STATE AND FEDERAL INCOME TAXATION OF AMERICAN CITIZENS RESIDING ABROAD

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August 29, 1975

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As a general rule, the State and Federal income tax laws regarding United States citizens residing abroad appear to reflect a general policy to tax such individuals similarly to American citizens residing in this country, with due consideration given to the special problems of foreign residence. Consistent with this policy, United States citizens residing abroad are subject to Federal income taxes and, in most States, may be subject to State income taxes, based in part upon the concept of dual residency (an individual may only have one domicile but many taxable residences). However, under both Federal and State tax laws, benefits may be afforded such individuals both to equalize their taxability with that of taxpayers residing within the United States and to give some special benefits as well.

I. FEDERAL INCOME TAXATION OF AMERICAN CITIZENS RESIDING ABROAD: SUBCHAPTER N, PART III, OF THE INTERNAL REVENUE CODE OF 1954, SECTIONS 901 THROUGH 912

Under the Federal income tax laws American citizens residing abroad appear to receive two major tax benefits. First, such taxpayers are given a credit against United States income taxes for taxes paid to foreign governments. Int. Rev. Code §§ 901-905. Second, such taxpayers are granted an exclusion from gross income of their first $20,000 (sometimes up to $25,000) of income earned abroad. Int. Rev. Code §§ 911-912.

Under Section 901 of the Internal Revenue Code of 1954, as amended to date [hereinafter, "Code" or "Section"] a taxpaying individual may take a credit against his or her United States income tax liability for "the amount of any income, war profits, and excess profits taxes" paid or accrued to a foreign country. Int. Rev. Code § 901(a). The credit is available to either a resident or a non-resident American citizen, as well as to alien taxpayers. Treas. Reg. § 1.901-1(a).

Section 904 imposes certain limitations on the foreign tax credit. Basically, the limit on allowable credit may be calculated on either a "per country" or "overall" method. Int. Rev. Code § 904. The "per country" limit is the basic limitation, taxpayers being required to elect the "overall" limitation affirmatively.

Where a taxpayer has not elected the "overall" limitation and uses the "per country" limit on foreign tax credits, the credit available may not exceed a percentage of the taxpayer's total tax bearing the same ratio as the taxpayer's foreign income from the country in question bears to the taxpayer's total taxable income. This limit is applied to each country to which the taxpayer pays taxes. To illustrate this credit formula, the regulations give an example:

> EXAMPLE (1). The credit for foreign taxes allowable for 1954 in the case of X, an unmarried citizen of the United States who, in 1954 received the income shown below and had three exemptions under section 151, is $14,904, computed as follows:

Taxable income (computed without deductions for personal exemptions) from sources within the United States..	$50,000
Taxable income (computed without deductions for personal exemptions) from sources within Great Britain..	25,000
Total Taxable Income	$75,000
United States income tax (based on taxable income computed with the deduction for personal exemptions)..	44,712
British income and profits tax.......................	18,000
Per-country limitation	
$\frac{25,000}{75,000}$ of $44,712..........................	14,904
Credit for British income and profits taxes (total British income and profits taxes, reduced in accordance with the per-country limitation).............	14,904

Treas. Reg. § 1.904-1(a)(2)(ex. 1)

Where a taxpayer elects the "overall" limit on allowable tax credit, the permitted credit against United States tax is not to exceed that portion of the taxpayer's total United States tax which is the same percentage as that of the taxpayer's total foreign income to total United States taxable income. To illustrate this formula, the regulations give another example:

> EXAMPLE. Corporation X, a domestic corporation [the same rule would apply to an individual but, in fact, more corporations are likely to have a sufficiently multinational business to elect the overall limitation] for its taxable year beginning January 1, 1961, elects the overall limitation provided by section 904(a)(2). For taxable year 1961 corporation X has taxable income of $275,000 of which $200,000 is from sources without the United States. The United States income tax is $137,500. During the taxable year corporation X pays or accrues to foreign countries $105,000 in income and profits taxes, consisting of $45,000 paid or accrued to foreign country Y and $60,000 to foreign country Z. The credit for such foreign taxes is limited to $100,000, i. e.
>
> $$\frac{200,000}{275,000} \text{ x } \$137,500$$

> The limitation would be the same whether or not the same portion of the $200,000 of taxable income from sources without the United States is from sources on the high seas or in a foreign country (other than Y and Z) which imposed no taxes allowable as a credit.
> Treas. Reg. § 1.904-1(b)(2)(Ex.)

With either credit limitation, the unused credit may be carried back and used to offset taxes in the two years prior to the credit or forward to offset taxes during the next five years. No carryback or carryforward is permitted where the taxpayer elects one form of limitation in the year of creation of the credit and the other form during the prior or subsequent years.

In addition to the foreign tax credit, United States citizens residing abroad are also permitted to exclude from their gross income, for tax purposes, a portion of their "earned income" earned abroad. If the taxpayer establishes himself or herself as a "bona fide resident of a foreign country," up to the first $25,000 of earned income is excludable. Int. Rev. Code § 911 (c)(1)(B). If the taxpayer, rather than establish "bona fide residence," shows physical residence abroad for any 510 days of an 18 month period, up to the first $20,000 of earned income may be excluded. Int. Rev. Code § 911(c)(1)(A).

The regulations of the Department of the Treasury define "bona fide resident of a foreign country" as a resident for a period of uninterrupted residence including an entire taxable year. The regulations also state:

> (2) WHAT CONSTITUTES BONA FIDE RESIDENCE.--Though the period of bona fide foreign residence must be continuous and uninterrupted, once bona fide residence in a foreign country or

> countries has been established, temporary visits to the United States or elsewhere on vacation or business trips will not necessarily deprive the citizen of his status as a bona fide resident of a foreign country. Whether the individual citizen of the United States is a bona fide resident of a foreign country shall be determined by the application, to the extent feasible, of the principles of section 871 and the regulations thereunder, relating to what constitutes residence or nonresidence, as the case may be, in the United States in the case of an alien individual.
>
> Treas. Reg. § 1.911-1(a)(2).

Section 871, referred to in the above-quoted regulation, imposes a tax on nonresident alien individuals earning income from United States sources. In its regulations it discusses the question of residence, generally stating:

> (b) RESIDENCE DEFINED.--An alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. Whether he is a transient is determined by his intentions with regard to the length and nature of his stay. A mere floating intention, indefinite as to time, to return to another country is not sufficient to constitute him a transient. If he lives in the United States and has no definite intention as to his stay, he is a resident. One who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned. An alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of this section in the absence of exceptional circumstances.
>
> Treas. Reg. § 1.871-2(b).

The issue of "bona fide residence" has also been the subject of substantial judicial interpretation. In Sochurek v. Commissioner, 300 F.2d 34 (Cir. 7, 1962), rev'g 36 T.C. 131, the United States Court of Appeals for the Seventh Circuit found a taxpayer to be a "bona fide resident" of Singapore, although he was actually present there only twenty-five days of the taxable year.

In Sochurek, the taxpayer was a foreign correspondent for Life magazine, permanently stationed in Singapore. He rented living quarters there, installed in his photographic equipment, hired servants, and established both business and social contacts. While the Internal Revenue Service (IRS) noted the fact that his assignments throughout Southeast Asia frequently kept him from Singapore, the Court found more persuasive in distinguishing "transients and sojourners on the one hand, and residents on the other" the contacts made by the taxpayer in his new home. 300 F. 2d at 38. The court noted eleven factors it considered relevant:

> (1) intention of the taxpayer;
> (2) establishment of his home temporarily in the foreign country for an indefinite period;
> (3) participation in the activities of his chosen community on social and cultural levels, identification with the daily lives of the people and in general, assimilation into the foreign environment;
> (4) physical presence in the foreign country consistent with his employment;
> (5) nature, extent and reasons for temporary absences from his foreign home;
> (6) assumption of economic burdens and payment of taxes to the foreign country;
> (7) status of resident contrasted to that of transient or sojourner;
> (8) treatment accorded his income tax status by his employer;
> (9) marital status and residence of his family;
> (10) nature and duration of his employment; whether his assignment abroad could be promptly accomplished within a definite or specified time;
> (11) good faith in making his trip abroad; whether for purpose of tax evasion.
>
> 300 F. 2d at 38.

The concept of "bona fide residence" has been clarified further by other judicial decisions pointing to factors of social and business contacts established abroad by the taxpayer as helpful in determining "residence." See, e.g., Fly v. United States, 20 A.F.T.R. 2d 5073 (D. Fla., 1967); Supino v. United States, 192 F. Supp. 389 (D.N.J., 1961); and Glackin v. United States, 110 F. Supp. 658 (D. Calif., 1953). Other decisions have noted that the requirement of "bona fide residence" should not be equated with a demand for domicile abroad. Weible v. United States, 244 F.2d 158 (Cir. 9, 1957); Fuller v. Hofferbert, 204 F.2d 592 (Cir. 6, 1955).

The IRS has also issued at least one revenue ruling on the subject of "bona fide residence" abroad. Revenue Ruling 71-101, 1971-1 CB 214, stated that a United States citizen who voted in a national, State, or local election by absentee ballot still resided abroad. The political contact with his or her place of domicile within the United States did not vitiate the "residence" abroad.

"Earned income," the measurement upon which the $20,000 or $25,000 exclusion is predicated, is defined by the statutes to include "wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered." Int. Rev. Code § 911(b). Furthermore, a formula is provided for situations in which both capital and services produce the net income of the taxpayer. Int. Rev. Code § 911(b).

Therefore, these two tax benefits, the foreign tax credit and the $20,000 or $25,000 earned income exclusion [hereinafter, the "Section 911 exclusion"] appear to be the two main distinctions in Federal income taxation of United States citizens residing abroad.

II. STATE TAXATION OF THE INCOMES OF UNITED STATES CITIZENS RESIDING ABROAD

A. The General Pattern of State Taxation of the Incomes of United States Citizens Residing Abroad.

While the laws of the various States (forty-one of which have general, personal income taxes) and the District of Columbia may vary regarding income taxes levied on the United States citizens living abroad, certain tax treatments appear to be most commonly found. Probably the most significant of these tax treatments, excluding the threshold issue of existence of an income tax in a State, would be whether a State's tax is levied on its "resident" individuals, its "domiciliary individuals," or both.

