ReedSmith

Reed Smith Clients Win Precedent-Setting Illinois Residency Case

18 July 2012

Authors: Michael J. Wynne, Adam P. Beckerink, Jennifer C. Waryjas

On July 16, 2012, the Appellate Court of Illinois, First District, issued a decision in favor of the taxpayers in *Cain v. Hamer, 2012 Ill. App. (1st) 112833*. Reed Smith's state tax attorneys represented the taxpayers in *Cain*. *Cain* is the first published decision interpreting the residency requirements under the Illinois Income Tax Act ("Act") since the enactment of the Act in 1969.[1]

Under the Act and the regulations, an individual is an Illinois resident if the individual is present in Illinois for other than a "temporary or transitory purpose" during the tax year, or if the individual is "domiciled" in Illinois but is absent from the state for a temporary or transitory purpose. If an individual leaves Illinois for other than a temporary or transitory purpose, or if an individual establishes domicile elsewhere, then he or she ceases to be an Illinois resident.

Beginning in 1995, the Cains had filed Illinois income tax returns as nonresidents. On audit, the Illinois Department of Revenue (the "Department") issued Illinois income tax assessments to the Cains for the 1995 through 2005 tax years, treating the Cains as Illinois "residents" for those years, and subjecting all of the Cains' income for those years to Illinois income tax. The Cains chose to pay the assessed tax under protest and bypassed the Department's administrative appeal process. Based on facts stipulated by the parties, the circuit court rendered summary judgment in favor of the Cains, determining that they were mere seasonal visitors to Illinois, not Illinois residents. The Department appealed.

The Cains were a married couple who lived and worked in Illinois until 1990. In 1990, Mr. Cain retired and the Cains purchased a home in Florida. At that time, the Cains began splitting their time between Florida and Illinois. In 1995, the Cains executed and filed a "declaration of domicile" declaring Florida to be their domicile. Also in 1995, the Cains obtained Florida drivers' licenses and voted in Florida elections. During 1995 and in subsequent years, the Cains were members of a number of Florida social clubs, maintained professional relationships with physicians and attorneys in Florida, and received and honored summonses for Florida jury duty. However, during those same years, the Cains continued to own a home in Illinois, and continued to maintain their pre-existing memberships in Illinois clubs. During those years, the Cains also continued to maintain social relationships in Illinois, and continued to consult with medical and other professional service providers located in Illinois. In addition, Mr. Cain continued to rent office space in Illinois, although he did not engage in any business activity in either Illinois or Florida in 1995 or later years. Mrs. Cain retained her Illinois permit as an interior designer, although she did not engage in her interior design business in either Illinois or Florida.

In 1995 and in subsequent years, the Cains returned annually to Illinois, splitting their time roughly equally between Illinois and Florida. While the Cains were not present in Illinois for a sufficient number of days in 1995 or any subsequent year to trigger the presumption of Illinois residency that would arise, under the Department's regulations, if the Cains had been present in Illinois for nine months of a given tax year, they also did not remain outside of Illinois for a sufficient number of days in 1995 or any subsequent year to trigger the presumption of nonresidence that would arise under the Department's regulations if they had been away from Illinois for 12 consecutive months.

On appeal, the Department relied on residency case law arising under the election and probate laws in Illinois, as well as residency case law from other jurisdictions, primarily California, to argue that the Cains had failed to prove that they physically abandoned their Illinois domicile *before* taking steps to acquire a new domicile, and hence could not have acquired a Florida domicile. However, the Appellate Court found it unnecessary to look to case law from other fields and jurisdictions. The court noted that the Act does not define the term "domicile." Thus, the Appellate Court found guidance in the Department's own regulation on residency, which defines domicile and provides examples. Based on its reading of the Department's residency regulations, the Appellate Court concluded that the Cains had abandoned their Illinois domicile and acquired a new domicile in Florida in 1995. Thus, the Appellate Court concluded that "the plaintiffs intended to live in Florida for half the year and visit Illinois, not the other way around."

Although during oral argument the Appellate Court delved into the meaning of what is a "temporary or transitory" purpose for an absence from Illinois, the court's decision rests almost entirely on its analysis of what constitutes domicile under the Act and the Department's regulation, although the court did conclude that the Cains' presence in Illinois was "temporary or transitory." Another residency case is currently on appeal by the Department, in which Reed Smith also successfully represented the taxpayer below. This other case focuses on what constitutes a "temporary or transitory" purpose for an absence from Illinois within the meaning of the Act, so it is likely that more guidance will be coming from the courts on the meaning of residency under the Act in the near future.

The Department has 35 days to seek a petition for leave to appeal the Appellate Court's decision in *Cain* to the Illinois Supreme Court. However, it is entirely within the court's discretion to reject or allow the appeal. Reed Smith will provide further updates if the court allows the appeal.

If you have questions about the *Cain* decision or other Illinois residency issues, please contact the authors of this article, or the Reed Smith lawyer with whom you usually work. For more information on Reed Smith's Illinois tax practice, visit www.reedsmith.com/iltax.

About Reed Smith State Tax Reed Smith's state and local tax practice is comprised of more than 30 lawyers across seven offices nationwide. The practice focuses on state and local audit defense and refund appeals (from the administrative level through the appellate courts), as well as planning and transactional matters involving income, franchise, unclaimed property, sales and use, and property tax issues. Click here to view our State Tax team.

---

[1] Prior to the July 16 decision in *Cain*, the only decision interpreting the residency requirements under the Act was an unpublished decision in a case that had been decided against the Department while *Cain* case was still pending below, which would have been helpful to the Cains. However, this prior decision was a so-called Rule 23 order that could not be cited as precedent, nor relied on in any cases. The parties to the prior case reached a compromise

whereby the successful taxpayer agreed not to move for the court to publish the order (and hence create precedent) in exchange for the Department agreeing not to pursue a petition for leave to appeal to the Illinois Supreme Court. Consequently, the Cains had no option but to proceed with their case, and theirs is now the only published precedent on residency under the Act.

About Reed Smith

Reed Smith is a global relationship law firm with more than 1,600 lawyers in 23 offices throughout the United States, Europe, Asia and the Middle East.

The information contained herein is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained herein as if it were legal or other professional advice.

The business carried on from offices in the United States and Germany is carried on by Reed Smith LLP of Delaware, USA; from the other offices is carried on by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Reed Smith Richards Butler. A list of all Partners and employed attorneys as well as their court admissions can be inspected at the website **http://www.reedsmith.com/**.

© Reed Smith LLP 2012. All rights reserved.