

**ALABAMA TAX TRIBUNAL**

DAVID A. WERNER, §  
Taxpayer, § DOCKET NO. INC. 18-1009-LP  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

**FINAL ORDER**

This appeal involves final assessments of 2011 through 2013 Alabama income tax entered against the above Taxpayer. A hearing was conducted on March 21, 2019. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Revenue Department. Attorney Jeffrey W. Crabtree represented the Taxpayer.

Facts

The Taxpayer failed to file Alabama income tax returns for the subject years. The Department received IRS information indicating that the Taxpayer was required to file Alabama returns for those years. It consequently assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information. The Taxpayer claimed on appeal that he abandoned Alabama as his domicile in 2010 when he moved to Honduras.

The Taxpayer was born in Honduras to parents who were American citizens. Thus, he is a dual national of Honduras and the United States. In 1987, after marrying in Texas and moving to Miami, he and his wife moved to Daphne, Alabama, for his job as a helicopter pilot for the Army. In 2002, the Taxpayer retired from the Army and began working for a private company, again as a helicopter pilot. While he resided in Alabama with his family, he worked in Louisiana and Texas.

In December 2009, the Taxpayer and his wife separated and subsequently divorced. The Final Judgment of Divorce between the Taxpayer and his ex-wife was entered on May 10, 2010. Under the judgment, it was ordered that the marital home be sold and that the ex-wife retain possession until its sale. The Taxpayer was required to pay half of the mortgage, property tax, and insurance as alimony until the property was sold. Thus, the homestead exemption remained on the property as it had been prior to the divorce. It took eight years and ten months for the house to sell. Once it sold, the Taxpayer's ex-wife and youngest child moved to Mississippi where his other children reside.

In January of 2010, he moved to Tampa to live with his sister where he stayed until December 2010, when he moved back to Honduras. He obtained a Honduran driver's license at that time. He continued his employment as a helicopter pilot in Louisiana and Texas. In 2014, he moved to Columbia to perform missionary work. He remarried in 2014 in Columbia. During this time, he also worked in Nigeria. In 2018, he and his current wife moved to Orlando, where they now reside. Since leaving in January of 2010, the taxpayer has not lived in Alabama nor owned property in Alabama other than the marital home.

The Taxpayer's brother moved to Daphne from out-of-state in 2009 because he liked the area after visiting the Taxpayer over the years. While living abroad, the Taxpayer used his brother's address as his mailing address because of the complications of receiving mail in the foreign countries in which he lived and worked. His brother would contact him regarding important mail. However, some of the Taxpayer's mail was sent to his address in Honduras, such as the Forms 1099 for his military retirement income for the years at issue.

The Taxpayer filed federal returns in 2011, 2012, and 2013. He put his sister's address in Tampa as his home address in 2011 although he was living in Honduras. The Taxpayer could not

recall whether he put the Tampa address or his brother's Daphne address on his 2012 and 2013 federal returns. His employer did send his Forms W-2 to his brother's Daphne address for all three years.

### 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, §40-18-2(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).

The factors favoring an Alabama domicile in this case are that the Taxpayer maintained his Alabama driver's license, that he had an Alabama homestead exemption, and that some of his federal tax forms reflected an Alabama address. According to the facts presented, the Taxpayer renewed his Alabama driver's license in 2011, at a time when he was living in Honduras, where he also obtained a driver's license. Presumably, the Taxpayer renewed the Alabama license for the convenience of having a license to drive when he worked in or otherwise visited the United States. Additionally, the Taxpayer maintained an Alabama homestead exemption only because he was obligated to pay half of

the cost of the mortgage, taxes, and insurance on the marital home by the divorce decree. He did not live in the home, and in fact, he expected it would be sold soon after his divorce in 2010. Regarding the mailing address, the testimony provided indicates that the use of the Taxpayer's brother's Alabama address on the Taxpayer's federal tax forms was done for convenience.

In light of the Taxpayer's testimony and documents presented, the facts favoring Alabama domicile do not outweigh the overwhelming evidence indicating that the Taxpayer abandoned Alabama as his domicile in 2010 and established a new domicile in Honduras.

The 2011, 2012, and 2013 final assessments are 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 May 9, 2019.

*/s/ Leslie H. Pitman*

LESLIE H. PITMAN

Associate Tax Tribunal Judge

lhp:dr

cc: Jeffrey W. Crabtree, Esq.  
Duncan R. Crow, Esq.