Where a State levies its personal income tax only on its "residents," a physical presence within the taxing State, perhaps for a specified period, would appear the prerequisite to liability for income taxes. Where, however, domicile is the precondition to taxation of an individual's income, an individual would appear able to reside abroad and remain liable for State income taxes, an individual being able to have one domicile and many resiences. The concept of "domicile" is not equivalent to the concept of "residence." While actual physical presence is an important element of domiicile, it is neither conclusive nor mandatory.

Perhaps the leading American decisions on defining "domicile" for purposes of State income taxation are Lawrence v. State Tax Commission, 286 U.S. 276 (1932), and District of Columbia v. Murphy, 314

U.S. 441 (1941). Both of these decisions by the United States Supreme Court state the essential rules of the concept of domicile, and those rules play a determinative part in the outcome of each decision.

In Murphy, the District of Columbia attempted to impose a tax on the income of an economist for the Department of the Treasury. The District of Columbia's then extant tax law imposed an income tax on "every individual domiciled in the District of Columbia on the last day of the taxable year." 314 U.S. at 445 [Note: The current income tax law of the District of Columbia may be found in the Appendix]. The taxpayer argued that his "home" was Detroit, Michigan, that it was also his place of domicile, and that he was only residing within the District of Columbia pursuant to the requirements of his employment with the Federal government. He contended that he would stay in the District of Columbia only until his employment terminated, and then he would return to Michigan. The Court held that merely residing within the District of Columbia indefinitely was not domicile, but that the District of Columbia was justified in presuming domicile from physical residence and requiring the taxpayer to prove the contrary. The Court said, quoting from the debates in Congress during the enactment of the District of Columbia's income tax law:

> In the House, Representative Nichols, chairman of the House conferees, and also chairman of the House District Committee in charge of fiscal affairs, submitted the conference report and stated: "Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read: 'Domicile is the place where one has his true, fixed, permanent home and principal

> establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights. . . . There must exist in combination the fact of residence and animus manendi--'which means residence and his intention to return [sic]; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States." 84 Cong. Rec. 8974.
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> 314 U.S. at 451.

Furthermore, the Court noted,

> Turning to the judicial precedents for further guidance in construing "domicile" as used in the statute, we find it generally recognized that one who comes to Washington to enter the Government service and to live here for its duration does not thereby acquire a new domicile. More than a century ago, Justice Parker of New Hampshire observed that "It has generally been considered that persons appointed to public office under the authority of the United States, and taking up their residence in Washington for the purpose of executing the duties of such office, do not thereby, while engaged in the service of the government, lose their domicile in the place where they before resided, unless they intended on removing there to make Washington their permanent residence." See Atherton v. Thornton, 8 N.H. 178, 180. By and large, subsequent cases have taken a like view. It should also be observed that a policy against loss of domicile by sojourn in Washington is expressed in the constitutions and statutes of many States. Of course, no individual case, constitution, or statute is controlling, but the general trend of these authorities is a significant recognition that the distinctive character of Washington habitation for federal service is meaningful to those who are served as well as to those in service.
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> 314 U.S. at 453-453.

As to the individual factors raised by Mr. Murphy to show a Michigan domicile--voting in Michigan, the nature of the local employment, as well as physical presence--the Court noted that all elements had to be jointly considered. The Court did pay special note, however, to the taxpayer's own statements:

> In order to retain his former domicile, one who comes to the

> District to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service. A mere sentimental attachment will not hold the old domicile. And residence in the District with a nearly equal readiness to go back where one came from, or to any other community offering advantages upon the termination of service, is not enough.
>
> One's testimony with regard to his intention is, of course, to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or even be contradicted or negatived by other declarations and inconsistent acts.
>
> Whether or not one votes where he claims domicile is highly relevant but by no means controlling. Each State prescribes for itself the qualifications of its voters, and each has its own machinery for determining compliance with such qualifications. A vote cast without challenge may indicate only laxity of the state officials, and even an adjudication of the right to vote cannot preclude the levy of a tax by an arm of the Federal Government. On the other hand, failure to vote elsewhere is, of course, not conclusive that domicile is here.
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> 314 U.S. at 457-458.

Pursuant to these findings, the Court reversed the Circuit Court of Appeals for the District of Columbia, which had held for the taxpayer, remanding for further consideration.

In Lawrence, the imposition on a domiciled corporation of an income tax on all of its income, both from within and without the State of imposition, was upheld. Domicile, the Court said, forms a valid basis for taxation of a taxpayer's total income:

> The obligation of one domiciled within a state to pay taxes there, arises from unilateral action of the state government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute its burdens equitably among those who enjoy its benefits. Hence, domicile in itself establishes taxation. Enjoyment of the privileges of residence within the state, and the attendant right to invoke the protection of its laws, are inseparable from the responsibility for sharing the costs of government. . . . The Federal Constitution imposes on the states no particular modes of taxation, and apart

> from the specific grant to the federal government of the exclusive power to levy certain limited classes of taxes and to regulate interstate and foreign commerce, it leaves the states unrestricted in their power to tax those domiciled within them, so long as the tax imposed is upon property within the state or on privileges enjoyed there, and is not so palpably arbitrary or unreasonable as to infringe the Fourteenth Amendment. . . .
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> 286 U.S. at 279-280.

Recognizing that domicile was a sufficient nexus for taxation of a corporation's total income, the Mississippi tax was upheld.

Therefore, where a State taxes the total income of its domiciliaries, it would appear that United States citizens domiciled in the State but residing abroad, either temporarily or on an indefinite basis, may be taxed by the State. In these instances the State usually examines individual situations--the taxpayer's social and business contacts both in the State and abroad to determine where domicile actually lies. The State is aided therein by a generally accepted presumption, that domicile, once obtained, is not lost until another domicile is established.

> If one has at any time become domiciled here, it is his burden to establish any change of status upon which he relies to escape the tax.
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> District of Columbia v. Murphy, 314 U.S at 456.

One major problem in interpreting State tax laws on domicile is that States frequently levy an income tax based on domicile, but refer to the predicate as "residence." In these instances, administrative, judicial and statutory clarifications are helpful.

Another frequent element in State taxation of the incomes of United States citizens residing abroad is the foreign tax credit. Many States provide a credit against State income taxes for taxes paid to a foreign country. This does not appear as frequent, however, as the State adoption of the Section 911 exclusion.

Because so many States measure their own tax by the Federal adjusted gross income, gross income, or taxable income, the Section 911 exclusion is often adopted by necessary implication into the computation of State income taxes. In a few States, however, specific statutory provisions preclude the adoption of the exclusion of the first $20,000 or $25,000 of income earned abroad into the computation of State taxable income.

Furthermore, many States have enacted nonresident income taxes. In these States, if domicile is not the taxing base, or if a taxpayer's domicile is found to be outside the State, the resident of a foreign country may still be taxed on income from sources within the State.

In analyzing the tax laws of each State, the primary consideration is usually the statutory terms. In the analysis contained herein, such statutes are considered, along with relevant administrative or judicial declarations. Where terms such as "domicile" or "resident" are used without definition in any of these sources, it would seem appropriate to interpret the terms in light of the general concepts discussed in Murphy and Lawrence.

B. Summaries of the Laws of the Fifty States and the District of Columbia Relative to Taxation of the Incomes of United States Citizens Residing Abroad

1. ALABAMA

The State of Alabama levies a general, personal income tax on both its residents and on those domiciled within the State. Ala. Code § 51-373 (1935, as amended to date). The Alabama statutes also raise a presumption of taxable residency as to any individual both maintaining a permanent place of abode within the State and spending, in the aggregate, at least seven months of the taxable year within the State. Ala. Code § 51-373 (1935, as amended to date). It would appear, therefore, that if an individual were domiciled in Alabama but impermanently residing abroad, he or she would be liable for Alabama income taxes. This conclusion appears further reinforced by two recent State court decisions.

In State ex rel. Rabren v. Baxter, 46 Ala. App. 134, 239 So. 2d 206 (1970), the taxpayer sought to quash income tax assessments levied against him for Alabama State income taxes. The plaintiff had been born and raised in Alabama, but had held jobs requiring extensive global travel. However, the court found, he had retained his mother's Alabama address as his "mailing address," he had voted, when at all, in Alabama, he maintained a joint checking account with his mother in an Alabama bank, and he was affiliated with an Alabama church. Against his arguments that he was not domiciled in the State, the Alabama Court of Civil Appeals held that:

> The evidence is undisputed that Chatom, Alabama, was appellee's domicile in May, 1959, and we think the evidence is rather overwhelming that he entertained no intention of establishing a permanent domicile anywhere else until after the tax assessments were made. Except for his protests to appellant that he was required to pay income tax to Alaska, he has failed utterly to offer satisfactory proof of a change of domicile. In fact, the preponderance of the evidence, including his statements that he would always consider Alabama his home, is the other way; and we are clear to the conclusion that as a matter of law the appellee was domiciled in Alabama during the pertinent years, and that on that score the assessments were valid.
> 46 Ala. App. at 140.

To analogize to the case of a domiciliary of Alabama living abroad, unless such new residence is accompanied by a sufficient break of contacts to show acquisition of a new domicile, Baxter would appear to permit levy of a State income tax.

In Rabren v. Mudd, 285 Ala. 531, 234 So. 2d 549 (1970), the Alabama Supreme Court held that a former Alabama domiciliary had abandoned that domicile in favor of a Florida domicile and was no longer subject to Alabama income taxes. The evidence showed that for fifty years the taxpayer had been a resident of Birmingham, Alabama, engaged in the practice of law. However, after retiring he had moved to Delray Beach, Florida. He had registered to vote in Florida, which required domicile under Florida law, he had transferred his church affiliation to Florida, waived his Alabama homestead exemption, opened a Florida bank account and closed his Alabama bank accounts. About the facts presented, the court said:

> Measured by the above governing principles, we think the overwhelming preponderance of the evidence dictated the court's conclusions and decree that Mr. Mudd established his domicil in Florida in the latter part of 1963, and that Florida continued to be his domicil from that time until the time of the hearing below.
> 285 Ala. at 536

These two decisions appear to reinforce the conclusion that Alabama recognizes taxable domicile apart from residence within the State. Therefore, if an individual were domiciled in Alabama but resided abroad, he or she would still appear to be liable for Alabama income taxes.

