

JOHN D. & CHRISTIE R. ZITO	§	STATE OF ALABAMA
PSC 851 BOX 950		ALABAMA TAX TRIBUNAL
FPO, AE 09834-0010,	§	
		DOCKET NOS. INC. 16-824
Taxpayers,	§	INC. 16-1295
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

The Revenue Department denied John D. and Christie R. Zito’s (“Taxpayers”) request for refund of 2010 income tax and entered final assessments of 2012, 2013 and 2014 income tax against the Taxpayers. The Taxpayers appealed the denied refund and final assessments to the Tax Tribunal.

Procedural History

Relevant to the 2010 tax year, the Taxpayers filed a 2010 resident Alabama income tax return with the Department on April 5, 2011 reporting tax due in the amount of \$621. The Taxpayers paid the reported tax due in two installments, the first in May 2011, and the second in October 2011. On February 11, 2016, the Taxpayers filed a 2010 amended return changing their residency status, and requesting a refund of taxes withheld and paid to the Department in the amount of \$6,320. The Department denied the Taxpayers’ request for refund because it determined it to be outside of the statute of limitations for claiming a refund pursuant to Code of Ala. 1975, §40-2A-7(c)(2)a. The Taxpayers timely appealed the denied refund request to the Tax Tribunal on August 4, 2016 pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. The appeal was docketed and assigned docket number Inc. 16-824.

On February 11, 2016, the Taxpayers filed original non-resident Alabama income tax returns for tax years 2012, 2013 and 2014. The returns requested a refund of all taxes paid through withholding to Alabama in those years, specifically in the amounts of \$5,329, \$4,997 and \$5,299, respectively. The Department determined that the Taxpayers were domiciled in Alabama during the subject years, and determined that additional tax was due. Consequently, it entered final assessments against the Taxpayers as follows: tax year 2012 final assessment in the amount of \$1,066.43 entered on October 25, 2016; tax year 2013 final assessment in the amount of \$758.86 entered on November 4, 2016; and tax year 2014 final assessment in the amount of \$921.66 entered on October 27, 2016. The Taxpayers timely appealed the final assessments to the Tax Tribunal on November 28, 2016 pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. The appeal was docketed and assigned docket number Inc. 16-1245.

On March 29, 2017, an Opinion and Preliminary Order was entered in Docket Inc. 16-824 holding that the refund request for taxes paid through withholding for tax year 2010 was timely filed. Specifically, the Tax Tribunal held that the Taxpayers' 2010 request for refund was filed within the extension deadline granted to them as members of the United States Armed Forces serving in a designated combat zone.

On April 13, 2017, after determining that the only remaining issue in both appeals to be whether the Taxpayers were domiciled in Alabama during the subject years, the Tax Tribunal consolidated the appeals for hearing and the rendering of a final order. A hearing on the domicile issue was held on August 9, 2017. John Zito attended the hearing. Attorney Gwendolyn Garner represented the Department.

### Summary of the Facts

Relevant to this appeal, the Taxpayers lived in Florida until Mr. Zito was sent to Bahrain in service to the United States Department of Defense in 2001. The Taxpayers owned a home in Florida until they sold the home in 1999. They rented a home in Florida until they were deployed to Bahrain in 2001.

In 2004, fearing that they may be forced to evacuate Bahrain, the Taxpayers began looking for a house to purchase in the United States, and eventually purchased a home in Chelsea, Alabama, in 2004. Mr. Zito testified that the Taxpayers intended to return to the United States and live in the Alabama home if they were forced to leave Bahrain.

