the house for sale in March, 2006 without ever having moved into the house. *See* Pet. Ex. 39.

14. As explained by Petitioners and supported by the testimony of Graham Clements (Petitioners' long-time accountant), Petitioners told Mr. Clements in November 2005 that they were moving to Florida, asking his advice about what they needed to do to accomplish that change. Mr. Clements advised Petitioners that they needed to own a home there, that soon after January 1, 2006 was the ideal time to effect this change, that they should hire an attorney in Florida for advice, file a Declaration of Domicile in Florida, spend at least 183 days in Florida, and that they should take some "official action" to indicate their intention to become Florida citizens. Mr. Clements' recollection of his advice includes more specifics than Petitioners recall, but the testimony of greatest import for this case is consistent among these three witnesses: Petitioners expressed their clear intention to move to Florida and requested Mr. Clements' advice.

15. Another perspective on Petitioners' retirement planning came from William Graef (the owner of Aviation Management Group, a company from whom the Fowlers had chartered planes for several years). In November or December of 2005, Steve Fowler told Mr. Graef that Petitioners were moving to Florida and asked for Mr. Graef's assistance in buying, maintaining, storing, and managing an airplane, as well as complying with FAA regulations. Mr. Graef's company, based at the RDU Airport in Raleigh, served numerous customers who lived outside North Carolina and could perform all of the aircraft care and management tasks needed by Petitioners. At trial,

Mr. Graef detailed the various support elements integral to owning an airplane and what his company provided. Although direct efforts were made in Naples, Neither Petitioners nor Mr. Graef could find any company or individual in Naples that could provide suitable hangar space and the sophisticated range of services that Petitioners' aircraft required. In January 2006, Petitioners contracted to buy an airplane and engaged Mr. Graef to provide pilots and the related aircraft care and management services referenced above.

16. Prior to January 2006, Petitioners advised Lynwood Mallard that they were going to live in Florida and that they anticipated a significantly slower lifestyle after selling their business. As shown in the Letter of Intent and explained by Mr. Mallard during trial, in November or December of 2005, he and Steve Fowler learned that Long Point Capital required--as a condition of purchasing a controlling interest in the business--that Petitioners continue working for Fowler Contracting for a significant period after the purchase closed.
17. This continued work requirement was contrary to Petitioners' strong preference and became a point of negotiations with Long Point Capital. Petitioners acceded to a requirement to stay on for three years (Long Point had asked for five years) because of their desire to effect a fundamental change in their living patterns and because the final negotiated terms of their continued service provided flexibility.
18. Steve Fowler repeatedly asked his attorney, Lynwood Mallard, whether his new employment contract would allow him to live in Florida and work remotely, either from Florida or while traveling. Mr. Mallard advised Steve Fowler that he could live

anywhere he pleased as long as he performed his responsibilities according to the contract. Petitioners often did work remotely during 2006 and 2007.

19. Petitioners returned to North Carolina throughout 2006 and 2007 as necessary to fulfill their contractual employment obligations to Fowler Contracting. The nature of the business that Fowler Construction conducted required Petitioners to perform some of their duties "face-to-face," including "riding the jobs" in North Carolina.

20. In 2006 and 2007, Petitioners searched for a new President of Fowler Contracting to enable Steve Fowler to cease working in North Carolina. Although an individual, believed to be a suitable replacement, was identified, interviewed, and offered the position, that individual accepted a competing offer on short notice.

21. As due diligence was nearing its completion, Mr. Mallard suggested to Steve Fowler that he sign the Securities Purchase Agreement (the contract to sell Fowler Contracting) on January 20, 2006. Petitioners answered that they needed to sign the Securities Purchase Agreement on January 19, 2006 because they needed to go to Florida the following day to complete one or more official acts there to effect their change of domicile.