Alabama also levies a general, personal income tax on its non-resident individuals, on their income from Alabama businesses or property. Ala. Code § 51-373 (1935, as amended to date). Therefore, if a United States citizen residing abroad is not held domiciled in the State of Alabama, he or she could still be liable for taxes on income from sources within the State.

2. ALASKA

The State of Alaska levies a general, personal income tax on all residents and non-residents, on their income from sources within the State. Alas. Stat. § 43-20.010 (1972, as amended to date). The State equates "resident" with domiciliary, but because the tax is only levied on income from sources within the State, this definition may become less significant to the citizen residing abroad. Alas. Stat. § 43-20.040 (1949, as amended to date).

Alaska also determines its "taxable income" in terms of the Federal taxable income. Alas. Stat. § 43-20.010 (1972, as amended to date). However, while the Section 911 exclusion would appear to be adopted into the computation of Alaska taxable income, the statutory limitation of the Alaska personal income tax to income from sources within the State precludes Section 911 from having actual operative effect on the tax liability of an Alaskan resident or non-resident.

3. ARIZONA

The State of Arizona levies a general, personal income tax on its "residents," which it defines to include all individuals within the State for purposes which are not temporary, or domiciliaries outside the State for purposes which are temporary. Ariz. Stat. § 43-101(p) (1939, as amended to date). Furthermore, the State raises a statutory presumption of taxable residence from an individual's actual presence within the State for over nine months of the taxable year. This presumption may be overcome by "competent" evidence. Ariz. Stat. § 43-101(r) (1939, as amended to date).

Under the tax regulations of the State of Arizona, it would appear that an individual may be a domiciliary of Arizona for tax purposes "without being a resident." Ariz. Tax. Regs. § 101-6. The regulations also express Arizona's adoption of the general rules that once taxable residence is acquired, temporary absence does not remove it and that domicile in Arizona, once acquired, continues until other domicile is acquired. Ariz. Tax. Regs. § 101-6.

Under Arizona law, it would appear, therefore, that if an individual were domiciled in Arizona but impermanently residing abroad, he or she could be liable for Arizona income taxes.

The State of Arizona also levies a general, personal income tax on non-residents, on their income derived from sources within the State. Ariz. Stat. § 43-012(a) (1939, as amended to date). However, non-residents are afforded a credit against Arizona income taxes for taxes paid a foreign country on the same income, conditioned upon that foreign country having similar or equivalent reciprocal provisions for Arizona domiciliaries or residents. Ariz. Stat. § 43-128(b) (1939, as amended to date). Therefore, if an individual is found domiciled outside the State of Arizona, he or she may still be liable for tax on income from Arizona sources, subject to the conditional foreign tax credit.

4. ARKANSAS

The State of Arkansas levies a general, personal income tax on its "residents," which it statutorily defines to include both domiciliaries and persons who maintain a permanent place of abode within the State and also are present within the State for more than six months of the taxable year. Ark. Stat. § 84-2002(9) (1929, as amended to date). The Arkansas tax regulations discuss the many problems which may arise under these statutes, including the problem of "Income of U.S. Citizens in Foreign Countries." Ark. Tax. Regs. § 11.84-2002(10).

On the issue of State taxation of the incomes of United States citizens residing abroad, the regulations state that the levy of an income tax will depend upon whether new domicile abroad has been acquired. The regulations note the presumption of continued domicile pending evidence of newly acquired domicile and refer to a "fact sheet" found also in the regulations. The elements of new domicile noted on the "fact sheet" are domicile of birth, physical presence, expressed intentions, family residence, duty causing absence from Arkansas, State licenses (both Arkansas and place of residence), voter registration, location of substantial real and personal property holdings, community affiliations, business interests, bulk or necessary purchases, utility or telephone deposits, and local taxes and licenses. Ark. Tax. Regs., Art. 7.84-2002(10). The regulations also note the possibility that both jurisdictions could attempt to tax an individual and do not preclude Arkansas imposition of income tax in this instance. Ark. Tax. Regs., Art. 11. 84-2002(10). Therefore, if an Arkansas domiciliary resides abroad but, under the applicable factual determinations, does not adopt a new domicile, he or she will still be liable for Arkansas income taxes. This interpretation is also supported by the decision of the Arkansas Supreme Court in Cravens v. Cook, 212 Ark. 71, 204 S.W.2d 909 (1947).

In Cravens, the Arkansas Supreme Court held that Representative Cravens of the United States Congress, Fourth District of Arkansas, was not a "non-resident" of the State of Arkansas. While the Representative spent most of his time in Washington D.C., the Court noted that both his Constitutionally imposed status as an "inhabitant" of the State and his repeated self-declarations of residence within the State negated any possible loss of domicile. Furthermore, the Court held that no "place of abode" existed for the taxpayer in Washington, D.C., but merely temporary sojourns. 212 Ark. at 74.

Therefore, under Arkansas judicial, administrative, and statutory law, if a domiciliary of the State resides abroad without adopting new domicile, he or she may remain liable for Arkansas income taxes. Furthermore, should domicile be adopted abroad, the individual could still be liable for

Arkansas income tax on the income derived from sources within the State, under Arkansas' non-resident income tax law. Ark. Stat. § 84-2003(c) (1929, as amended to date).

5. CALIFORNIA

The State of California levies a general, personal income tax on its "residents," which it defines to include all persons within the State for other than temporary purposes and all domiciliaries outside the State for temporary purposes. Further, the statute determines that absence by virtue of elected national office, appointed national office, or working on the staff of one holding elected national office, is a temporary purpose for absence from the State, not vitiating "residence" if one is otherwise domiciled in the State. The State also raises a statutory presumption that residence, once acquired, is not lost by temporary absence from the State, such as for the aforestated purposes. Cal. Rev. & Tax. Code § 17016 (1955, as amended to date).

The regulations issued by the State of California interpreting the statutory definitions of "resident" elaborate on the concepts of "domicile" and "residence" under California law. The regulations state that a California domiciliary absent for an extended period might not be taxed if the absence is not "temporary." As always, such distinctions turn on an analysis of all the relevant facts of each case. Cal. Rev. & Tax. Regs. § 17014-17016 (b), (c).

The decisions of the California State Board of Equalization appear to have taken the view that foreign residence of a California domiciliary for purposes of employment does not necessarily terminate taxable status. However, they also appear to note the taxable status may end if enough facts to show abandonment of domicile or residence are presented. See, e.g., Appeals of Richard and Jobyna Arlen, SBE, Dec. 2, 1942; Appeal of Cheney, SBE, Dec. 13, 1961; Appeal of Nathan H. and Julia M. Juran, SBE, Jan. 8, 1968; Appeal of George J. Sevcsik, SBE, March 25, 1968; and Appeal of Brent L. Berry, SBE, March 22, 1971.

Therefore, it would appear that a California domiciliary or resident living abroad may be subject to California income taxes as long as the absence is for a "temporary or transitory" purpose.

The State of California also levies a general, personal income tax on its non-residents, on income from sources within the State. Cal. Rev. & Tax. Code § 17041 (1955, as amended to date). Therefore, a United States citizen not domiciled in the State, or absent for other than temporary or transitory purposes, may still be liable for taxes on income from sources within the State.

6. COLORADO

The State of Colorado levies a general, personal income tax on its "resident individuals," which it defines to mean both domiciliaries and any individuals with both permanent place of abode within the State and who are present in the State, in the aggregate, over six months of the taxable year. Colo. Rev. Stat. § 39-22-103 (10) (1963, as amended to date). The regulations of the State further elaborate on the definition, noting that domicile, as used in the Colorado laws, is a factual question and that intent controls in these determinations. They also establish the doctrine that domicile, once established, is not lost until new domicile is established. Colo. Tax. Regs. § 238-1-2(3). Therefore, a United States citizen domiciled in the State of Colorado and residing abroad could still be liable to the State for income taxes.

The State of Colorado also computes its own taxable income from the Federal adjusted gross income, with certain modifications not herein relevant. Colo. Rev. Stat. § 39-22-110 (1963, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted by reference into the computation of taxable income for Colorado income tax purposes.

The State of Colorado also levies a general, personal income tax on non-residents, on their income derived from sources within the State. Colo. Rev. Stat. § 39-22-103(10) (1963, as amended to date). Therefore, a citizen of the United States living abroad, though not domiciled in the State of Colorado, could still be liable for taxes on income earned from sources within the State.

7. CONNECTICUT

The State of Connecticut does not levy a general, personal income tax.

8. DELAWARE

The State of Delaware levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries and any individuals both maintaining a place of abode within the State and being present there at least one hundred and eighty-three days of the taxable year. Del. Code § 30-1103 (1953, as amended to date). The application of this provision to a United States citizen residing abroad has been clarified somewhat by at least one judicial decision.

In Mitchell v. Delaware State Tax Commission, 42 A. 3d 19 (Del. Supr. Ct., 1945), the Delaware Superior Court held that an individual who had moved to Washington, D.C., to take employment had abandoned his Delaware domicile. The particular facts in Mitchell showed that the taxpayer had sought to sever his Delaware domicile but continued to vote there. The Court held that the domicile actually had been severed, and that the voting, which it termed "illegal," did not prove Delaware domicile.

The impact of Mitchell on a United States citizen residing abroad would seem to be that a finding of domicile depends upon many factors, no single one totally dominant. With this weighing of all relevant factors, it would appear that a Delaware "domiciliary" living abroad may be subject to Delaware's general, personal income tax.

The State of Delaware also defines its own tax base in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Del. Code §§ 30-1105, 1106 (1953, as amended to date). Therefore, the Section 911 exclusion would appear adopted by reference into the computation of taxable income of a Delaware domiciliary residing abroad, and subject to Delaware income tax.

The State of Delaware also levies a general, personal income tax on its non-residents, on their income from sources within the State. Del. Code § 30-1121 (1953, as amended to date). Therefore, a citizen of the United States when living abroad, though not domiciled in the State of Delaware, could still be liable for taxes on income from sources within the State.

