

**ALABAMA TAX TRIBUNAL**

MERRIAL B. HARE,	§	
Taxpayer,	§	DOCKET NO. INC. 16-1133-CE
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

The Revenue Department assessed Merrial B. Hare (“Taxpayer”) for 2013 Alabama income tax. A hearing was conducted on December 18, 2017. Assistant Attorney General Duncan Crow represented the Department. The Taxpayer and his attorney, John Crowley, attended the hearing.

The Revenue Department received IRS information indicating that the Taxpayer was required to file a 2013 Alabama income tax return. The Department determined that the Taxpayer did not file a 2013 return, and then billed the Taxpayer for the tax, plus penalties and interest, based on the IRS information. The bill was not paid, and a final assessment was entered against the Taxpayer on September 22, 2016 in the amount of \$3,334.70. It is still unclear what IRS information led the Department to determine that the Taxpayer was required to file an Alabama return.

The Taxpayer appealed pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. The Taxpayer claimed in his notice of appeal that he moved from Alabama in 2010, and has been domiciled in Texas since 2013. Consequently, he is not subject to Alabama income tax for tax year 2013.

Facts

The Taxpayer lived in Alabama until he moved to Biloxi, Mississippi in 2010 to work for Power Shack, a company that sells sports drinks and supplements. The Taxpayer became ill, separated from Power Shack and moved back to Alabama in late 2011. In 2012, the Taxpayer became employed by American Club Systems, a company that develops health and fitness clubs across the country, and moved to Indianapolis, Indiana to manage a Gold's Gym. The Taxpayer's employment with American Club Systems caused him to move from fitness club to fitness club, and in late 2012, the Taxpayer was relocated to Cypress, Texas to help in the management of a club in Plano. While in Indianapolis, the Taxpayer met his wife, and she moved to Texas with him.

At some point after moving to Cypress, the Taxpayer was informed that the company would be relocating him again at some point to another state to assist another club. Determining that a transient lifestyle was not what he or his wife wanted, the Taxpayer separated from American Club Systems in late 2012. At the time, the Taxpayer's wife was employed in Texas. While living there, the Taxpayer and his wife decided they liked being Texas residents and wanted to stay there, so the Taxpayer began to look for a permanent job in Texas.

The Taxpayer quickly found a job with Buc-ee's, Ltd., a company that owns and operates large service stations, as the food service manager of a location close to the Taxpayer's Cypress home. The Taxpayer worked for Buc-ee's and lived at the same Cypress address until sometime in 2016. The Taxpayer and his wife have lived in Texas since they moved there in late 2012.

Despite living in Texas, the Taxpayer maintained his Alabama driver's license. The Taxpayer is an Alabama registered voter. The Taxpayer filed a 2011 Alabama non-resident income tax return reporting a Gulfport, Mississippi address, and a 2011 Mississippi income tax return reporting the same Gulfport address. The Taxpayer filed a 2012 Alabama non-resident income tax return, and a 2012 Indiana non-resident return. The Taxpayer reported his Cypress address on his 2012 federal income tax return and his 2012 withholding forms completed after he moved to Texas. The Taxpayer reported his Cypress address on his 2013 federal income tax returns, and the 2013 withholding forms for his employment with Buc-ee's.

The Taxpayer testified that he maintained his Alabama driver's license because he drives a car that is owned by his father and is registered in Alabama. He explained that he thought that your driver's license and vehicle registration needed to be issued in the same state. He also testified that he has not registered to vote in Texas yet because he hasn't voted in an election since he lived in Alabama.

#### 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).

The evidence indicates that the Taxpayer established a new permanent domicile in Texas with the intent to remain there indefinitely in 2013. The Taxpayer quit his job to remain in Texas with his wife and sought a permanent employment in Texas. He reported his Texas address on his federal income tax return and his federal withholding forms. The only factors favoring an Alabama domicile in this case are that the Taxpayer maintained his Alabama driver's license and that he did not register to vote in Texas. Those facts alone, especially in light of the Taxpayer's testimony regarding why he did so, do not outweigh the overwhelming evidence indicating that the Taxpayer was domiciled in Texas in tax year 2013.

The 2013 final assessment is voided. Judgment is entered accordingly.

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

Entered April 12, 2018.

*/s/ C. O. Edwards*

CHRISTY O. EDWARDS

Associate Tax Tribunal Judge

cc: John J. Crowley, Jr., Esq.  
Duncan R. Crow, Esq.