

ANDREW J. GIFFORD
2328 FREEDOM BAY DRIVE
SODDY DAISY, TN 37379-3505,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL
DOCKET NO. INC. 16-1405

FINAL ORDER

The Revenue Department assessed Andrew J. Gifford (“Taxpayer”) for 2013 and 2014 Alabama income tax. The Taxpayer appealed the assessments to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on May 16, 2017. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer did not file 2013 and 2014 Alabama income tax returns. The Department received IRS information indicating that the Taxpayer was required to file Alabama returns for those years – specifically, the Taxpayer reported an Alabama address on his federal income tax returns. The Department consequently assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information.

The Taxpayer claimed in his notice of appeal that he and his wife moved from Alabama to Tennessee in 2012 when he took a job with the Tennessee Valley Authority’s (“TVA”) Sequoyah Nuclear Plant in Soddy Daisy, Tennessee. He submitted information to prove that he and his wife purchased a new house in Soddy Daisy at the end of 2012.

The Department responded that the Taxpayer failed to prove that he had abandoned Alabama as his domicile in 2013 and 2014, and consequently, that he was liable for Alabama income tax in those years on all of his income.

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, §40-182(7). Simply put, Alabama law provides that a taxpayer domiciled in Alabama is liable for Alabama tax on income earned in the year, regardless of where the taxpayer resided or where the income was earned. 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 domicile from Alabama, a taxpayer must *abandon Alabama*, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. *Id.* (emphasis added). The burden is on a taxpayer asserting a change of domicile to prove that a change of domicile has occurred. *Rabren v. Baxter*, 239 So.2d 206 (1970). When facts are conflicting, the presumption is strongly in favor of the original domicile, as against a newly acquired one. *Jacobs v. Ryals*, 401 So.2d 776 (Ala. 1981).

The following facts are undisputed. The Taxpayer owns a home in Collinsville, Alabama, located on his mother and father's home place. The Taxpayer claimed the Alabama homestead exemption on the property, and claimed the homestead exemption in the subject years as he never reported that the Collinsville property was no longer being occupied as his principle residence.¹

¹ Alabama law provides a homestead exemption from state ad valorem taxes. Code of Ala. 1975, §40-9-19. A person's "homestead" is his principle residence. See *generally* Ala. Admin. Code 810-4-1-.23; *Smith v. Cox*, 611 So.2d 339 (Ala. 1992) (defining homestead generally as "the home or house where a family resides, where the head of the family dwells, and any adjoining or appurtenant land used for the family's comfort and sustenance"). To obtain the homestead exemption, the taxpayer must apply for the exemption, and the exemption renews from year to year until the taxpayer reports that he is no longer eligible for the exemption.

The Taxpayer maintained his Alabama voter registration in the subject years, and has maintained that registration to date. He last voted in Alabama in November 2014, and has never voted in another state. He renewed his Alabama driver's license in 2015, and has maintained that driver's license to date. He has never applied for a Tennessee driver's license, despite a Tennessee law requiring a resident to obtain a Tennessee driver's license within 30 days of becoming a resident. The Taxpayer's vehicles were registered in Alabama in the subject years, and continue to be registered in Alabama to date.

The Taxpayer explained that since accepting employment with the TVA in 2012, he has been too busy to obtain a Tennessee driver's license, register his vehicles in Tennessee, or to establish a voting registration and vote in Tennessee. He explained that he maintains the Collinsville property because it is located on family property and is surrounded by homes belonging to other family members. He further testified that he and his wife intend to retire in Tennessee.

Weighing the undisputed evidence, and finding the Taxpayer's testimony insufficient to overcome the presumption strongly favoring his original Alabama domicile, I find that the Taxpayer did not abandon Alabama with the intent never to return when he moved to Tennessee in 2012. Other than purchasing a house, there is no other evidence that the Taxpayer established a new domicile in Tennessee in tax years 2013 and 2014 with the intent to remain there permanently. I find that fact alone insufficient to meet the Taxpayer's burden of proof that he changed his domicile from Alabama to Tennessee, at least with respect to the tax years at issue.

The 2013 and 2014 final assessments, less the penalties assessed, are affirmed. Judgement is entered against the Taxpayer for 2013 and 2014 income tax and interest of

\$3,625.48 and \$4,735.32, respectively. Additional interest is also due from the date of entry of the final assessments, December 2, 2016.

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

Entered August 2, 2017

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Warren W. Young, Esq.
Andrew J. Gifford