9. DISTRICT OF COLUMBIA

The District of Columbia levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and persons maintaining a place of abode within the District for more than seven months of the taxable year. Specifically excluded, however, are certain elected and appointed United States officials. D.C. Code § 47-155c(s) (1947, as amended to date). As discussed, it has been held, under an earlier District of Columbia law, that domicile is a question of fact settled by examination of all the factors showing a person's intention, such as political rights, physical presence and social and business contacts. District of Columbia v. Murphy, 314 U.S. 441 (1941). It also has been held that indefinite residence with intent to return elsewhere did not establish domicile in the District of Columbia. Beckham v. District of Columbia, 82 U.S.App. D.C. 296, 163 F.2d 701, cert. den. 332 U.S. 825, reh. den. 332 U.S. 842.

In Beckham, the taxpayer was an attorney with the Federal government. He contended that his legal residence and domicile was in Texas, and that:

> he intended, with his wife, to return to Fort Worth, to practice law at the end of his Government service in the District, i.e. upon his

> retirement--for which at his present age of sixty five he is now eligible.
>
> 163 F.2d at 702.

The court held that this established evidence of domicile in Texas and that the taxpayer was not a domiciliary of the District of Columbia.

One impact of Beckham and Murphy would appear to be that a United States citizen might likely be liable for income taxes to the District of Columbia although residing abroad. Both cases establish the premise that domicile and residence are not synonomous in the District of Columbia, and that it is quite possible for taxable domicile to exist apart from physical presence.

Therefore, under the applicable statutes and judicial interpretations, it would appear that a United States citizen domiciled in the District of Columbia might be liable for District of Columbia income taxes although residing abroad.

The District of Columbia is precluded from levying a non-resident income tax by Public Law 93-198 § 602(a).

10. FLORIDA

The State of Florida does not levy a general, personal income tax.

11. GEORGIA

The State of Georgia levies a general, personal income tax on its "residents," which it defines to include "legal residents" of the State on December 31, of the taxable year under consideration, persons residing within the State on a "more or less regular basis" on December 31, of the taxable year under consideration, and persons residing within the State one hundred and eighty-three days of the taxable year. The State's statutory laws also raise the legal presumptions that a resident continues to be a resident until new domicile or residency is acquired elsewhere. Ga. Code § 92-3002(i) (1931, as amended to date). The similarities between Georgia's term "legal residence" and the general concept of "domicile" are continued in the tax regulations of the State, which note that the determination of "legal residence" is one of fact. Ga. Tax. Regs. § 560-7-3-0.2.

While no specific statement appears in either the regulations or the statutes of the State of Georgia, it would appear that a United States citizen residing abroad could be a "legal resident" of the State of Georgia on the last day of the taxable year and, thereby, liable for income taxes to the State. It is notable, however, that an Opinion of the Attorney General of the State of Georgia held a United States citizen residing abroad not to be subject to the Georgia income tax where it was shown that the individual had no intent to return to the State. This Opinion may be thought to prove only that not every citizen residing abroad remains taxable, and the possibility still exists that income tax liability could attach to one living in a foreign country but retaining "legal residence" in Georgia. Op. Atty. Gen. Ga., (August 12, 1960); but see also Op. Atty. Gen. Ga., (April 24, 1969), stating that domicile is to be determined by the State Revenue Commission, looking at all the facts upon which to predicate a finding of legal residence.

The State of Georgia defines its tax base in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Ga. Code § 92-3107 (1931, as amended to date). Therefore, the Section 911 exclusion would appear to have been adopted by reference into the computation of taxable income for Georgia taxpayers living abroad.

The State of Georgia also levies a general, personal income tax on its non-residents, on their income from sources within the State. Ga. Code § 92-3112 (1931, as amended to date). Therefore, a United States citizen residing abroad, who was not domiciled in the State of Georgia, could still be liable for taxes on income from sources within the State.

12. HAWAII

The State of Hawaii levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and other individuals "residing" in the State. The State laws also define "residing" to mean presence for other than a "temporary and transitory" purpose, and raise a presumption of "residence" where the taxpayer is present in the State for at least two hundred days of the taxable year. The statutes also raise the legal presumption that residence is neither acquired nor lost by absence or presence in the State for military service or educational pursuits. Haw. Rev. Stat. §§ 235-1, 235-4 (1957, as amended to date).

The regulations of the State of Hawaii elaborate on the definitions of "residence" and "domicile," stating that there is a presumption of continued domicile pending acquisition of new domicile and that the determination is predominantly factual. In the examples used in the regulations there are numerous instances of domicile being held in Hawaii, or elsewhere, with stays of up to six months in the nondomiciliary State. Haw. Tax. Regs. § 58-10, article (71). While no examples cite situations where the individual resides out of the State for the entire year, this may arguably be an extention of the principle governing the out-of-State residence for a few months. The two distinctions do not appear to be conceptually divergent. Therefore, it it would seem that a United States citizen might be domiciled in Hawaii and reside in a foreign country, and still be liable for income taxes to the State of Hawaii.

The State of Hawaii also gives taxpayers a credit against Hawaii income tax for taxes paid a foreign country on income taxable in both jurisdictions. Haw. Rev. Stat. § 235-55 (1957, as amended to date).

The State of Hawaii also levies a general, personal income tax on its non-residents, on their income from sources within the State. Haw. Rev. Stat. § 235-4 (1957, as amended to date). Therefore, a United States citizen residing abroad and not domiciled in the State of Hawaii could still be liable for tax on his or her income from sources within the State.

13. IDAHO

The State of Idaho levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and those who reside in the State the entire taxable year. Ida. Code § 63-6013 (1959, as amended to date). The regulations of the State of Idaho also define "resident," stating that the issue of domicile is to be determined by intent, and that it is a factual determination. Ida. Tax. Regs. § 13.

The State of Idaho also provides a credit against Idaho tax for taxes paid to a foreign country on income subject to tax in both Idaho and such foreign country. Ida. Code § 62-3029 (1959, as amended to date).

The State of Idaho also defines its own taxable income in terms of the Federal taxable income, with certain modifications not herein relevant. Ida. Code § 62-3022 (1959, as amended to date). Therefore, the Section 911 exclusion would appear adopted into the Idaho computation of taxable income.

14. ILLINOIS

The State of Illinois levies a general, personal income tax on its "residents," which it defines to include both domiciliaries absent from the State for "temporary or transitory purposes," and other individuals within the State for other than "temporary or transitory purposes." Ill. Stat. Tit. 120 § 15-1501(a)(20)(1969, as amended to date). Therefore, it would appear that a United States citizen, if domiciled in the State of Illinois, could be liable for income taxes to the State even if residing abroad, as long as the residence abroad was not interpreted as being for other than "temporary or transitory purposes."

The State of Illinois defines its own "base income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Ill. Stat. Tit. 120 § 2-203 (1969, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted by implication into the computation of the "base income" for the Illinois personal income tax.

The State of Illinois also levies a general, personal income tax on its non-residents, on their incomes derived from sources within the State. Ill. Stat. Tit. 120 § 3-301 (1963, as amended to date). Therefore, a United States citizen living abroad who was not domiciled in the State of Illinois could still be liable for income taxes on his or her income from sources within the state.

15. INDIANA

The State of Indiana levies a general, personal income tax on its "residents," which it defines to include domiciliaries and any person with both a permanent place of abode within the State and spending more than one hundred and eighty-three days of the taxable year within the State. Ind. Stat. § 6-3-1-12 (1963, as amended to date). Therefore, it would appear that a United States citizen domiciled in the State of Indiana and residing in a foreign country may still be subject to tax by the State on his or her income.

The State of Indiana also determines its own "adjusted gross income" in terms of the Federal adjusted gross income, with certain adjustments not herein relevant. Ind. Stat. § 6-3-1-3.5 (1971, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted into the computation of adjusted gross income for Indiana income tax purposes.

The State of Indiana also gives its resident and non-resident individuals a credit against Indiana income taxes for taxes paid to a foreign country on income subject to tax in Indiana. Ind. Stat. § 6-3-3-3 (1963, as amended to date).

The State of Indiana also imposes a general, personal income tax on its non-residents, on their income from Indiana sources. Ind. Stat. § 6-3-2-1 (1963, as amended to date). Therefore, if a United States citizen residing abroad is not domiciled in the State of Indiana, he or she could still be liable for taxes on income from sources within the State.

16. IOWA

The State of Iowa levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and those maintaining a permanent place of abode within the State. Iowa Code § 442.4 (1955, as amended to date). The regulations of the State of Iowa also state that unless there is evidence to the contrary, one will be presumed "domiciled in this state" if he or she exercises the right to vote, uses homestead credit or military exemption, or otherwise exercises his or her rights to suffrage. Iowa Tax. Regs. subrule 38.1(9).

Therefore, it would appear that a United States citizen could be domiciled in the State of Iowa and reside abroad, under the general concept of domicile apparently adopted in Iowa, and be subject to tax as an Iowa "resident."

The State of Iowa defines its "net income" for tax purposes in terms of the federal adjusted gross income, with certain modifications not herein relevant. Iowa Code § 422.7 (1955, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted by reference into the Iowa computation of "net income" for income tax purposes.

The State of Iowa also provides a credit against Iowa tax for taxes paid to a foreign country on income subject to tax both in Iowa and the foreign country. Iowa Code, section 422.8 (1961, as amended to date).

The State of Iowa also imposes a general, personal income tax on its non-residents, on their income from sources within the State. Iowa Code § 422.8 (1961, as amended to date). Therefore, a United States citizen residing abroad and not domiciled in the State of Iowa could still be liable for taxes on income earned from sources within the State.

17. KANSAS

The State of Kansas levies a general, personal income tax on its "resident individuals," which it equates with domiciliaries. Persons spending, in the aggregate, over six months of the taxable year within the State are presumed to be "resident individuals." Kan. Stat. § 79-32,109 (1970, as amended to date). The regulations of the State of Kansas further note that such facts as voting residence form prima facie evidence of domicile within the State. Kan. Tax. Regs. § 92-12-4.

Therefore, it would appear that under the general concept of domicile as apparently adopted in Kansas, a United States citizen could be a domiciliary of the State of Kansas and reside abroad, being subject to income taxes under Kansas law.

The State of Kansas adopts as a basis for its own "adjusted gross income" the adjusted gross income under Federal law, with certain modifications not herein relevant. Kan. Stat. § 79-32,117 (1970, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted into the computation of adjusted gross income for Kansas purposes.

