

## ALABAMA TAX TRIBUNAL

EARL MARSH,	§	
Taxpayer,	§	DOCKET NO. INC. 17-963-CE
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

### FINAL ORDER

The Revenue Department assessed Earl Marsh, Jr. (“Taxpayer”) for 2004 through 2013 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 April 25, 2018. Assistant Attorney General Gwendolyn Garner represented the Department. The Taxpayer attended the hearing and was represented by Attorney Charlie Shah.

The evidence indicates that the Taxpayer’s appeal of the final assessments entered for tax years 2004, 2005, 2006, 2008, 2009, 2010, 2011, 2012 and 2013 is untimely. Consequently, the Tax Tribunal lacks jurisdiction to decide the Taxpayer’s appeal of those assessments.

A taxpayer may appeal to the Tax Tribunal from any final assessment entered by the Department by filing a notice of appeal within 30 days from the date of mailing of the final assessment. Code of Ala. 1975, §40-2A-7(b)(5)a. If the Taxpayer fails to file a notice of appeal within the 30 days, the appeal is not timely filed, and the Tax Tribunal lacks jurisdiction to decide the issues appealed.

The Taxpayer’s appeal was mailed August 10, 2017 according to USPS tracking information. The 2004, 2005, 2006, 2008 and 2009 final assessments were entered by the

Department on June 26, 2017, and mailed by certified mail through the U.S. Postal Service on either June 28, 2017 or June 29, 2017. The 2010 final assessment was entered by the Department on October 29, 2013, and was mailed by certified mail the same day. The 2011 final assessment was entered by the Department on January 31, 2017, and was mailed by certified mail on February 1, 2017. The 2012 final assessment was entered by the Department on October 26, 2015, and was mailed by certified mail on October 28, 2015. The 2013 final assessment was entered by the Department on October 17, 2017, and was mailed by certified mail on October 19, 2016.

Because the Taxpayer's appeal of the above assessments was not made within the required 30 days from the date of the mailing of the final assessments, the Tax Tribunal does not have jurisdiction to decide the Taxpayer's appeal of those assessments. Consequently, the Taxpayer's appeal with respect to these years is dismissed. The Taxpayer may, however, pay the final assessments in full and then petition for refunds. If the refunds are denied, the Taxpayer may appeal to the Tax Tribunal or to circuit court pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. or b., respectively.

Regarding tax year 2007, the Taxpayer asserts in his notice of appeal that he is not liable for Alabama income tax because he was not domiciled in Alabama in 2007. Specifically, the Taxpayer asserts that he moved to Kuwait in 2004 with the intention to reside in Kuwait indefinitely, and that he had no intention to ever return to Alabama to live.

The Department argues that Alabama is the Taxpayer's original domicile, and while he may have abandoned his Alabama residency, he never established domicile elsewhere – a legal requirement for changing one's domicile. Specifically, it argues that the Taxpayer cannot be considered domiciled in Kuwait because he was a United States citizen living in

Kuwait pursuant to a work visa. Consequently, it argues, the Taxpayer is liable for Alabama tax on all income earned by the Taxpayer in 2007, regardless of where the income was earned.

The Taxpayer was born in Alabama and lived in Alabama until 2003 when he was deployed to the Marshall Islands in the Pacific Ocean to work on the Ronald Reagan Ballistic Missile Defense Test Site. In January 2004, the Taxpayer moved to Kuwait to work as a patrol officer for Combat Support Associates (“CSA”), a private company that contracts with the United States Army to provide protection to army troops and allied forces in Kuwait. Other than having a few family members living in Alabama, which included his mother, siblings, and an estranged wife he divorced in 2006, the Taxpayer had no ties to Alabama after he left for the Marshall Islands. Until a medical condition caused the Taxpayer’s return to Alabama in November 2017, the Taxpayer only visited Alabama once a year to see his mother.

Shortly after moving to Kuwait, the Taxpayer opened a bank account in Kuwait; obtained a Kuwait driver’s license, national civil identification card, and residency visa; and took out compulsory health insurance and acquired a Kuwait health insurance card – a requirement for expatriates. At some point after divorcing his wife in 2006, the Taxpayer became engaged to a Muslim doctor who was a Kuwaiti national. He entered into an Islamic marriage contract with her and agreed to change his religion to Islam – a requirement for a non-Muslim male to marry a Muslim female. On January 21, 2007, the Taxpayer legally converted to Islam and acquired the Muslim name Earl Marsh Fahad. For reasons unknown to the Tax Tribunal, the marriage did not occur. Because the Taxpayer did not marry, he was never granted Kuwait citizenship.

Even though he never became a citizen, he continued to work for CSA and was eventually promoted to the job of patrol supervisor until an on-the-job injury caused him to return to Alabama to see an American medical professional in November 2013. After the injury, CSA would not allow him to return to work in Kuwait.

The Taxpayer testified at the hearing that when he left for Kuwait he never intended to return to Alabama to live. The Taxpayer testified that he wanted to marry and live in Kuwait indefinitely. He testified that he only returned to Alabama because of the injury, and that he intended to return to Kuwait as soon as he was healed. I find the Taxpayer's testimony credible and supported by the evidence presented during the appeal.

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 their true, fixed home to which they intend to return when absent. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). Consequently, individuals can still be domiciled in Alabama, even if they reside outside of Alabama in a given year.

Alabama's courts have also held that 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 residency elsewhere with the intent to remain permanently, or at least indefinitely. *Id.* (holding that "in order to displace the former, original domicile by acquisition of a new

domicile, actual residence and intent to remain at the new domicile must both occur.”). 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 Taxpayer undisputedly abandoned Alabama as his domicile after he left for Kuwait in 2004. The Taxpayer maintained no ties to Alabama other than family, and it is well settled that the fact that a Taxpayer has family in Alabama has little or no bearing on whether the person is domiciled in Alabama. *Killingsworth v. State of Alabama*, Docket Inc. 14-804 (T.T. 1/9/2015). It is also clear that the Taxpayer, at least as early as 2007 when he entered into a marriage contract, converted to Islam, and changed his name, intended to reside in Kuwait indefinitely with no intention to return to Alabama to live.

The question is now whether the Taxpayer’s U.S. citizenship bars him from establishing domicile in a foreign country for Alabama income tax purposes – i.e., whether a U.S. citizen who completely abandons Alabama to reside in a foreign country indefinitely with no intention to return to Alabama to live can establish domicile in the foreign country without renouncing his citizenship. In *Ragland v. State of Alabama*, the Tax Tribunal held that a U.S. citizen living in Japan was domiciled for Alabama tax purposes outside of the state. Docket No. Inc. 15-972 (Ala. Tax Tribunal 2/26/2016). The relevant facts in *Ragland* are similar to the ones presented in this case.

Mindful of the importance of consistency in the decisions issued by the Tax Tribunal and finding no federal or Alabama law prohibiting a U.S. citizen from establishing domicile for tax purposes in a foreign country, I decline to hold otherwise.

The Taxpayer's appeal of the 2004, 2005, 2006, 2008, 2009, 2010, 2011, 2012 and 2013 final assessments is dismissed for lack of jurisdiction. The Taxpayer may contact the Department's Office of Taxpayer Advocacy to see if that office may be of assistance. The Taxpayer Advocate can be reached at (334) 242-1055.

The 2007 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 August 14, 2018.

*/s/ C. O. Edwards*

CHRISTY O. EDWARDS

Associate Tax Tribunal Judge

cc: Charlie M. Shah, Esq.  
Gwendolyn B. Garner, Esq.