

KIMBERLY P. BELL
855 ROLLING ACRES ROAD
HOPE HULL, AL 36043,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 16-1059-CE

FINAL ORDER

The Revenue Department assessed Kimberly P. Bell (“Taxpayer”) for 2012 Alabama income tax. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on October 13, 2017. The Taxpayer attended the hearing. Assistant Counsel Billy Young represented the Revenue Department.

The Department received information indicating that the Taxpayer was domiciled in Alabama in tax year 2012. Consequently, it determined that the Taxpayer was required to file a 2012 Alabama income tax return. Finding no return on file for the Taxpayer, it assessed the Taxpayer for tax, penalties and interest based on IRS information.

The Taxpayer appealed, arguing that she abandoned her Alabama domicile and established a new domicile in Tennessee in 2010. She asserts in her appeal that she intended to remain in Tennessee permanently until unforeseen circumstances and a new job opportunity caused her to move back to Alabama in 2014.

The Taxpayer lived in Alabama for many, many years until her employer, Colonial Bank, failed in late 2009. The Taxpayer was offered a job with First Bank of Tennessee in 2010. She accepted the position, and she and her husband, Derris Bell, (collectively “the Bells”) moved to Memphis, Tennessee. The Taxpayer’s employer provided the Bells with a realtor to assist them with purchasing a house in Memphis, and moved all their

household goods and personal belongings to Memphis as part of a relocation package the Taxpayer was given when she accepted the job. Early on, the Bells looked for a house to buy, but after several months of searching for a house they decided to rent an apartment until they were more familiar with the area.

As part of her employment, the Taxpayer was required to live in Memphis, and she maintained a permanent office there. The Bells visited several churches in Memphis, and intended to join a church when they found the right church that suited them both. The Taxpayer completed a rigorous volunteer training course to become a certified volunteer at St. Jude's Children's Hospital in Memphis. She was a regular, consistent volunteer at the hospital and formed close relationships with the hospital community there. The Bells also established relationships with physicians in Memphis for their own personal healthcare.

The Bells registered their vehicles in Tennessee, and Mr. Bell obtained a Tennessee driver's license and a Tennessee hand gun permit listing the Bell's Memphis address. The Bells listed their Memphis address on their federal tax returns, on their W-2 withholding forms and on their social security accounts.

As proof that the Taxpayer never abandoned her Alabama domicile, the Department provided the Tax Tribunal with evidence indicating that the Taxpayer renewed her driver's license in Alabama sometime after 2010, and that she maintained her Alabama voter registration. The Department also produced evidence that the Taxpayer never sold her home in Hope Hull, Alabama. The Department concluded that the Taxpayer moved to Memphis to perform a job, and that when she moved to Memphis she intended to return to Hope Hull when her job was complete. Given the overwhelming evidence indicating that

the Taxpayer moved from Alabama to Tennessee with the intent to remain in Tennessee, I disagree.

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 person's 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).

While I agree with the Department that the asserted connections are factors to consider in determining whether a taxpayer is domiciled in Alabama, I cannot ignore the plethora of evidence in this case indicating that the Taxpayer abandoned her Alabama domicile and established domicile in Tennessee when she and her husband moved to Memphis in 2010. Specifically, the Bells reported their Tennessee address on their motor vehicle registrations, government documents and employer and withholding information. They established community relationships in Memphis. They worked off and on with a realtor to purchase a house in Memphis, and were in the process of looking for a foreclosure to purchase shortly before the Bells made the decision to move back to

Alabama. A fact that supports the Taxpayer's testimony below that the decision to move back to Alabama was due to circumstances that were unforeseen by her when she moved to Tennessee.

Regarding the Bell's return to Alabama in 2014, the evidence indicates that the Taxpayer was visiting family in Alabama during the 2013 Christmas holidays when she was approached by a former co-worker about a job opening with Alfa Insurance at their corporate office in Montgomery, Alabama. Finding the prospect of working in a different industry compelling, combined with the fact that her father had recently become ill and needed a caretaker, the Taxpayer decided to explore the job opportunity in Montgomery. She subsequently took the job with Alfa Insurance in 2014, and the Bells returned to Alabama to live, work and to care for the Taxpayer's father during his declining health.

Regarding the Taxpayer's limited connection to Alabama while living in Memphis, the Taxpayer explained that her Alabama driver's license expired while she was in Alabama visiting family, and that she renewed it here to avoid driving back to Tennessee with an expired driver's license. The Taxpayer also testified that when she and her husband moved to Memphis, they decided not to sell their home in Hope Hull because it was appreciating in value at that time. Instead, she explained, they let their son and his family live in and care for the home until they decided to put it on the market. She testified that they were in the process of making some repairs to the house in preparation to put the house on the market shortly before they moved back to Alabama. The Taxpayer testified that while living in Memphis, she and her husband returned to Alabama frequently, but that it was only to visit close family that remained in Alabama.

The Taxpayer has met her burden of proving that when she and her husband moved to Tennessee in 2010, they did so with the intention of abandoning Alabama as their domicile and establishing Tennessee as their new domicile with the intent to remain there permanently, or at least indefinitely. The fact that the Bells later moved back to Alabama due to circumstances that were unforeseen by them when they moved to Tennessee has no bearing on whether they abandoned their Alabama domicile and established a new domicile in Tennessee in 2010.

The evidence indicates that the Taxpayer abandoned her Alabama domicile and established domicile in Tennessee in 2010, and that she maintained that domicile until she moved back to Alabama in 2014. Consequently, the Taxpayer is not liable for 2012 Alabama income tax.

The 2012 final assessment is voided. Judgment is entered accordingly.

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

Entered November 21, 2017.

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

cc: Warren W. Young, Esq.
Kimberly P. Bell (w/enc.)