22. Steve Fowler signed the Securities Purchase Agreement on January 19, 2006. *See* Pet. Ex. 31 & Resp. Ex. 60.

23. For their entire lives through January 19, 2006, Petitioners were residents of North Carolina.

24. On January 20, 2006, Petitioners left for Naples Florida on a chartered plane at 5:03 a.m. *See* Pet. Ex. 34. Upon arrival there, the Fowlers ate breakfast, went to the local government center to inquire about getting driver's licenses and registering to vote,

and went to a local driver's license office. At the driver's license office, Petitioners presented their North Carolina licenses and asked for Florida driver's licenses. Petitioners were unable to obtain Florida driver's licenses that day because they did not have further identification papers requested by Florida authorities. For the same reason, Petitioners were unable to register to vote. Petitioners were able, however, to register a car that they had moved to Florida previously. *See* Pet. Ex. 5. Petitioners moved a second car to Florida later in 2006. Also on January 20, 2006, Petitioners went to a local post office to obtain a post office box. They did not succeed in doing so on January 20 because none was available in the size desired. On January 20, Petitioners attempted to register their dog, but could not do so because they did not have the dog's vaccination records present.

25. The trial evidence shows that Petitioners intended to become domiciled in Florida on January 20, 2006. Taken as a whole, the evidence reviewed above displays numerous indications of such an intention prior to January 20 (*e.g.*, two purchases of residential property in Naples and the starting of a Florida business), and then, through the Petitioners' taking, or attempting to take on January 20, a series of official acts consummating that intention.

26. Petitioners' actions on the consecutive days, January 19 (signing the definitive agreement to sell control of Fowler Contracting) and January 20 (the Florida government activity detailed above), expressed the Petitioners' intention to change their domicile to Florida.

27. Respondent neither contested nor introduced any evidence indicating that Petitioners failed to take all of the foregoing actions on January 19 and 20.

28. As admitted at trial by Respondent's official Rhonda Smith, on January 20, 2006 Petitioners' Tiburon House in Naples was a true, fixed permanent home and their principal establishment. Other evidence, including Petitioners' moving heirlooms and family furnishings to their Tiburon House, the size of that residence, and the investment Petitioners made in it, confirms this testimony. Rhonda Smith's contradictory testimony after the Thanksgiving break during trial neither was credible nor an accurate characterization of the Tiburon House.
29. The credible trial evidence also establishes that after January 20, 2006, Petitioners intended, when they were absent, to return to their home in Naples, Florida.
30. On February 3, 2006, Petitioner Steve Fowler closed the transaction to sell control of Fowler Contracting to Long Point Capital.
31. On March 10, 2006, Petitioners completed the government registration actions they had begun on January 20. Specifically, they obtained Florida driver's licenses and registered to vote in Florida. Shortly thereafter, Petitioners turned in their North Carolina Driver Licenses. *See* Pet. Exs. 18, 19, and 22. That same day, Petitioners signed and filed a Declaration of Domicile in Florida. *See* Pet. Exs. 16 & 17. Since January 20, 2006, Petitioners have voted in every election in person in Florida and have not voted in North Carolina. *See* Pet. Exs. 20 & 21.
32. In August 2006, Petitioners notified the Wake County Board of Elections that they were Florida residents and should be removed from the voting rolls of Wake County. *See* Pet. Ex. 38.
33. On March 11, 2006, Petitioners obtained a post office box in Naples, Florida. *See* Pet. Ex. 41.

34. At trial, Respondent's official, Gail Beamon, acknowledged that the official actions the Petitioners took on March 10 and 11 were actions they had begun on January 20, but could not complete because of inadequate documents in their possession.
35. Based on the advice of their North Carolina real estate agent, Kim Dennis, Petitioners did not list their Old Stage Road house for sale in 2006. As Petitioners and Ms. Dennis explained at trial, Ms. Dennis advised Petitioners against selling their North Carolina house at that time because Petitioners required a place to stay when returning to North Carolina for work. Further, Ms. Dennis also advised against a sale at that time because the market for their kind of house and grounds had started to decline.
36. As explained by Petitioners and shown by flight records, throughout the rest of 2006 and throughout 2007, Petitioners repeatedly returned to their home in Naples and resided there. Pursuant to their plans to get away from their business lives, Petitioners also travelled extensively throughout the country, spending a substantial amount of time in Myrtle Beach, South Carolina.
37. In the spring of 2006, Petitioners hired Cooper Pulliam, an investment advisor in Atlanta Georgia, to buy municipal bonds for them. As Petitioners and Mr. Pulliam testified, Petitioners told Mr. Pulliam that they were Florida residents. The residence of Mr. Pulliam's clients is an important investment consideration. Mr. Pulliam purchased a portfolio of municipal bonds for Petitioners from across the country based on Petitioners having become Florida residents in 2006. *See* Pet. Ex. 47.
38. Petitioners used their Florida address on their tax returns that were filed in April 2006 and thereafter. *See* Pet. Exs. 23, 24 & 25; Resp. Ex. 98.

