

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

vs.

§

DOCKET NO. INC. 93-168

JAMES H. AND ROBBIE L. ELDRIDGE  
4530 Shamrock Court  
Montgomery, AL 33106,

§

§

Taxpayers.

§

FINAL ORDER

The Revenue Department assessed James H. and Robbie L. Eldridge for income tax for the years 1989, 1990 and 1991. The Eldridges appealed to the Administrative Law Division and a hearing was conducted on July 29, 1993. James H. Eldridge (Taxpayer) appeared at the hearing. Assistant counsel Beth Acker represented the Department.

This is a domicile case. The issue is whether the Taxpayer was domiciled in Alabama during the years 1989 through 1991. If so, the Department properly assessed Alabama income tax on the income earned by the Taxpayer outside of Alabama during those years.

The Taxpayer and his wife lived in Montgomery from 1974 until early 1989. The Taxpayer worked in the construction industry during those years with either Blount, Inc. or T. H. Taylor Construction Company, Inc.

The Taxpayer was laid off in January, 1989. He and his wife were having marital problems at the time and the Taxpayer took a

job and moved to Tennessee in March or April, 1989. The Taxpayer lived with his parents while working in Tennessee. His wife and children continued living in Montgomery. The Taxpayer testified that when he moved to Tennessee in early 1989 he never intended or expected to move back to Alabama.

The Taxpayer accepted another construction job in Tennessee in October, 1989. The Taxpayer's first assignment with the new company was as a project manager in Jacksonville, Florida. However, the Taxpayer purchased a pick-up truck prior to leaving Tennessee which he titled, registered and tagged in Montgomery.

The Taxpayer worked in Jacksonville from October 1989 until the construction job was completed in December, 1990. The Taxpayer returned to the company's home office in Tennessee for approximately two months, and was then reassigned to another project in Fort Myers, Florida in February, 1990. The Taxpayer worked in Fort Myers until October 1991, when he was transferred to Hollywood, Florida. The Taxpayer was rehired by Blount in March or April, 1992, and after working a short period in Boca Raton, Florida was transferred by Blount to Atlanta where he presently resides and works.

The Taxpayer lived in a rented apartment at all times after leaving Alabama except for the short period he lived with his parents in Tennessee during 1989. The Taxpayer maintained a joint bank account with his wife in Montgomery during the entire period,

and he continued to send money to Montgomery for the support of his wife and children. The Taxpayer and his wife still jointly own the family home in Montgomery. The Taxpayer is still a member of a church in Montgomery, and he has maintained his voter registration and drivers license registration in Alabama. The Taxpayer testified that while he does not foresee moving back to Alabama in the near future, he also does not intend to divorce his wife. The couple filed joint federal and Alabama returns in 1989 through 1991, and the Taxpayer claimed away-from-home living expenses on the federal returns in all years. The Taxpayer visited Alabama as often as he could during the subject years, depending on where he was working at the time.

Every person domiciled in Alabama is subject to Alabama income tax regardless of where they live or where their income is earned. Code of Ala. 1975, §40-18-2. "Domicile" is defined as an individual's true, fixed home to which he intends to return when absent. Whetstone v. State, 434 So.2d 796.

There are no hard rules for determining if a person is domiciled in Alabama. However, once Alabama is established as a person's domicile, there is a strong presumption in favor of Alabama as the domicile and the burden is on the person asserting a change to prove that Alabama has been abandoned and a new domicile established elsewhere with the intent to remain at the new domicile permanently.

Domicile can be determined from a person's acts and oral declarations. Rosenberg v. Commissioner, 37 F.2d 808. However, when a person's actions conflict with his declarations, his acts must control. Consequently, although the Taxpayer testified that he intended to abandon Alabama and remain permanently in Tennessee when he moved in early 1989, his actions to the contrary must control. I find the below argument set out in the Department's brief to be convincing:

In the case presently before Your Honor, Mr. Eldridge repeatedly stated that when he moved to Tennessee he intended to remain in Tennessee permanently. If declarations alone were sufficient to establish domicile, the record in this case no doubt would show that Mr. Eldridge was domiciled in Tennessee as of April, 1989.

By his actions, however, Mr. Eldridge did not abandon his Alabama domicile "unequivocally". His ties to Tennessee were temporary, while his ties to Alabama were and are continuous. Although he moved his IRA account to Tennessee he did not transfer his other bank accounts.

He did not transfer his voter registration. He did not transfer his church membership. He did not change his driver's license. These are things that a person does when he changes his residency permanently. In October 1989 when Mr. Eldridge decided to buy a new truck, he contacted a bank in Montgomery, Alabama and had the truck titled, registered and tagged in the State of Alabama.

He testified that he knew he was leaving Tennessee and that he chose not to have it titled, registered and tagged to the State of Florida. Instead, he chose Alabama. He and his wife filed joint returns. He claimed away from home living expenses on his federal returns during the time period in issue. He and his wife are not formally separated, and he testified he does not intend to divorce his wife. He testified that he visited and continues to visit his family when he can. As the Court directed in Whetstone, supra, Your Honor cannot ignore Mr. Eldridge's indicia of domicile in Alabama. The best evidence of Mr. Eldridge's intent is manifested through his actions - all which support the Department's position that he never abandoned his Alabama domicile.

When declarations are inconsistent with the actual facts of the case, actions speak louder than words and actions should control. Such is the case here.

Although this is a close case, I find that the Taxpayer neither abandoned Alabama nor established a permanent domicile in Tennessee or elsewhere with the intent to remain at the new location permanently. Consequently, the Taxpayer remained domiciled in Alabama during the years in issue and is liable for Alabama income tax on his income earned in those years.

The above considered, the assessments in issue are upheld and judgment is entered against the Taxpayers for 1989 income tax of \$1,864.51, 1990 income tax of \$1,971.35, and 1991 income tax of \$2,734.14, all with additional interest computed from February 3, 1993.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on August 17, 1993.

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BILL THOMPSON  
Chief Administrative Law Judge