The State of Kansas also levies a general, personal income tax on its non-residents, on their income from sources within the State. Kan. Stat. §§ 77,32-110, 79,32-122 (1969, as amended to date). Therefore, a United States citizen residing abroad and not domiciled in Kansas could still be liable for taxes on income earned from sources within the State.

18. KENTUCKY

The State of Kentucky levies a general, personal income tax upon its "residents," which it defines to include both those domiciled in the State and those maintaining a place of abode in the State and spending, in the aggregate, over one hundred and eighty-three days of the taxable year within the State. Kent. Rev. Stat. § 141.010(17) (1946, as amended to date). The regulations of the State of Kentucky further state that those who are permitted, for Federal purposes, to be classified non-resident citizens, and who resided in Kentucky prior to their departure from this country, are considered domiciliaries of the State of Kentucky unless they relinquish their citizenship. Kent. Tax. Regs. § II-1-1. Therefore, should a United States citizen, formerly residing in Kentucky and classified as a "resident" of Kentucky, establish residence abroad without relinquishing citizenship, the State of Kentucky would impose its income tax upon his income, whether earned from within or without the State. This interpretation appears to be supported by two opinions of the Attorney General of the State of Kentucky.

In 1939 the Attorney General of the State of Kentucky ruled that an individual residing in Kentucky and claiming Kentucky as her home is domiciled in the State and must pay income taxes, even if she votes elsewhere. Op. Atty. Gen. Ky. (July 12, 1939). This tends to show that no single factor, including voting, usually a significant factor in domicile determinations, is conclusive of domicile in Kentucky.

In 1960, the Attorney General of the State ruled that "legal residence" for Kentucky tax purposes is determined by facts showing intent and by the actual residence of the taxpayer. The opinion also distinguished "legal residence" from actual residence, in that the former was not lost by temporary departure from the State where the intent to return is shown. The opinion also established for Kentucky the legal presumption that once "legal residence" is acquired, it is not lost until a distinct legal residence is acquired elsewhere. Op. Atty. Gen. Ky. (May 12, 1960).

These two Opinions of the Attorney General of the State of Kentucky, along with the statutory and administrative provisions discussed prior hereto, tend to show that where a United States citizen is a "legal resident," or "domiciliary" of the State of Kentucky, he or she may live in a foreign country and still be liable for income taxes to the State unless new domicile is acquired.

The State of Kentucky determines its adjusted gross income from the Federal adjusted gross income, with certain modifications not herein relevant.

Kent. Rev. Stat. § 141.010(10) (1945, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted into the computation of "taxable income" for Kentucky income tax purposes.

The State of Kentucky also levies a general, personal income tax on its non-residents, on their income from sources within the State. Kent. Rev. Stat. § 141.010(18) (1945, as amended to date). Therefore, a United States citizen who resides abroad and is not a "legal resident" of Kentucky may still be liable for taxes on income earned within the State.

19. LOUISIANA

The State of Louisiana levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries and individuals with a permanent place of abode within the State, spending, in the aggregate, over six months of the taxable year within the State. La. Stat. § 47-31 (1962, as amended to date). The regulations of the State of Louisiana further define "resident" and "domicile," explaining that domicile is a factual determination of intent to remain in or return to the State of Louisiana. Furthermore, the examples in the regulations show that an individual may spend large portions of his or her time outside the State without giving up domicile. La. Inc. Tax. Regs. § 31.2. Therefore, it would appear that a United States citizen could be domiciled in the State of Louisiana and reside abroad for a significant period of time, still remaining liable for income taxes to the State of Louisiana.

The State of Louisiana also imposes a general, personal income tax on its non-residents, on their income from sources within the State. La. Stat. § 47-241 (1970, as amended to date). Therefore, where an individual is not domiciled in the State of Louisiana and is residing abroad, he or she could still be liable for taxes on income from Louisiana sources.

20. MAINE

The State of Maine levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries, unless they have no permanent place of abode within the State, maintain a permanent place of abode elsewhere, and spend no more than thirty days per year in the State, and those not domiciled in the State but maintaining a permanent place of abode within the State and present over one hundred and eighty-three days of the taxable year. Me. Rev. Stat. Tit. 37 § 5102 (1969, as amended to date). Therefore, it would appear that if a United States citizen residing abroad were domiciled in the State of Maine, under the general concepts of domicile, he or she could remain liable for taxes to the State until domicile was abandoned.

The State of Maine adopts as its basis for taxable income of residents the Federal adjusted gross income, with certain modifications not herein relevant. Me. Rev. Stat. Tit. 37 § 5121 (1969, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted into the computation of Maine taxable income for such citizens having foreign earned income.

The State of Maine also levies a general, personal income tax on its non-residents, on their income from sources within the State. Me. Rev.

Stat. Tit. 37 § 5140 (1969, as amended to date). Therefore, a United States citizen residing abroad who is not domiciled in the State of Maine may still be liable for taxes on income earned from sources within the State.

21. MARYLAND

The State of Maryland levies a general, personal income tax on its "residents," which it defines to include those domiciled within the State on the last day of the taxable year, and those maintaining a place of abode within the State for more than six months of the taxable year. Furthermore, where a resident individual leaves the State and returns to take up residence within six months, the statute designates such acts prima facie evidence that no intent existed to permanently leave the State and abandon domicile. Md. Code Tit. 81 § 279(i) (1951, as amended to date). This statutory provision would appear to support the conclusion that a United States citizen domiciled in the State of Maryland but residing abroad may still be liable to the State for income taxes. This conclusion appears to be bolstered by two decisions of Maryland courts.

In Comptroller of the Treasury v. Lenderking, 268 Md. 613, 303 A. 2d 402 (1973), the Maryland Court of Appeals interpreted the Maryland definition of "resident" as applied to an individual currently residing in Connecticut. The taxpayer had lived in Maryland but moved to Connecticut after obtaining a divorce. While he alleged that he was no longer a Maryland domiciliary and, therefore, was not liable for Maryland income taxes, he conceded that he had voted in Maryland during the period for which he denied domicile. The court held that the taxpayer was domiciled in the State, noting that:

> Evidence that a person registered to vote is admissible and ordinarily persuasive when the question of domicile is at issue.
>
> "While evidence of the exercise of the right of suffrage in a certain place is not conclusive, as a general rule, in determining the question of domicil, and may sometimes be of slight importance when overbalanced by other circumstances, such evidence should ordinarily have considerable weight, because it is very strong evidence of intention.". . .
>
> The act of registering, taken together with the fact that Mr. Lenderking lived with his family in Maryland from 1967 until late 1969, gives rise to a rebuttable presumption that he was domiciled in Maryland. . . .
>
> 303 A. 2d at 405.

Lenderking may have an impact on the United States citizen residing abroad because it establishes the principle, under Maryland law, that domicile and residence need not be the same, and that one residing outside the State will be a taxable domiciliary where political rights within the State are exercised.

In Knapp v. Comptroller of the Treasury, 269 Md. 697, 309 A. 2d 625 (1973), the Court of Appeals of the State of Maryland held that a taxpayer who had been domiciled in the State had not lost that domicile when he moved to West Virginia and then to Pennsylvania pursuant to the demands of his job, leaving his family in Maryland in both instances. The decision appeared to turn on the issue of whether the taxpayer had lost his Maryland domicile prior to obtaining a new domicile elsewhere. The court stated:

> There seems to be little doubt that, in the present case, the taxpayer established a domicile in Maryland when he moved to Maryland in June, 1954, purchased a home in this State in 1962 and registered to vote here. This status continues until Mr. Knapp establishes that

> he has acquired a new domicile. . . . As already indicated, in our opinion there was sufficient evidence to support the decision of the Maryland Tax Court that he had not met the burden of establishing a new domicile in Pennsylvania. . . .
>
> 309 A. 2d at 638.

It would appear from the statutory and judicial law that one may be domiciled in the State of Maryland and reside outside the State for tax purposes. Therefore, it would appear that a United States citizen residing abroad but domiciled in the State of Maryland could be liable for income taxes to that State.

The State of Maryland adopts as its basis for taxable income the Federal adjusted gross income, with certain modifications not herein rele-ant. Md. Code. Tit. 81 § 280 (1951, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted into the Maryland computation of taxable income for individuals having foreign source earned income and paying Maryland income taxes.

The State of Maryland also imposes a general, personal income tax on its non-residents, on their income from sources within the State. Md. Code Tit. 81 § 287 (1951, as amended to date). Therefore, it would appear that a United States citizen residing abroad and not domiciled in the State could still be liable for taxes on income from sources within the State.

22. MASSACHUSETTS

The Commonwealth of Massachusetts levies a general, personal income tax on its "residents," which it equates with domiciliaries. Mass. Gen. Laws § 62-1(f) (1971, as amended to date). Under the general concepts of domicile a United States citizen domiciled in the Commonwealth of Massachusetts and residing abroad would appear to be subject to income taxes in the Commonwealth. This is supported by a decision of the Massachusetts Board of Tax Appeals which, in 1937, ruled that change of domicile from the Commonwealth to a foreign country requires greater proof of intent to abandon domicile than change between States of the United States. Farr v. Commissioner of Corporations and Taxation, 1 Mass. B.T.A. 467 (1937). Therefore, it would appear that the United States citizen residing abroad would be more likely to be taxed in Massachusetts than the Massachusetts domiciliary who resides merely in another State.

The Commonwealth of Massachusetts adopts as its basis for computing Massachusetts' "adjusted gross income" the Federal adjusted gross income, but with a modification which precludes the Section 911 exclusion from applicability to Massachusetts income tax computations. Mass. Gen. Laws § 62-2(a)(1)(C) (1971, as amended to date).

Additionally, the Commonwealth of Massachusetts also allows its taxpayers a credit for taxes paid to other States or the Dominion of Canada, with certain limitations. Mass. Gen. Laws § 62-6 (1971, as amended to date).

The Commonwealth of Massachusetts also levies a general, personal income tax on its non-residents, on their income from sources within the Commonwealth. Mass. Gen. Laws § 62-5A (1971, as amended to date). Therefore, it would appear that a United States citizen residing abroad and not domiciled in the Commonwealth of Massachusetts could still be liable for taxes on income from sources within the Commonwealth.