39. Throughout 2006, Petitioners changed their address from North Carolina to Florida with various businesses. *See* Pet. Exs. 42, 43, 45, and 46; Resp. Ex. 51.
40. In 2006 and 2007, Elizabeth Fowler went to church both in Naples and in Raleigh and contributed to churches in both locations. Her contributions to Westover United Methodist Church in Raleigh were motivated by her appreciation for the significant care and support that church provided to Ms. Fowler's late father in the years preceding his death.
41. In 2006 and 2007, Petitioners were members of the Tiburon Club and the Quail West Club in Florida. *See* Pet. Exs. 35 & 40. Petitioners were not members of any club in North Carolina.
42. Elizabeth Fowler retained her North Carolina real estate license to allow her to receive referral fees in connection with properties she bought and sold for herself. Ms. Fowler has never worked as a real estate agent for other people. Ms. Fowler received referral fees for properties in South Carolina and Florida, but never for property sold in North Carolina.
43. Petitioners paid more property tax in Florida in both 2006 and 2007 than they paid in North Carolina for those years. *See* Resp. Exs. 12 & 13.
44. In 2006 and 2007, Petitioners used doctors in Florida, North Carolina, and Massachusetts. Petitioners called on doctors in North Carolina as needed in emergencies or as follow-up treatment to Mr. Fowler's cancer surgery. The vast majority of Petitioners' medical expense in 2006 and 2007 was incurred in Massachusetts at a facility associated with the Cleveland Clinic.

45. In 2006 and 2007, Petitioners kept two trained guard dogs, a Doberman and a German Shepherd, at their Raleigh property to protect the property.
46. In 2006 and 2007, Petitioners' pet, a dog named D8, often travelled with Petitioners. In 2006 and 2007, Petitioners took D8 to vets in Florida, North Carolina, and Colorado. Petitioners took D8 to vets in North Carolina and Colorado for emergencies or as convenient in conjunction with care of the guard dogs.
47. In 2006 and 2007, Petitioners did everyday "hometown" activities wherever they happened to be, including Florida and North Carolina.
48. In 2006, Petitioners hired Florida counsel to create wills and other estate documents. These documents were Petitioners' first estate plan.
49. Petitioners went about becoming Florida residents in a manner consistent with their experience in business – not as a lawyer or accountant may have done. They reached various features of their affairs (changing addresses, registrations, and the like), as time allowed. Their accomplishing the transition in the manner they did reflects busy lives and is fully consistent with an intention to call Naples, Florida their home no later than January 20, 2006.
50. During trial, the Petitioners acknowledged their continuing activity in North Carolina, following the sale of Fowler Contracting. What came through in their testimony, and through Mr. Mallard's testimony, was the central feature of this activity: helping Fowler Contracting from several angles, in contrast to maintaining any personal or "domiciliary" ties to North Carolina. For example, Petitioners donated to candidates running for office in North Carolina who had helped protect job-site property of Fowler Contracting (*e.g.*, a candidate for Sheriff), made certain charitable donations

at the request of Fowler Contracting customers, hosted an elaborate dual purpose party for customers and employees and Steve Fowler's birthday, and invested in property in North Carolina to secure work to protect Fowler Contracting employees. All the evidence concerning these actions reflects a desire to benefit Fowler Contracting, especially as economic conditions made its viability more difficult.

