

HORACE C. & MARTHA BROWN §
590 County Road 1261
Falkville, Alabama 35622-3231,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 95-216

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed income tax against Horace C. and Martha Brown (jointly "Taxpayers") for the year 1992. The Taxpayers appealed to the Administrative Law Division, and a hearing was conducted on July 10, 1995. Horace C. Brown (individually "Taxpayer") appeared at the hearing. Assistant Counsel Claude Patton represented the Department.

This is a domicile case. The issue in dispute is whether the Taxpayer was domiciled in Alabama during 1992, and thus liable for Alabama income tax on income earned outside of Alabama in that year.

The Taxpayer was born in Alabama and entered the military service in 1961. The Taxpayer left the military and moved back to Alabama in 1966, but then re-entered the service in 1973 and moved to North Carolina at that time.

The Taxpayer's father-in-law died in Alabama in 1981. The Taxpayer and his family moved back to Alabama in 1982 because his wife wanted to be closer to her mother. The Taxpayer lived in Alabama and worked at various jobs from 1982 until 1989.

The Taxpayers were having marital problems in 1989. The

Taxpayer subsequently moved to Washington, D.C. in that year and took a job with the United States Government. The job required the Taxpayer to move to Chile in August 1990. The Taxpayer's wife and family remained in Alabama. The Taxpayer continued to send support money to his family while he worked in Chile.

The Taxpayer claims that he never intended to return to live in Alabama, but rather intended to work for the United States Government outside of the United States indefinitely. He expected to stay in Chile for at least three years, after which time he expected to move to another foreign post.

The Taxpayer got sick in mid-1992 and returned to Alabama for diagnosis and treatment of cancer. Because he needed continuing cancer treatment, the Taxpayer was unable to return to his job in Chile. Consequently, he moved back to Alabama in October 1992 and is presently living in the State.

Code of Ala. 1975, §40-18-2(7) levies an income tax on "every natural person domiciled in the State . . . ". A person's domicile is his true, fixed home to which he intends to return when absent.

To change domiciles, there must be both an abandonment of the old domicile with no present intention of returning, and the establishment of a new domicile with the intent to remain permanently, or at least for an indefinite period. State ex rel. Rabren v. Baxter, 229 So.2d 206 (1970); Whetstone v. State, 434 So.2d 796 (1983).

In this case, the Taxpayer clearly abandoned Alabama when he left in 1989 with the intention never to return. The fact that his estranged wife continued to live in Alabama does not establish his intent to return to the State at some point in the future.

However, the Taxpayer nevertheless failed to change domiciles from Alabama because he failed to establish a permanent domicile elsewhere.

Under Alabama law, a person initially domiciled in Alabama remains domiciled in Alabama until a new permanent domicile is established elsewhere. In Whetstone, supra, the taxpayers had moved to Nigeria where they intended to live until the husband retired. They intended to return to the United States at that time. The Court of Civil Appeals held that the taxpayers had failed to change domicile from Alabama because they had not established a permanent domicile elsewhere, as follows:

"The taxpayers have failed to meet their burden in establishing Nigeria as their domicile in another critical way; that is, they have not shown an intent to remain in Nigeria. In order to establish Nigeria as their domicile, they need to show their intent to remain permanently, or at least for an unlimited time from which the intent to remain may be inferred. *State ex rel. Rabren v. Baxter, supra; Holmes v. Holmes*, 212 Ala. 597, 103 So. 884 (1925). By their actions, the taxpayers have indicated an intent to remain at the most only until the husband retires. Although no specific date is involved, a specific event - retirement - will cause the taxpayers to leave Nigeria. Put another way, they will not be there for an "unlimited time," because they will leave upon the husband's retirement. The fact that the taxpayers have established a home in Florida further supports the trial court's finding that the taxpayers are not domiciled in Nigeria because they have no intent to

remain."

The Taxpayer in this case intended to remain in Chile for only approximately three years, after which he intended to move to another "temporary" job assignment. Consequently, although the Taxpayer abandoned Alabama in 1989, he nonetheless remained domiciled in Alabama because he failed to establish a permanent residence outside of Alabama.

As in this case, individuals on occasion will abandon Alabama as their domicile, but instead of settling in a new home permanently, will travel from place to place as required by a job or for some other reason. A reasonable case could be made that the individual has abandoned Alabama as a domicile and thus should not be liable for Alabama income tax on income subsequently earned outside of Alabama. However, as indicated in Whetstone and the cases cited therein, if a person once domiciled in Alabama does not subsequently establish a permanent domicile elsewhere, Alabama remains that person's domicile for income tax purposes.

The above considered, the final assessment in issue must be affirmed. Judgment is entered against the Taxpayer in the amount of \$3,094.49, plus applicable interest.

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

Entered July 25, 1995.

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BILL THOMPSON
Chief Administrative Law Judge