23. MICHIGAN

The State of Michigan levies a general, personal income tax on its "residents," which it defines to include domiciliaries. It further defines "domicile" to mean having a "true, fixed and permanent home and principal establishment to which whenever absent therefrom he intends to return." Mich. Comp. Laws § 206.18 (1967, as amended to date). Furthermore, the State statutorily adopts the presumption that domicile, once established, continues until other domicile is established. It also statutorily presumes "residence" from living within the State for one hundred and eighty-three days of the taxable year, or one-half of the taxable year. Mich. Comp. Laws § 206.18 (1967, as amended to date). Therefore, it would appear that a United States citizen domiciled in the State of Michigan and residing abroad could be liable for income taxes to the State.

The State of Michigan also levies a general, personal income tax on its non-residents, on income from sources within the State. Mich. Comp. Laws § 206.110 (1967, as amended to date). Therefore, it would appear that a United States citizen residing abroad and not domiciled in the State of Michigan could still be liable for taxes on income from sources within the State.

14. MINNESOTA

The State of Minnesota levies a general, personal income tax on its "residents," which it defines to include domiciliaries and any individuals maintaining a place of abode within the State during a portion of the tax year and not domiciled outside the State. Minn. Stat. § 290.1 (subd. 7), (1945, as amended to date). The regulations of the State of Minnesota elaborate on the definition of "resident," stating that "[r]esidence, as defined in the Act, is practically synonomous with domicile." The regulations further state that voting franchise is "presumptive evidence of residence," but may be overcome by evidence showing facts contrary to the presumption of residence. Minn. Tax. Regs. § 2001(7). Therefore, it would appear that a United States citizen could be domiciled in the State of Minnesota and residing abroad and still remain liable for income taxes to the State.

The State of Minnesota determines its "gross income" upon the Federal adjusted gross income, with certain modifications not herein relevant. Minn. Stat. § 290.1 (subd. 20) (1945, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted into the Minnesota computation of gross income for income tax purposes.

The State of Minnesota also levies a general, personal income tax on its non-residents, on their income from sources within the State. Minn. Stat. § 290.17 (1971, as amended to date). Therefore, it would appear that a United States citizen not domiciled in the State of Minnesota and residing abroad could still be liable to the State for taxes on income from sources within the State.

25. MISSISSIPPI

The State of Mississippi levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and others maintaining either "legal or actual residence" within the State. Miss. Code § 27-7-3

(e) (1942, as amended to date). The regulations of the State of Mississippi elaborate on the definitions of "legal residence" and "domicile," stating that domicile is "the place where an individual lives and has his permanent home and . . . to which he has the intention of returning." "Legal residence," on the other hand, the regulations define to mean actual residence coupled with exercise of legal rights, such as voting. Miss. Tax. Regs. § 1.27-7-3(5)(b), (c). Therefore, it would appear that a United States citizen could be a domiciliary or legal resident of the State of Mississippi, reside abroad for other than permanent purposes, and remain liable to the State for income taxes.

The State of Mississippi also levies a general, personal income tax on its non-residents, on their income from sources within the State. Miss. Code § 27-7-5(1), (2) (1945, as amended to date). Therefore, it would appear that a United States citizen not domiciled in the State of Mississippi and residing abroad could still be liable for taxes on income from sources within the State.

26. MISSOURI

The State of Missouri levies a general, personal income tax on its "residents," which it defines to include both domiciliaries, unless such domiciliary has no permanent place of abode in the State, has a permanent place of abode outside the State, and spends less than thirty days of the taxable year in the State, and those spending over one hundred and eighty-three days of the taxable year within the State. Mo. Stat. § 143.101 (1972, as amended to date).

Therefore, under the general concept of domicile, it would appear that a United States citizen could be domiciled in the State of Missouri, reside abroad and still remain liable for income taxes to the State.

Furthermore, the State of Missouri computes its own "adjusted gross income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Mo. Stat. § 143.121 (1972, as amended to date). Therefore, the Section 911 exlcusion would appear to be adopted by reference into the computation of Missouri "taxable income."

The State of Missouri also levies a general, personal income tax on its non-residents, on their income from sources within the State. Mo. Stat. § 143.041 (1972, as amended to date). Therefore, a United States citizen residing abroad and not domiciled in the State of Missouri could still be liable for taxes on income from sources within the State.

27. MONTANA

The State of Montana levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and other persons who maintain a permanent place of abode within the State. Mont. Rev. Codes § 84-4901(6) (1933, as amended to date). Therefore, under the general concept of domicile, it would appear that a United States citizen residing abroad could be domiciled in the State of Montana and remain liable for taxes to the State.

The State of Montana defines its own "adjusted gross income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Mont. Rev. Codes § 84-4905(a), (b) (1933, as amended to date). Therefore, the State of Montana would appear to have adopted by reference the Section 911 exclusion into the computation of adjusted gross income for Montana income tax purposes.

The State of Montana also levies a general, personal income tax on its non-residents, on income from sources within the State. Mont. Rev. Codes § 84-4903 (1933, as amended to date). Therefore, a United States citizen residing abroad and not domiciled within the State of Montana would appear to be remain liable for taxes on income from sources within the State.

28. NEBRASKA

The State of Nebraska levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries and others maintaining a permanent place of abode within the State for over six months of the taxable year. Neb. Rev. Stat. § 77-2715(2) (1967, as amended to date). The regulations of the State of Nebraska elaborate on the definition of "resident individual," stating that where it depends on domicile, it "is a question of fact rather than law," and that temporary absence from the State does not abandon domicile. Neb. Tax. Regs. § TC-23-1. Therefore, it would appear that a United States citizen domiciled in the State of Nebraska and residing abroad could remain liable to the State for income taxes.

The State of Nebraska bases its tax on the Federal adjusted gross income, with certain modifications not herein relevant. Neb. Rev. Stat.

§77-2715(1) (1967, as amended to date). Therefore, it would appear that the State of Nebraska adopts by reference the Section 911 exclusion into its computation of "taxable income" for Nebraska tax purposes.

The State of Nebraska also levies a general, personal income tax on its non-residents, on their income from sources within the State. Neb. Rev. Stat. § 7-2715(1) (1967, as amended to date). Therefore, it would appear that a United States citizen residing abroad and not domiciled in the State of Nebraska could still be liable to the State for taxes on income from within the State.

29. NEVADA

The State of Nevada does not levy a general, personal income tax on its residents or domiciliaries.

30. NEW HAMPSHIRE

The State of New Hampshire levies no general, personal income tax on its residents or domiciliaries.

31. NEW JERSEY

The State of New Jersey levies no general, personal income tax on its residents or domiciliaries.

32. NEW MEXICO

The State of New Mexico levies a general, personal income tax on its "resident individuals," which it equates with domiciliaries. The statutes of the State of New Mexico also state that a person who changes his or her place of abode from within the State to without the State with the bona fide intention not to return is no longer a "resident." N. Mex. Stat. § 72-15A-3 (1965, as amended to date). Therefore, it would appear that if a United States citizen residing abroad were domiciled in the State of New Mexico, under the general concept of domicile, he or she could remain liable for income taxes to the State.

The State of New Mexico defines its own "base income" in terms of the Federal taxable income. N. Mex. Stat. § 72-15A-2 (1965, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted into the computation of New Mexico taxable income for United States citizens having foreign earned income and paying New Mexico income taxes.

The State of New Mexico also gives its resident and non-resident taxpayers a credit against New Mexico tax for taxes paid to a foreign country on income taxed in the State. N. Mex. Stat. §§ 72-15A-11, 72-15A-12 (1965, as amended to date).

The State of New Mexico also levies a general, personal income tax on its non-residents, on their income from sources within the State. N. Mex. Stat. § 72-15A-3 (1965, as amended to date). Therefore, a United States citizen residing abroad who is not domiciled in the State of New Mexico may still be liable for taxes on income from sources within the State.

33. NEW YORK

The State of New York levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State and spend not over thirty days of the taxable year within the State, and non-domiciliaries who both maintain a permanent place of abode within the State and spend, in the aggregate, over one hundred and eighty-three days of the taxable year within the State. N. Y. Tax Law § 605(a) (1963, as amended to date). The tax regulations of the State of New York further define "resident individual," noting that taxable residence does not necessarily equate with residence for all other legal purposes. Furthermore, the regulations state, if an individual works for the Federal government and lives in Washington, D.C., he or she may retain New York domicile for the purpose of voting, but not be subject to income taxes in the State as long as no permanent place of abode is maintained within the State, a permanent place of abode is maintained outside the State, and no more than thirty days of the taxable year are spent residing within the State. The regulations define "domicile" as

> the place which an individual intends to be his permanent home--the place to which he intends to return whenever he may be absent.
> N.Y. Tax. Regs. § 102.2

More directly on point of the United States citizen domiciled in the State of New York and residing abroad, the regulations state that:

> Domicile is not dependent on citizenship; that is, an immigrant who has permanently established his home in New York is domiciled here regardless of whether he has become a United States

> citizen or has applied for citizenship. However, a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in New York, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his New York domicile unless it is clearly shown that he intends to remain abroad permanently.
>
> N.Y. Tax. Regs. § 102.2(b)(3).

Therefore, it would appear that a United States citizen domiciled in the State of New York could reside in a foreign country and, as long as his or her domicile in New York is not surrendered, remain liable for income taxes to the State.

Furthermore, the state of New York determines its "adjusted gross income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. N.Y. Tax Law § 612 (1960, as amended to date). Therefore, it would appear that the Section 911 exclusion is adopted by reference into the computation of "taxable income" for purposes of the State tax.

The State of New York also levies a general, personal income tax on its non-residents, on their income from sources within the State. N.Y. Tax Law § 631 (1960, as amended to date). Therefore, it would appear that a United States citizen residing abroad and not domiciled in the State of New York could still be liable for taxes on income from sources within the State.

34. NORTH CAROLINA

The State of North Carolina levies a general, personal income tax on its "residents," which it defines as including both domiciliaries and other individuals who are not domiciled within the State but who reside within the State for an "other than temporary or transitory purpose." N. Car. Gen. Stat. § 105-135(13) (1939, as amended to date). The statutes further state that, absent other evidence, residence within the State for over six months of the taxable year raises a presumption of permanent residence. N. Car. Gen. Stat. § 105-135 (13) (1939, as amended to date). Therefore, it would appear that a United States citizen domiciled in the State of North Carolina and residing in a foreign country could, under the general concept of domicile, remain liable for income taxes to the State of North Carolina. This interpretation is supported by two nonstatutory authorities.