51. Reviewing Petitioners' actions following January 19, 2006 as a whole, including their testimony and related documents concerning these actions, the undersigned finds that Petitioners presented credible evidence of their intention to make Naples, Florida their home on January 20, 2006 and to return to that home when they were called away for work or were able to travel on vacation.
52. Respondent's officials testified that they applied what they termed a "facts and circumstances test" or "totality of circumstances test" to this controversy. Their testimony and Respondent's Final Determination, however, failed to demonstrate an understanding and appreciation of the intent of the criteria for domicile set forth in 17 NCAC 06B.3901(a) "Definition of Resident." Accordingly, Respondent has not demonstrated specialized knowledge and expertise regarding the applicable legal test to change domicile or the application of that test.
53. In addition, Respondent also failed to consider what its announced test demands: all the facts and circumstances. Respondent's officials revealed through their testimony and their Final Determination that they either (i) failed to consider the reasons why Petitioners took numerous actions; or (ii) decided the reasons did not matter. For example, Gail Beamon testified that it does not matter why Petitioners continued to work for Fowler Contracting, only that they did so, and Caroline Krause-Iafate (the

lead auditor) testified that Petitioners' obtaining Florida driver's licenses and registering to vote in Florida held no substance. The evidence also was clear that no official from Respondent interviewed, or asked to interview, either Steve or Elizabeth Fowler at any time, either by telephone or face to face.

54. The evidence did not show any facts and inferences regarding residency of these taxpayers within the specialized knowledge of Respondent.

55. The Department owes the citizens of North Carolina a complete explanation regarding the Department's analysis of cases. Applied here, the Department owed taxpayers an explanation why it rejected or ignored the detailed reasons for the position that taxpayers advanced, both in writing (*e.g.*, August 5, 2011 letter to Department officials and counsel, Pet. Ex. 2) and at conference several weeks before the Department issued its Final Determination.

56. On September 15, 2011, Steve Fowler and Lynwood Mallard appeared at a conference hosted by the Department. After summarizing his clients' position, Petitioners' counsel tendered Mr. Fowler and Mr. Mallard for questions by Respondent's officials and counsel. Respondents declined to make any meaningful inquiry of either of them.

57. In summary, the evidence shows that the Department focused too much on where Petitioners were, at any given time, instead of why Petitioners were there. The reasons for Petitioners' actions reveal their intention to become Florida residents far better than their physical presence in any place on any particular date.

58. Taking into account all that Respondent advanced to detract from or diminish the evidence from Petitioners, Respondent failed to show that Petitioners' reasons for their actions lacked sincerity or credibility.

CONCLUSIONS OF LAW

1. The parties properly are before the undersigned Administrative Law Judge and jurisdiction and venue are proper.
2. The applicable statute for this case is § G.S.105.134.1(12), captioned "Resident." This portion of the statute contains four sentences, two of which have application here.
3. The opening sentence of the statute defines as resident:

An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose.

G.S. § 105-134.1(12). (emphasis added).

4. The third sentence provides:

A resident who removes from North Carolina during a taxable year is considered a resident of North Carolina until he has both established a definite domicile elsewhere and abandoned any domicile in North Carolina.

G.S. § 105-134.1(12)(emphasis added).

5. G.S. § 105-134.1(12) does not require that an individual abandon all ties with the State of North Carolina to effect a change of domicile.
6. The North Carolina Administrative Code provides specific direction in this regard.

The section titled "Definition of Resident" states:

A person's domicile is the place where he has a true, fixed permanent home and principal establishment, and to which place, whenever absent, the individual has the intention of returning.

17 NCAC 06B.3901(a).

7. To change one's domicile, in addition to having a home and the requisite intent, a person desiring to effect such a change must also take voluntary and positive action.

