

GORDON W. WALLACE
305 STANWOOD COURT
FLORENCE, AL 35633-5633,

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 14-815

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Gordon W. Wallace (“Taxpayer”) for 2010 Alabama income tax. The Taxpayer appealed to the Administrative Law Division, now the Alabama Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 13, 2014. The Taxpayer and his CPA, Frank Spires, attended the hearing. Assistant Counsel Mary Martin Majors represented the Department.

The Revenue Department received IRS information indicating that the Taxpayer resided in Alabama in 2010 and had sufficient income to require him to file an Alabama income tax return for that year. It assessed the Taxpayer accordingly. This appeal followed.

The Taxpayer argues that he resided and was domiciled in Tennessee in 2010, and thus was not subject to Alabama income tax in that year.

The Taxpayer is 48 years old. He was born in Alabama, and resided and worked in Alabama until 2006. The Taxpayer accepted a permanent job with Alcoa Corporation in Maryville, Tennessee just outside of Knoxville in February 2006. He moved to the Knoxville area at that time.

The Taxpayer’s wife and young son continued living at the couple’s home in Florence, Alabama after the Taxpayer moved to Tennessee. The Taxpayer explained at

the November 13 hearing that his wife works for the Alabama Conservation Department, and that she wanted to work for two or three more years to build up her State retirement benefits. The wife also wanted to stay in Alabama and help her elderly parents who lived nearby because they were not in good health at that time. The wife did intend to eventually move to Tennessee in a few years, and the couple looked at houses to buy in the Knoxville area in 2008 and 2009. The wife and son never moved, however, primarily because the wife did not want to leave her elderly parents.

The Taxpayer periodically visited his wife and son on weekends in Alabama after moving to Tennessee, but more often the wife and son visited the Taxpayer in Tennessee. The Taxpayer renewed his Alabama driver's license and his Alabama car tag while living in Tennessee because, as explained by the Taxpayer, it was convenient to do so, especially cornering the annual tag that could be renewed by mail. He also remained registered to vote in Alabama, although he never voted in Alabama while he was in Tennessee.

The Alabama company for which the Taxpayer had worked prior to his move to Tennessee offered him a significant promotion in early 2013. He accepted the offer in February 2013, and returned to live with his wife and son in Alabama at that time.

The Taxpayer's representative has prepared the Alabama and federal returns for the Taxpayer and his wife for approximately ten years. He has always filed joint federal returns for the couple. He explained at the November 13 hearing that when the Taxpayer moved to Tennessee in 2006, the Taxpayer told him and he believed that the move was intended to be permanent. The representative thereafter filed married, filing separate Alabama returns for the wife.

Alabama income tax is levied on individuals residing in Alabama, Code of Ala. 1975, §40-18-2(1), and also on individuals residing and earning income outside of Alabama that are still domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A persons' domicile is his true, fixed home to which he intends to return when absent. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). In order to change domiciles from Alabama, a taxpayer must abandon Alabama and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. The burden is on a taxpayer asserting a change of domicile to prove that a change of domicile has occurred. The presumption is in favor of the original or former domicile, as against a newly acquired one. See generally, *Cobb v. State, Inc.* 96-272 (Admin. Law Div. 2/24/97).

The Taxpayer retained some ties to Alabama while living in Tennessee from 2006 until 2013 because his wife and son continued living in Alabama, he was registered to vote in Alabama, and he renewed his Alabama driver's license and his Alabama automobile tags while in Tennessee. The Taxpayer adequately explained, however, that his wife did not also move to Tennessee in 2006 because she wanted to accrue additional retirement benefits with the State, and also wanted to help care for her elderly parents. He kept his voter registration in Alabama because, as he explained, he did not know how to "un-register" to vote in Alabama. In any case, he never voted in Alabama while in Tennessee. And although he now concedes that he should have obtained a Tennessee driver's license and registered his car in Tennessee, it is understandable that he did not do so simply because it was convenient and easy to keep his Alabama license and register his vehicle in Alabama by mail.

The facts establish that the Taxpayer abandoned Alabama when he moved to Tennessee in 2006 with the intent to remain there permanently, or at least indefinitely. Consequently, he changed his domicile to Tennessee, and thus was not subject to Alabama income tax on his Tennessee-sourced income earned in Tennessee in 2010. The final assessment in issue is voided.

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

Entered November 18, 2014.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Frank Spires, CPA