A 1942 Opinion of the Attorney General of the State of North Carolina (January 7, 1942) asserted that a Federal employee could remain liable for North Carolina income taxes even if his voting residence were in another jurisdiction. This opinion may be thought to further support the concept that, for purposes of North Carolina income taxes, actual residence and taxable domicile are not necessarily equivalent and that an individual may be residing out of the State and liable for income taxes.

Furthermore, a letter from the Department of Revenue of the State of North Carolina to a tax publishing company, noted in that company's reporter, stated that location of a taxpayer overseas does not, alone, change taxable domicile. The Department of Revenue's administrator stated in that letter that other factors commonly showing new domicile would have to be presented. CCH State Tax Reporter ¶ 15-060.20, N.C. (as amended to date).

The State of North Carolina also gives its taxpayers a credit against

North Carolina income taxes for taxes paid to another country on income also subjected to tax in North Carolina. N. Car. Gen. Stat. § 105-151 (1939, as amended to date).

The State of North Carolina also levies a general, personal income tax on its non-residents, on their income from sources within the State. N. Car. Gen. Stat. § 105-136 (1939, as amended to date). Therefore, a United States citizen not domiciled in the State and residing in a foreign country could still be liable to the State of North Carolina for taxes on income from sources within the State.

35. NORTH DAKOTA

The State of North Dakota levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and any persons both maintaining a permanent place of abode within the State and spending, in the aggregate, over seven months of the taxable year within the State. N. Dak. Cent. Code § 57-38-01 (10) (1923, as amended to date). Therefore, a United States citizen domiciled in the state of North Dakota and residing in a foreign country could, under the general concept of domicile, remain liable for income taxes to the State.

Furthermore the State of North Dakota determines its own taxable income in terms of the Federal taxable income, adjusted in ways not herein relevant. N. Dak. Cent. Code § 57-38-01.2 (1967, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted into the computation of taxable income for purposes of the North Dakota personal income tax.

The State of North Dakota also levies a general, personal income tax on its non-residents, on their income from sources within the State. N. Dak. Cent. Code § 57-38-03 (1923, as amended to date). Therefore, a United States citizen not domiciled in the State of North Dakota and residing in a foreign country could still be liable for tax on income from sources within the State.

36. OHIO

The State of Ohio levies a general, personal income tax on its "residents," which it defines to include both domiciliaries and individuals who maintain a permanent place of abode within the State, do not maintain a permanent place of abode outside the State, and spend, in the aggregate, less than three hundred and thirty-five days of the taxable year outside the State. Ohio Rev. Code § 5747 (I) (1971, as amended to date). Therefore, a United States citizen domiciled in the State of Ohio and residing in a foreign country could, under the general concept of domicile, still be liable for income taxes to the State.

Furthermore, the State of Ohio determines its own "adjusted gross income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Ohio Rev. Code § 5747 (A) (1971, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted by reference into the computation of taxable income for purposes of the Ohio personal income tax.

37. OKLAHOMA

The State of Oklahoma levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries and other individuals spending, in the aggregate, over seven months of the taxable year in the State. Ok. Stat. Tit. 68 § 2353 (4) (1971, as amended to date). Therefore, a United States citizen domiciled in the State of Oklahoma and residing in a foreign country could, under the general concept of domicile, be liable for income taxes to the State.

Furthermore, the State of Oklahoma determines its "adjusted gross income" in terms of the Federal adjusted gross income, and its "taxable income" in terms of the Federal taxable income, with certain adjustments not herein relevant. Ok. Stat. Tit. 68 § 2353 (11), (12) (1971, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted by reference into the computation of taxable income for purposes of the Oklahoma personal income tax.

The State of Oklahoma also levies a general, personal income tax on its non-residents, on their income from sources within the State. Ok. Stat. Tit. 68 § 2362 (1971, as amended to date). Therefore, a United States citizen not domiciled in the State of Oklahoma and residing in a foreign country could still be liable for taxes on income from sources within the State.

38. OREGON

The State of Oregon levies a general, personal income tax on its "residents," which it defines to include both domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and reside within the State for less than thirty days of the taxable year, and non-domiciliaries maintaining a permanent place of abode within the State and spending, in the aggregate, more than two hundred days of the taxable year within the State. Ore. Rev. Stat. § 316.027(a), (b) (1969, as amended to date). The tax regulations of the State of Oregon elaborate on these concepts, stating that those persons domiciled within the State are "residents" for tax purposes whether or not they are physically present within the State during the tax year, and that the doctrine of continued domicile pending acquisition of a new and distinct domicile applies to the residency requirements of the Oregon personal income tax. Ore. Tax. Regs. § 150-316.027. The regulations also cite four examples of domicile and presence being in different States, further supporting the interpretation that a United States citizen domiciled in the State of Oregon and residing in a foreign country may still be liable to the State for income taxes. Ore. Tax. Regs. § 150-316.027.

Furthermore, the State of Oregon determines its own "taxable income" in terms of the Federal taxable income, with certain adjustments not herein relevant. Ore. Rev. Stat. § 316.067 (1969, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted by reference into the computation of taxable income for purposes of the Oregon personal income tax.

The State of Oregon also gives its taxpayers a credit against Oregon income tax for taxes imposed on the taxpayer by foreign countries on income also subject to tax in Oregon. Ore. Rev. Stat. § 316.082 (1969, as amended to date).

The State of Oregon also levies a general, personal income tax on its non-residents, on their income from sources within the State. Ore. Rev. Stat. § 316.062 (1969, as amended to date). Therefore, a United States citizen not domiciled in the State of Oregon and residing in a foreign country could still be liable to the State for taxes on income from sources within the State.

39. PENNSYLVANIA

The Commonwealth of Pennsylvania levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries, unless the domiciliary maintains no permanent place of abode within the Commonwealth, maintains a permanent place of abode outside the Commonwealth, and resides within the Commonwealth for less than thirty days of the taxable year, and non-domiciliaries maintaining a permanent place of abode within the Commonwealth and residing within the Commonwealth for more than one hundred and eighty-three days of the taxable year. Pa. Stat. § 72-7301 (P) (1971, as amended to date). Therefore, a United States citizen domiciled within the Commonwealth of Pennsylvania and residing in a foreign country could, under the general concepts of domicile, be liable to the Commonwealth for income taxes.

The Commonwealth of Pennsylvania also grants its taxpayers a credit against Pennsylvania income taxes for taxes paid to foreign countries on income also subject to tax in the Commonwealth. Pa. Stat. § 72-7314 (1971, as amended to date).

The Commonwealth of Pennsylvania also levies a general, personal income tax on its non-residents, on their income from sources within the Commonwealth. Pa. Stat. § 72-7302 (1971, as amended to date). Therefore, a United States citizen not domiciled in the Commonwealth and residing in a foreign country could still be liable for taxes on income from sources within the Commonwealth.

40. RHODE ISLAND

The State of Rhode Island levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and spend, in the aggregate, less than thirty days of the taxable year within the State, and non-domiciliaries who both maintain a permanent place of abode within the State and also reside in the State for more than one hundred and eighty-three days of the taxable year. R. I. Gen. Laws § 44-30-5(a) (1971, as amended to date). Therefore, United States citizens domiciled in the State of Rhode Island and residing in a foreign country could, under the general concept of domicile, be liable for income taxes to the State.

Furthermore, the State of Rhode island determines its own "Rhode Island income" of a resident in terms of the Federal adjusted gross income, with modifications not herein relevant. R.I. Gen. Laws § 44-30-12 (1971, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted by reference into the computation of taxable income for purposes of the Rhode Island personal income tax.

The State of Rhode Island also levies a general, personal income tax on its non-residents, on their income from sources within the State. R. I. Gen. Laws§ 44-30-2(a) (1971, as amended to date). Therefore, a United States citizen not domiciled in the State of Rhode Island and living in a foreign country could still be liable for taxes on income from sources within the State.

41. SOUTH CAROLINA

The State of South Carolina levies a general, personal income tax on every "individual residing in the State," which the statutes of the State do not further define. S. Car. Code § 65-221 (1952, as amended to date). An Opinion of the Attorney General of the State of South Carolina (August 27, 1947), however, did state that for purposes of the South Carolina income tax, "residing" could be equated with the concept of domicile. Therefore, a United States citizen domiciled in the State of South Carolina and residing in a foreign country could, under the general concept of domicile incorporated into the South Carolina law through the aforementioned Opinion, be liable for income taxes to the State. This interpretation is further supported by a second Opinion of the Attorney General of the State of South Carolina (November 13, 1948), which said that a taxpayer domiciled in the

State and residing in China as a missionary was still subject to income taxes in South Carolina. This interpretation is also supported by at least one judicial decision of the courts of the State of South Carolina.

In Phillips v. South Carolina Tax Commission, 195 S.C. 472, 12 S. E. 2d 13 (S.Car. App. Ct. 1940), a taxpayer contested the assessment of a deficiency for the tax years 1934 through 1937, stating that during those years he was a non-resident of the State, residing in Virginia and voting in that jurisdiction. The Court noted that the taxpayer had also spent over six months of the taxable year within South Carolina, but held that he was domiciled in the Commonwealth of Virginia and not liable for South Carolina income taxes. The court stated:

> the word "residing," as used in the income tax acts, refers to legal residence [emphasis in original] in this State which is equivalent to domicile, and that the legal residence or domicile of plaintiff being in the State of Virginia and not in this State, the sum paid by him by way of income tax, under protest, should be refunded. 195 S.C. at 476.

Therefore, the South Carolina income tax should be considered, pursuant to the decision of the South Carolina Court of Appeals in Phillips and the aforementioned Opinions of the Attorney Generals of the State of South Carolina, to be predicated upon domicile within the State. Furthermore, it may be noted from Phillips that voting residence within the State is not determinative of taxable residency, since an individual may vote outside South Carolina and still be taxable by the State.

The State of South Carolina also levies a general, personal income tax on its non-residents, on their income from sources within the State.

