

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 91-100

JAMES F. & CHRISTINE R. BAKER §
Route 1, Box 129-A
Dozier, AL 36028, §

§

Taxpayers. §

FINAL ORDER

The Revenue Department assessed income tax against James F. and Christine R. Baker (Taxpayers) for the years 1987, 1988 and 1989. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on March 20, 1991. Gregory D. Hyde, Esq. represented the Taxpayers. Assistant counsel Dan Schmaeling appeared for the Department. This Final Order is based on the facts and arguments presented by the parties.

FINDINGS OF FACT

This is a domicile case. The issue is whether James F. Baker (Taxpayer) was domiciled in Alabama during 1987, 1988 and 1989 and therefore liable for Alabama income tax in those years. The relevant facts are undisputed.

The Taxpayer was born in Montana in 1922 but moved to Florida in 1925 and finally settled in Orlando, Florida in 1954. The Taxpayer purchased a house in Orlando where he lived with his wife and children. The Taxpayer worked as an ironworker and retired in 1984.

The Taxpayers purchased approximately 60 acres of land near

Dozier in Crenshaw County, Alabama in 1979. The Taxpayers moved a doublewide trailer onto the property in 1986 and during the years in issue stayed at either the trailer in Alabama or their house in Orlando. The determinative question is whether the Taxpayers abandoned Orlando and established a new primary residence in Alabama in 1986.

The Taxpayers opened a checking account in Opp, Alabama in 1986 and soon thereafter closed their old account in Orlando. The Taxpayer's retirement check was mailed to Alabama beginning in 1986. The Taxpayers' grandson moved into the trailer in late 1986 or early 1987 and attended a local high school.

The Taxpayers purchased and registered several vehicles in Alabama during the subject years and also purchased and registered a vehicle in Tallahassee, Florida in 1989. The Taxpayers retained their Florida driver's licenses after 1986. The Taxpayer remained a member of the local ironworker's union in Orlando and worked on a job in Orlando in 1988. Neither of the Taxpayers were registered to vote in Florida. However, the Taxpayer registered in Alabama in the mid-1980s at the request of a friend so that he could vote in a local election.

The Taxpayers filed Alabama and federal income tax returns for 1986, 1987 and 1988, all of which showed the Taxpayers' address as Dozier, Alabama. The 1986 and 1988 Alabama returns were part-year resident returns and the 1987 return was a full-year resident

return. All the returns were prepared by H & R Block in Opp.

The Taxpayers were staying at the trailer in Crenshaw County in mid-1989 when the Taxpayer won over \$600,000.00 in the Florida lottery. The Taxpayer put his name and Alabama address on the back of the winning ticket in case it was lost or stolen. The Taxpayer also gave the Florida lottery officials his Alabama address when he cashed the ticket in Tallahassee.

The Taxpayers hired a CPA in Tallahassee to do their 1989 income tax returns. The CPA concluded after consulting with the Taxpayers' representative in this case that the Taxpayers had not been domiciled in Alabama and thus did not owe Alabama tax in 1989.

The Taxpayers consequently filed a 1989 Alabama return showing no tax due.

The Department determined that the Taxpayers were domiciled in Alabama after 1986 and thus assessed additional tax due for the years in issue. The Taxpayers subsequently appealed to the Administrative Law Division.

The Taxpayers contend that they are still domiciled in Orlando and that the trailer in Alabama is only a vacation home that they use to get away from the traffic congestion in Orlando. The Taxpayers periodically returned to Orlando during the years in issue to visit friends and family in the area. However, the Taxpayer could not estimate at the administrative hearing how much time he spent in either Crenshaw County or Orlando. When in

Orlando the Taxpayers stay at their old house with their youngest son. The son moved into the house when the Taxpayers began staying at the trailer in Alabama in 1986 and has lived in and paid the utilities on the house since that time.

CONCLUSIONS OF LAW

A person's domicile is his true, fixed home to which he intends to return when absent. To change domiciles, the previous residence must be abandoned and a new permanent residence must be established elsewhere. The presumption is in favor of the former domicile and the burden of establishing a change of domicile is on the party asserting that a change has occurred. Whetstone v. State, Department of Revenue, 434 So.2d 796.

The Taxpayers were domiciled in Florida and the Department is required to prove that the Taxpayers changed domiciles to Alabama in 1986. However, the facts, viewed objectively, show that the Taxpayers established the trailer in Crenshaw County as their primary residence in 1986. The facts supporting that conclusion are as follows:

The Taxpayers opened a checking account in Alabama in 1986 and soon thereafter closed their old account in Orlando. A person normally keeps his checking account where he lives and the Taxpayers would not have moved their only checking account from Orlando to Alabama unless they intended to abandon Orlando and establish a new home in Alabama. The Taxpayer also would not have

had his monthly retirement check mailed to Alabama unless he anticipated being in Alabama when it arrived.

The Taxpayers would not have filed Alabama returns and also claimed Alabama as their home on their federal returns only because they had a vacation home in Alabama and happened to be on vacation in Alabama when the returns were filed. Even if the Taxpayers were vacationing in Alabama each year at income tax time, which is an unusual coincidence in itself, they still could have listed Orlando as their permanent home on the returns if in fact they still considered Orlando to be their home.

The Taxpayer put his Alabama address on the winning lottery ticket because he was in Alabama when he learned that he had won.

However, the Taxpayer also gave his Alabama address to the Florida lottery officials when he cashed the ticket in Tallahassee. There is no reasonable explanation why the Taxpayer, while in Florida to cash a Florida lottery ticket, would declare Alabama as his home if he still considered himself to be domiciled in Orlando.

Other facts pointing to Alabama as the Taxpayers' domicile are as follows: The Taxpayer registered to vote in Alabama (a declaration of citizenship or intent to become a citizen is required). The Taxpayers purchased and registered several vehicles in Alabama during the subject years, but never purchased or registered a vehicle in the Orlando area. The Taxpayers' grandson lived with them and attended high school in Alabama. Finally, the

Taxpayers' son moved into the Orlando house and has lived in and paid the utilities on the house since the Taxpayers moved to Alabama in 1986.

The Taxpayer testified that he intended to make the trailer his permanent home at some point in the future. However, the evidence indicates that the Taxpayers lived primarily at the trailer and treated Alabama as their home after 1986. Consequently, the Taxpayers were domiciled in Alabama during the years in issue and the assessments in dispute are correct and should be made final, with applicable interest.

Entered on the 4th day of June, 1991.

BILL THOMPSON
Chief Administrative Law Judge