17 NCAC 06B.3901(a).

8. A sub-part of the Administrative Code lists seven "events" that "indicate [when] a change in residency" occurs. Registering a vehicle in a new jurisdiction is one of the events indicating when a change in domicile occurs. 17 NCAC 06B.3901(c)(5).
9. Given the above factual findings that (i) Petitioners' Tiburon House was their true, fixed permanent home and principal establishment from January 20, 2006 through the end of 2007; (ii) from January 20, 2006 through the end of 2007, Petitioners intended to return to their Tiburon House, whenever absent; and (iii) Petitioners took voluntary and positive action to change their domicile to Florida (including, but not limited to, registering a vehicle in Florida on January 20, 2006); Petitioners' domicile from January 20, 2006 through the end of 2007 was Florida.
10. The North Carolina Administrative Code also declares: "A longstanding principle in tax administration, repeatedly upheld by the courts, is that an individual can have but one domicile" at any given time. 17 NCAC 06B.3901. As a result, the true establishment of a new domicile results in the de jure abandonment of one's old domicile.
11. Accordingly, when Petitioners established their domicile in Florida on January 20, 2006, Petitioners abandoned their North Carolina domicile on January 20, 2006.
12. Independent of the above, Petitioners also abandoned their North Carolina domicile through the following acts: (i) their selling control of Fowler Contracting, the

company to which Petitioners had devoted their personal and business lives for some 22 years at the time of sale; (ii) working less in Raleigh and working remotely when feasible, after the sale; (iii) abandoning their architect-drawn plans to build an estate-size residence on Old Stage Road; (iv) moving their most valued heirlooms and furniture from their North Carolina residence to their Florida residence; (v) creating and investing in the Florida company, Fowler Aviation, Inc.; (vi) buying the Quail West House in Naples; (vii) moving cars from Raleigh to their Tiburon House; (viii) changing addresses on tax returns and with businesses from North Carolina to Florida; (ix) turning in their North Carolina drivers licenses; (x) removing themselves from the voting rolls in North Carolina; (xi) hiring Cooper Pulliam in Atlanta Georgia as their investment advisor; (xii) investing in a national portfolio of municipal bonds; (xiii) hiring Florida counsel to create an estate plan; (xiv) searching for someone to replace Steve Fowler as President of Fowler Contracting; and (xv) expressing their intention to change domicile to numerous individuals who provided some services to them – some of those services depending upon where Petitioners were domiciled.

13. Petitioners' enlistment of numerous individuals to assist in relinquishing their "North Carolina lives" is additional evidence of abandonment of their North Carolina domicile by January 20, 2006. Those individuals include Lynwood Mallard, Kim Dennis, Graham Clements, Cooper Pulliam, Victoria Harrison, Judy Shelton, and William Graef. Their collective testimony yields a consistent theme that Petitioners had decided to abandon North Carolina for a new life in Naples, Florida.

14. The time Petitioners spent in North Carolina during the period of January 20, 2006 through the end of 2007 was for a temporary or transitory purpose, as the applicable


statute contemplates. Specifically, only when the nature of the tasks called for them to do so did Petitioners return to North Carolina to fulfill the terms of their agreement with Long Point Capital.