S. Car. Code § 65-221 (1952, as amended to date). Therefore, a United States citizen not domiciled in the State of South Carolina and residing in a foreign country could still be liable for taxes on income from sources within the State.

42. SOUTH DAKOTA

The State of South Dakota does not levy a general, personal income tax on its residents and domiciliaries.

43. TENNESSEE

The State of Tennessee levies a general, personal income tax on its "persons," which it defines to include:

> every natural person, inhabitant, resident, . . . regardless of the sources from which such income is derived, save and except as otherwise expressly provided. Any person who has a legal domicile in Tennessee shall be subject to the tax hereby imposed; every person who maintains a place of residence in Tennessee for more than six (6) months in the tax year shall be subject to the tax hereby imposed regardless of what place such person may claim as a legal domicile.
>
> Tenn. Code § 67-2701 (1931, as amended to date).

Therefore, a United States citizen domiciled in the State of Tennessee and residing in a foreign country could, under the general concepts of domicile, still be liable for income taxes to the State.

44. TEXAS

The State of Texas does not levy a general, personal income tax on its residents and domiciliaries.

45. UTAH

The State of Utah levies a general, personal income tax on its "resident individuals," which it defines to include both domiciliaries, and individuals not domiciled in the State but maintaining a permanent place of abode within the State and residing within the State for, in the aggregate, over one hundred and eighty-three days of the taxable year. Utah Code § 59-14A-4(g) (1973, as amended to date). The regulations of the State of Utah elaborate on the concept of domicile, stating that it means

> the place where an individual has true, fixed permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning.
>
> Utah Tax. Regs. § 14A-1.

These regulations also adopt the view that domicile, once acquired, is not lost until a new and distinct domicile is obtained. Utah Tax. Regs. § 14A-1. Therefore, a United States citizen domiciled in the State of Utah and residing abroad could, under the general concepts of domicile adopted in the State of Utah, remain liable for income taxes to the State.

Furthermore, the State of Utah determines its "taxable income" in terms of the Federal taxable income, with certain modifications not herein relevant. Utah Code § 59-14A-15 (1973, as amended to date). The Section 911 exclusion would, thereby, appear adopted by reference into the Utah computation of taxable income.

The State of Utah also levies a general, personal, income tax on its nonresidents, on their income from sources within the State. Utah Code § 59-14A-15(1973, as amended to date). Therefore, a United States citizen not domiciled in the State of Utah and residing abroad could still be liable for taxes on income from sources within the State.

46. VERMONT

The State of Vermont levies a general, personal income tax on its "residents," which it defines to include both domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and reside less than thirty days of the taxable year in the State, and non-domiciliaries who maintain a permanent place of abode within the State and reside within the State for more than one-hundred and eighty-three days of the taxable year. 32 Vt. Stat. § 5811 (11) (A)(i), (ii) (1971, as amended to date). Therefore, a United States citizen domiciled in the State of Vermont and residing in a foreign country could, under the general concept of domicile, be liable for income taxes to the State.

Furthermore, the State of Vermont determines its "adjusted gross income" in terms of the Federal adjusted gross income, without subsequent modification. 32 Vt. Stat. § 5811(1)(1971, as amended to date). Therefore, the Section 911 exclusion would appear adopted by reference into the computation of taxable income for purposes of the Vermont individual income tax.

47. VIRGINIA

The Commonwealth of Virginia levies a general, personal income tax on its "residents," which it defines to include natural persons either domiciled in the Commonwealth or other individuals who reside within the Commonwealth for more than one-hundred and eighty-three days of the taxable year. Va. Code § 58-151.02(e) (1971, as amended to date). Therefore, a domiciliary of the Commonwealth of Virginia residing abroad could, under the general concept of domicile, remain subject to income taxation in Virginia.

Furthermore, the Commonwealth of Virginia determines its "taxable income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Va. Code § 58-151.013(1971, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted into the Virginia computation of taxable income.

The Commonwealth of Virginia also levies a general, personal income tax on its nonresidents, on their income from sources within the state. Va. Code § 58-151.013(f) (1971, as amended to date). Therefore, it would appear that a United States citizen not domiciled in the Commonwealth of Virginia and residing abroad could still be liable to the Commonwealth for taxes on income from sources within the state.

48. WASHINGTON

The State of Washington does not appear to currently levy a general personal income tax on its residents and domiciliaries.

49. WEST VIRGINIA

The State of West Virginia levies a general, personal income tax on its "resident individuals," which it defines to include domiciliaries, unless they maintain no permanent place of abode within the State, maintain a permanent place of abode outside the State, and spend not more than thirty days of the taxable year in the State, and nondomiciliaries who maintain a permanent place of abode within the State and reside within the State for more than one hundred and eighty-three days of the taxable year. W. Va. Code § 11-21-7(a) (1961, as amended to date). The regulations of the State of West Virginia further clarify the question of domicile by noting that "residence" for tax purposes is not necessarily equivalent to "residence" for all purposes. The regulation states that

> [a]n individual may be a resident of West Virginia for income tax purposes, and be taxable as a resident, even though he would not be deemed a resident for other purposes.
>
> W. Va. Tax. Regs., I.T. 1.7.

The regulations also note that domicile is "the place which an individual intends to be his permanent home; the place to which he intends to return whenever he may be absent." W. Va. Tax. Regs., I.T. 1.7(4). Domicile is not dependent upon citizenship, but, most applicable to the instance of a United States citizen residing abroad, the regulations note that

> a United States citizen will not ordinarily be deemed to have changed his domicile by going to a foreign country unless it is clearly shown that he intends to remain there permanently. For example, a United States citizen domiciled in West Virginia, who goes abroad because of an assignment by his employer or for study, research or recreation, does not lose his West Virginia domicile unless it is clearly shown that he intends to remain abroad permanently and not to return.
>
> W. Va. Tax. Regs., I.T. 1.7 (4).

Therefore, a United States citizen domiciled in West Virginia and residing abroad could still remain liable to the State for income taxes.

Furthermore, West Virginia determines its own taxable income in terms of the Federal adjusted gross income, with modifications not herein relevant. W. Va. Code § 11-21-11(a)(1961, as amended to date). Therefore, the Section 911 exclusion would appear to be adopted into the West Virginia computation of taxable income.

The State of West Virginia also levies a general, personal income tax on its nonresidents, on their income from sources within the State. W. Va. Code § 11-21-21(a)(1961, as amended to date). Therefore, it would appear that a United States citizen not domiciled in the State of West Virginia and residing abroad could still be liable to the State for taxes on income from sources therein.

50. WISCONSIN

The State of Wisconsin levies a general, personal income tax on all "natural persons residing within the state," which it defines to include domiciliaries only. Wis. Stat. § 71.01(1) (1947, as amended to date). Therefore, under the general concept of domicile it would appear that a United States citizen domiciled in the State of Wisconsin and residing abroad could still be liable for income taxes to the State.

Furthermore, the State of Wisconsin determines its own "taxable income" in terms of the Federal adjusted gross income, with certain modifications not herein relevant. Wis. Stat. § 71.05 (1947, as amended to date). Therefore, the Section 911 exclusion would appear adopted by reference into the computation of taxable income for Wisconsin income tax purposes.

The State of Wisconsin also levies a general, personal income tax on its nonresidents, on their income from sources within the State. Wis.

Stat. § 71.01 (1947, as amended to date). Therefore, a United States citizen not domiciled in the State and residing abroad could still be liable for tax on income earned within the State.

51. WYOMING

The State of Wyoming does not appear to levy a general, personal income tax on its residents and domiciliaries.

III. COMPARATIVE ANALYSIS OF THE STATE PROVISIONS ON TAXATION OF UNITED STATES CITIZENS RESIDING ABROAD

As stated earlier, there are a number of common bases upon which the tax laws of the fifty states and the District of Columbia may be compared with regard to taxation of United States citizens residing abroad. The major categories are (1) the basis upon which taxation is predicated, i.e. domicile or residency, and the factors upon which the State determines these bases; (2) the existence of a nonresident income tax; (3) the adoption by reference of the Section 911 exclusion; and (4) existence of a foreign tax credit. The following comparative analysis will be organized on this basis. References will be made to the forty-one States, rather than the fifty States, because nine of these do not levy a general, personal income tax.

A. Basis of Taxation: Domicile, Residency and their Component Factors

In addition to the District of Columbia, of the forty-one States with general, personal, income taxes, thirty five determine their tax base upon the residency and the domicile of their citizens. An individual either residing in the State (other than temporarily) or domiciled there may be subject to an income tax. These States include: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, and West Virginia. Six States tax only domiciliaries; Alaska, Kansas, Massachusetts, New Mexico, South Carolina, and Wisconsin. Georgia levies its tax on "legal residence," which is defined to be similar but not totally equivalent to domicile. Where "residence" is one of the elements upon which tax may be predicated, all of the States appear to use some form of computation for determining residence: e.g. the taxpayer must stay in the State physically for a certain number of days. In these States and the States in which domicile only is the predicate (all except Georgia), the United States citizen living abroad may be subject to income tax. To avoid this tax the citizen must show abandonment of domicile in the State.

Of the forty-one States and the District of Columbia, voting has been held to be a major determinant of domicile in Alabama, Arkansas, Iowa, Kansas, Maryland. However, it may be noted, under the general concept of domicile, voting should be a relevant point of inquiry in evaluating domicile in any State in which domicile forms a basis for taxation.

B. Nonresident Income Tax

The following States levy an income tax on their nonresidents, on income from sources within the State: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, West Virginia, and Wisconsin. In these States, therefore, even if a United States citizen residing abroad were not domiciled in the State, he might still be liable for taxes on income from sources within the State.

C. Adoption by Reference of the Section 911 Exclusion

The following States have enacted provisions which adopt the Section 911 exclusion of the first \$20,000 or \$25,000 of income earned abroad into their computations of taxable income for State income tax purposes: Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New

Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

D. Foreign Tax Credit

Of the forty-one States and the District of Columbia, all of which levy a general, personal income tax, the following States permit their taxpayers to credit against State tax obligation the taxes paid a foreign country: Arizona, Hawaii, Idaho, Indiana, Iowa, Massachusetts, New Mexico, North Carolina, Oregon, and Pennsylvania.