

SHARAFAT A. AND SAJEELA	§	STATE OF ALABAMA
CHADHARY		ALABAMA TAX TRIBUNAL
1701 WOODVIEW CIRCLE	§	
PELHAM, AL 35124-5124,	§	DOCKET NO. INC. 16-349
Taxpayers,	§	
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.	§	

**FINAL ORDER**

The Revenue Department entered a final assessment of 2013 Alabama income tax against Sharafat A. and Sajeela Chadhary (“Taxpayers”). The Taxpayers appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. The appeal was submitted on the record.

The Taxpayers filed their 2013 Alabama income tax return indicating that they were full-year residents, but reported no Alabama income. Attached to the Alabama return was a copy of the Taxpayers’ federal income tax return reporting income earned in a foreign country in the amount of \$75,000, and taking a foreign earned income deduction in the same amount. The Department calculated the Alabama tax due on the foreign earned income, and assessed the Taxpayers for the tax due.

The Taxpayers assert in their appeal that they do not owe tax to Alabama in 2013 because they did not live or work in the State in that year.

In May 2012, the Taxpayers left their home in Alabama to live and work in Pakistan for Universal Chemical Industries. The Taxpayers maintained an Alabama mailing address in 2013 and filed a 2013 Alabama full-year resident return, but did not maintain a home or own any real estate in Alabama in 2013. The pleadings filed by the Taxpayers in this

appeal indicate that they intend to return to Alabama when their work in Pakistan is completed so that they can be close to relatives.

Alabama income tax is levied on every person domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A person's domicile is their true, fixed home to which they intend to return when absent. Consequently, individuals can still be domiciled in Alabama, even if they reside outside of Alabama in a given year.

Alabama's courts have also held that once Alabama is established as a person's domicile, that domicile is presumed to exist until a new one is acquired. To change an existing domicile, the person must abandon the former domicile, and establish a new domicile elsewhere. *Whetstone v. State, Dept. of Revenue*, 434 So.2d 796 (Ala. Civ. App. 1983) (stating that "[in] order to displace the former, original domicile by acquisition of a new domicile, actual residence and intent to remain at the new domicile must both occur.>").

In *Whetstone*, the taxpayers moved from Alabama to Nigeria in 1975. The taxpayers' children remained in Alabama, and the taxpayers also maintained other ties to the State. The Revenue Department audited the taxpayers and determined that they were still domiciled in Alabama in 1976 and 1977, and thus liable for Alabama income tax in those years. It assessed the taxpayers accordingly.

The circuit court affirmed the assessments on appeal. The taxpayers appealed to the Court of Civil Appeals, which also affirmed the assessments. That Court held that the taxpayers had failed to overcome the presumption that Alabama had remained as their domicile in the subject years. And importantly, the Court also held that the taxpayers had failed to prove that they intended to remain permanently in Nigeria.

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.

*Whetstone*, 434 So.2d at 797.

The *Whetstone* rationale applies in this case. The Taxpayers have presented no evidence that they established a new domicile in Pakistan with the intent to remain permanently, or at least indefinitely. To the contrary, the Taxpayers admit that they intend to return to Alabama. Consequently, just as the taxpayers in *Whetstone* failed to establish Nigeria as a new domicile, the Taxpayers in this case failed to establish Pakistan as their new domicile because they intend to eventually return to Alabama when their current employment contract expires. The Taxpayers thus remained domiciled in Alabama in 2013, and are liable for Alabama income tax in that year.

The final assessment is affirmed. Judgment is entered against the Taxpayers in the amount of \$3,611.50. Additional interest is also due from the date of entry of the final assessment, January 29, 2016.

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

Entered March 28, 2017.

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CHRISTY O. EDWARDS  
Associate Tax Tribunal Judge

cc: David E. Avery, III, Esq.  
Rajaa Aldohan