

LEANDER W. HUGHLEY
2102 Reed Avenue
Tuskegee Institute, AL 36088,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 02-891

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Leander W. Hughley (“Taxpayer”) for Alabama income tax for 1997, 1998, and 1999. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on May 15, 2003. CPA Pamella Watson represented the Taxpayer. Assistant Counsel Glen Powers and Mark Griffin represented the Department.

The issue in this case is whether the Taxpayer resided or was domiciled in Alabama in 1997, 1998, and 1999, and thus subject to Alabama income tax in those years pursuant to Code of Ala. 1975, §40-18-2.

The Taxpayer won the Florida lottery in 1989. She and her husband (together “Taxpayers”) were living in Miami, Florida at the time. The lucky ticket entitled the Taxpayer to receive 20 annual payments of \$595,000 in November of each year. The Taxpayers continued to live in their home in Miami, Florida in the early 1990s.

One of the Taxpayers’ daughters began attending Tuskegee Institute in Tuskegee, Alabama in 1993. She chose Tuskegee Institute because the Taxpayer’s husband was born and raised in Tuskegee, and his mother and other family members still lived in the area.

The Taxpayers purchased a house in Tuskegee in 1993 in which their daughter lived while in school. They periodically stayed at the house while visiting their daughter or Mr. Hughley's mother and family in the area. The Taxpayers kept the house and visited Tuskegee periodically after their daughter graduated in 1995.

Mr. Hughley was diagnosed with leukemia in 1997. He thereafter received regular treatments for the disease at UAB in Birmingham, Alabama or at the Cancer Center in Montgomery, Alabama. Mr. Hughley apparently received daily injections to fight the disease. The Taxpayers generally stayed at their house in Tuskegee while Mr. Hughley was being treated.

The Taxpayers' son had continued living in Miami while Mr. Hughley was being treated in Alabama. However, he also moved to Alabama and began living with his parents in the Tuskegee house in early 1998. He registered to vote in Alabama in June 1998.

The Taxpayers subsequently sold their Miami house in August 1998. They had also previously notified the Florida Lottery Commission in April 1998 that their future lottery payments should be sent to their Tuskegee address. They also subsequently registered to vote in Alabama and registered various vehicles in Alabama. Mr. Hughley passed away in August 2002.

In 2001, the Revenue Department inquired with the Florida Lottery Commission concerning lottery winners that had an Alabama address. The Department learned that the Taxpayer had an Alabama address, but had failed to file Alabama returns for the subject years. It consequently assessed the Taxpayer for 1997 and 1998 Alabama income tax based on the \$595,000 annual lottery payments she received in November of those years. It also assessed the Taxpayer for 1999 tax based on a lump-sum amount of \$4,033,661 the Taxpayer received for selling the right to receive her future lottery payments.

The Department now concedes that there is insufficient evidence to establish that the Taxpayer was subject to Alabama income tax in 1997. Consequently, the 1997 final assessment should be dismissed. It still argues that the Taxpayer was subject to Alabama income tax in 1998 and 1999. It further concedes, however, that the Taxpayer is not liable for 1999 income tax on the lump-sum payment of \$4,033,661 because that amount was not received until 2000. Rather, the Department claims that the Taxpayer owes 1999 tax on the regular annual payment of \$595,000 she received in November 1999.

Alabama income tax is levied on every individual residing or domiciled in Alabama. Sections 40-18-2(1) and (7).¹ A person's domicile is his true, fixed home to which he or she intends to return when absent. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). In order to change domiciles to Alabama, a taxpayer must abandon their previous domicile, and also establish a new domicile in Alabama with the intent to remain permanently, or at least indefinitely. The burden is on the party 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's representative argues that the Taxpayer had sufficient ties to Florida in 1997, 1998, and 1999 to retain Florida as her residence and domicile in those years. She submitted evidence that the Taxpayer periodically visited Florida for business reasons

¹ A person is presumed to be residing in Alabama if they maintain a permanent place of abode in the State, or they are in Alabama more than seven months in the tax year. Section 40-18-2(7). However, all that is required to be subject to Alabama tax is that the taxpayer reside in Alabama when the income is earned. Section 40-18-2(1). The seven month test only creates a presumption, and is not a minimum residency period required for someone to be subject to Alabama tax.

and to visit a daughter that had a house in Florida during those years. She also used a Florida attorney, had a checking account at a Florida bank, and visited a Florida doctor in those years.

The above facts do not establish that the Taxpayer resided in or retained her Florida domicile after 1997. Rather, the Taxpayer and her husband notified the Florida Lottery Commission in April 1998 that all future lottery check should be sent to their address in Alabama. They subsequently sold their house in Miami in August 1998. Thereafter, their only permanent home was in Tuskegee. The fact that the Taxpayer periodically visited her daughter's home in Florida is not relevant. The Taxpayer lived with her sick husband in Tuskegee in 1998 and 1999, not with her daughter in Florida. The Taxpayers' Florida checking account also showed the Taxpayers' Tuskegee house as their address. The above evidence is sufficient to establish that the Taxpayer and her husband not only resided in Alabama during most of 1998, they also changed domiciles to Alabama in mid-1998. Consequently, the Taxpayer is liable for Alabama income tax on the lottery payments she received in Alabama in November 1998 and November 1999.

The Department is directed to recompute the Taxpayer's 1999 liability as indicated above. A Final Order will then be entered dismissing the 1997 final assessment, affirming the 1998 final assessment, and also affirming the 1999 final assessment, as adjusted.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered June 18, 2003.