

JOHN M. & CATHERINE D. HARBOR §
408D STATE STREET §
FAYETTEVILLE, TN 37334, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NOS. INC. 14-644
INC. 14-993
INC. 15-573

FINAL ORDER

These consolidated appeals involve final assessments of 2010, 2011, and 2012 income tax entered by the Revenue Department against John M. and Catherine D. Harbor (jointly "Taxpayers"). The Taxpayers appealed to the Department's Administrative Law Division, now the Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on June 30, 2015. John Harbor (individually "Taxpayer") attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer and his wife lived in Alabama until April 2007, when the Taxpayer accepted a job in Savannah, Tennessee. The couple intended to sell their house in Pelham, Alabama and move to Savannah, but were unable to sell the house. They consequently kept the house in Pelham, where the Taxpayer's wife has always resided. The Taxpayer initially rented a motel room close to his job in Tennessee. He subsequently leased a house in the area.

The Taxpayers paid Alabama tax in 2008 and 2009. The Taxpayer twice inquired with the Department's Help Desk in 2010 and 2011 as to whether he was required to file an Alabama return because he worked in Tennessee. The Help Desk responded that if he claimed Tennessee as his home of residence and had no Alabama-sourced income, then he would not be required to pay Alabama tax on his income. The Taxpayer interpreted the

response to mean that he was not legally required to pay Alabama tax on his Tennessee income. The Taxpayers consequently did not file Alabama returns for the years in issue – 2010, 2011, and 2012.

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 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 there 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).

Although the Taxpayer worked in Tennessee during the years in issue, the facts clearly establish that he and his wife remained domiciled in Alabama in those years. The Taxpayers retained their house in Alabama where the wife resided during the subject years. The Taxpayers have also always maintained Alabama driver's licenses and voted in Alabama. Importantly, the Taxpayer stated in his appeal letter and also testified at the June 30 hearing that he has always intended to live full-time in Alabama after he retires. He consequently did not abandon Alabama with the intent not to return. See generally, *Whetstone*, supra.

Because the Taxpayers were domiciled in Alabama in the subject years, the tax and interest as assessed by the Department is affirmed. The penalties in issue are waived for

reasonable cause under the circumstances. Judgment is entered against the Taxpayers for 2010, 2011, and 2012 income tax and interest of \$3,419.34, \$3,653.26, and \$3,794.54, respectively. Additional interest is also due from the date the final assessments were entered, June 8, 2014, March 3, 2015, and September 17, 2014, respectively.

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

Entered July 6, 2015.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Craig A. Banks, Esq.
Robert J. Stone, III, Esq.
John M. Harbor