In December 2006, Mr. Zito was transferred to Pennsylvania. The Taxpayers lived together with their children in Pennsylvania until 2007 when Mrs. Zito moved with the children to Alabama to live in the Chelsea home. The Zito children were enrolled in school in Chelsea, and they lived and attended school in Chelsea until they were grown and left for college. The children's grandmother lived in the home and helped tend to the children, and sometime in late 2007 or early 2008, Mrs. Zito began traveling back and forth between Pennsylvania and Alabama. This arrangement continued until sometime in late 2010 when Mr. Zito was transferred back to Bahrain. He has been in Bahrain on a work visa since. Mrs. Zito returned to Bahrain when Mr. Zito was transferred, and the Taxpayers live in Bahrain primarily. When they return to the United States for temporary visits, they stay in the Chelsea home.

After the Taxpayers purchased their home in Chelsea, they obtained Alabama drivers licenses and renewed those licenses in Alabama when expired. The Taxpayers registered their vehicles in Alabama, and have maintained that registration. The Taxpayers

furniture, personal belongings and vehicles are at the Chelsea home. When Mrs. Zito and the Zito children moved to Alabama and enrolled in school in Chelsea, the Taxpayers began filing Alabama resident income tax returns, and they did so until 2010 when they filed an amended return in 2016 to change their residency status that was reported on the original 2010 return.

The Taxpayers listed the Chelsea address as their residence on the Taxpayers' Letters of Authorization from the US Department of Defense during the subject years and on their W-2 withholding documents for the subject years. The Taxpayers also maintained a bank account in the United States during the subject years that listed the Chelsea address on the account. When they return to the United States to visit, they return to Alabama and stay in the Chelsea home.

At the hearing, Mr. Zito testified that he did not have a domicile in the United States during the subject years, and that currently he doesn't know where he intends to live when he is no longer living in Bahrain for work. He also testified that he never officially abandoned his Florida residency, and that he only obtained an Alabama driver's license because Florida would not allow him to renew his license without some evidence that he was a resident of Florida.

#### Analysis

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). Once Alabama is established as a person's domicile, that domicile is presumed to exist until a new one is acquired. *Id.* 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).

As aforementioned, Mr. Zito argued at the hearing that, to date, he and his wife never abandoned their Florida residency. Thus, he argues, they never established domicile in Alabama. I disagree. The undisputed evidence shows that the Taxpayers maintained no connection to Florida once they left Florida for Bahrain, other than maintaining a Florida driver's license that eventually expired at some point prior to Mr. Zito's obtaining an Alabama driver's license. Although the fact that the Taxpayers' living conditions have been unstable since 2001 make this a unique case, there is no evidence to support the Taxpayers' argument that they maintained their Florida domicile, and instead a plethora of facts support a finding that they established domicile in Alabama prior to the subject years.

The Taxpayers reported their Alabama address on their driver's licenses, motor vehicle registrations, bank documents, government documents, and employer and withholding information- all factors favoring an Alabama domicile. These factors, combined with the facts that the Taxpayers purchased a home in Alabama to return to when they left Bahrain, that Mrs. Zito and the Zito children actually returned to Alabama to live, and that

the Zito children attended school in Alabama until they graduated from high school, strongly favor a finding that the Taxpayers were domiciled in Alabama at some point prior to the subject years. And there is no evidence to indicate that the Taxpayers ever abandoned that domicile and established a new domicile during the subject years. In fact, to date, the Taxpayers continue to return to their Alabama home from time to time when they are back in the United States.

The evidence indicates that the Taxpayers established an Alabama domicile prior to the subject years, and that they never abandoned that domicile by establishing a domicile elsewhere during the subject years. Consequently, the Taxpayers are liable for Alabama tax on income earned in the subject years, regardless of where the Taxpayers resided or where the income was earned during those years.

The Department's denial of the Taxpayers' request for refund of 2010 income tax is affirmed. The 2012, 2013 and 2014 final assessments are affirmed in the amounts of \$1,066.43, \$758.86 and \$921.66, respectively. Additional interest is also due from the date the final assessments were entered.

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

Entered November 17, 2018.

/s/ C. O. Edwards  
CHRISTY O. EDWARDS  
Associate Tax Tribunal Judge

cc: Gwendolyn B. Garner, Esq. (w/enc.)  
Kevin Waldron, Esq.