

JOHN SUTTON
4702 Tennessee Avenue, #6
Nashville, Tennessee, 37209,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

JOHN & IRIS SUTTON
108 Matt Phillips Road
Huntsville, Alabama 35806,

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DOCKET NOS. INC. 97-116
INC. 97-117

Taxpayers,

§

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed income tax against John and Iris Sutton (together "Taxpayers") for 1993, and John Sutton (individually "Taxpayer") for 1994 and 1995. The Taxpayers both appealed. The cases were consolidated and heard on April 15, 1997. The Taxpayers represented themselves at the hearing. Assistant Counsel Antoinette Jones represented the Department.

The Taxpayers initially filed a joint 1993 Alabama income tax return. The Taxpayer's wife later filed an amended individual 1993 return after the April 15, 1994 due date. The primary issue is whether that amended return should be accepted by the Department. A second issue is whether the Department correctly disallowed certain business expenses claimed by the Taxpayers on their 1993 joint return.

Concerning 1994 and 1995, the issue is whether the Taxpayer was domiciled in Alabama in those years, and thus liable for Alabama income tax on wages earned in Tennessee.

The Taxpayers are married. Before 1991, they lived together with their two children in their jointly owned home in Huntsville, Alabama. The Taxpayers had a third child in 1992.

The Taxpayer began working in 1991 as a respiratory therapist at Baptist Hospital in Nashville, Tennessee. The Taxpayer was employed in Nashville, and rented either a room or an apartment in Nashville during the subject years. The Taxpayer's family continued living in Alabama. The Taxpayer also maintained an individual checking account in Nashville.

The Taxpayers filed joint federal income tax returns and listed their home in Huntsville as their permanent residence during the years in issue. They also filed joint Alabama returns in 1991, 1992, and 1993. However, the Taxpayer's wife filed an amended 1993 form 40X return on August 3, 1994, claiming a status of married, filing separate. Both Taxpayers failed to file Alabama returns in 1994 or 1995, although the Taxpayer's wife claimed at the April 15 hearing that she intends to file a married, filing separate return in the near future.

The Department received IRS information indicating that the Taxpayers filed as Alabama residents on their 1994 and 1995 joint federal returns. The Department investigated and determined that the Taxpayer was domiciled in Alabama during those years, and accordingly assessed the Taxpayer for the 1994 and 1995 Alabama tax in issue.

The Department also rejected the wife's 1993 amended return because filing an amended return after the due date is prohibited by Department Reg. 810-3-27-.01(3). The Department also disallowed some business expenses deducted on the Taxpayers' joint 1993 return because they failed to provide verifying records. The 1993 final assessment resulted from those disallowed deductions.

Department Reg. 810-3-27-.01(3) provides that the "election to file a joint return is irrevocable after the due date of the return for any tax year." Consequently, the Department correctly rejected the wife's amended 1993 return filed after the due date.

The Department also properly disallowed all unverified deductions claimed by the Taxpayers on their joint 1993 return. The burden is on a taxpayer to prove his or her right to a deduction, and in the absence of verifying records, the deduction must be disallowed. U.S. v. Wodtke, 627 F.Supp. 1034 (1985). All deductions for which records were provided were allowed.

The Department determined the Taxpayer was domiciled in Alabama in 1994 and 1995 based on the following facts:

The Taxpayer was married, and his wife and three children continued to live in the couple's jointly owned house in Alabama during the subject years. The Taxpayer visited and sometimes spent the night with his family in Huntsville on the average of twice a week. The couple also jointly owned a rental house, and maintained a joint checking account in Alabama during the subject years.

The Taxpayer had an Alabama driver's license, was registered to vote in Alabama, and titled and tagged his vehicle in Alabama during the subject years. The W2 forms issued by Baptist Hospital showed the Taxpayer's residence as the family home in Huntsville, Alabama. As indicated, the Taxpayers filed joint federal returns showing Alabama as their home state. Finally, the Taxpayer provided continuing and substantial financial support to his family in Alabama, as indicated by the

following testimony:

ALJ: Mr. Sutton, during this period, what do you do with your pay? Do you live independent with your own pay, or do you provide some support?

Mr. Sutton: Oh, yeah. You know, I just give her, you know, whatever she needs.

ALJ: For support of the children primarily.

Mr. Sutton: Yeah, absolutely. Children, medical, everything, you know, whatever.

Transcript at p. 31-32.

The Taxpayer argues that although he is still married, he and his wife are amicably separated, and his home is now Tennessee, not Alabama. The Taxpayer claims he did not change his voter registration, driver's license, or car registration to Tennessee when he moved in 1991 because he saw no need to. He also argues that he and his wife kept their joint Alabama checking account and joint ownership of their Alabama property for the same reason.

Alabama income tax is levied on all individuals domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). An individual can work and reside outside of Alabama, but still be domiciled in Alabama and thus liable for Alabama income tax.

A person's domicile is his true, fixed home to which he intends to return when absent. The burden is on a person claiming a change of domicile to prove that a change has in fact occurred. There is a presumption in favor of the former domicile, and a change occurs only if the person (1) abandons Alabama with the intent not to return, and (2) establishes a new residence outside of Alabama with the intent to

remain at the new location permanently, or at least indefinitely. See generally, Whetstone v. State, 434 So.2d 796 (Ala. 1983).

I understand there was no practical reason for the Taxpayer to immediately change his voter registration, vehicle registration, and driver's license to Tennessee when he started working in Nashville in 1991. However, other than working and renting a room or apartment in Nashville, the Taxpayer failed to establish any permanent ties to Tennessee during the subject years. Importantly, the Taxpayer also maintained strong, permanent ties to Alabama. Of particular importance - (1) the Taxpayer owned a residence and rental property with his wife in Alabama, (2) he shared his entire income with his family in Alabama, and (3) he regularly visited and stayed in Alabama with his family during the subject period.

The Taxpayer's actions fail to establish that he abandoned Alabama and established a new permanent home in Tennessee. Consequently, the Taxpayer remained domiciled in Alabama, and is liable for Alabama income tax during the subject years. The Taxpayer and his family certainly benefitted from public services provide by Alabama (public schools, highways, fire and police protection, etc.) sufficient to justify the Taxpayer paying his fair share of Alabama taxes.

Concerning the penalties, the Taxpayer clearly believed in good faith that he was not required to file an Alabama income tax return and pay Alabama tax in 1994 or 1995 because he worked in Nashville. Consequently, reasonable cause exists to waive the late penalties assessed for 1994 and 1995. Code of Ala. 1975, §40-2A-11(h).

The final assessments, as adjusted, are affirmed. Judgment is entered against the Taxpayers for 1993 income tax of \$1,644.16, plus applicable interest, 1994 income tax of \$1,670.95 (\$2,484.63 less penalty of \$813.68), plus applicable interest, and 1995 income tax of \$1,431.59 (\$2,026.91 less penalty of \$595.32), 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 June 12, 1997.

BILL THOMPSON
Chief Administrative Law Judge

BT:dr

cc: Antoinette Jones, Esq.
John Sutton
Iris Sutton
Kim Herman