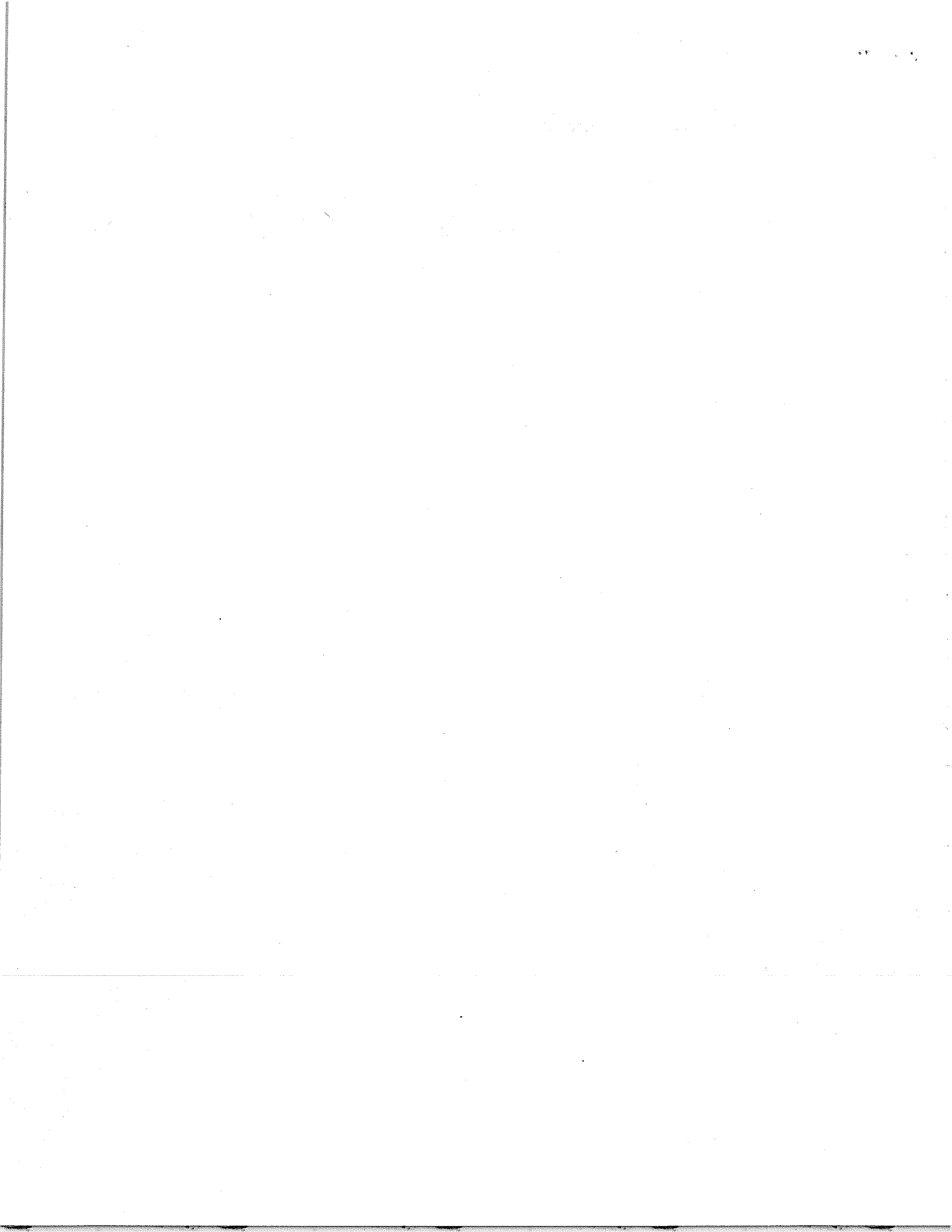
15. "The term 'nonresident' includes an individual who resides in North Carolina for a temporary or transitory purpose and is, in fact, a domiciliary resident of another state or country." State of North Carolina Individual Income Tax Rules and Bulletins at 34 (Pet. Ex. 8). This provision describes Petitioners in 2006 and 2007.
16. Taking all of the above into account, Petitioners established by a preponderance of the evidence that Respondent acted erroneously in deciding that Petitioners had failed to change their domicile to Florida for 2006 and 2007.
17. Under N.C. Gen. Stat. §105-134.1(12), Petitioners were not residents of North Carolina after January 19, 2006 through the end of 2007 and therefore not subject to North Carolina income or gift tax for that period, except for income earned in North Carolina.
18. There are no facts and inferences regarding residency, arising from the evidence produced in this case, within the demonstrated, specialized knowledge of Respondent.
See N.C. Gen. Stat. § 150B-34(a).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B 36(b), (b1) and (b2) (2011). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a) (2011). The Agency is required by N.C. Gen. Stat. § 150B-36(b) (2011) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings. The agency that will make the final decision in this contested case is the North Carolina Department of Revenue.

This the 3 / day of December, 2012.


Beecher R. Gray
Administrative Law Judge



On this date mailed to:

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This the 2nd day of January, 2013.



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Dear Mr. [Name],
I have your letter of the 10th and am
glad to hear that you are
interested in the [Project Name].
I will be happy to provide you
with the information you need.

I will be in touch with you
again in a few days.
Thank you for your interest.

Sincerely,
[Name]
[Title]