

ALABAMA TAX TRIBUNAL

ROBERT W. DUNN, §
Taxpayer, § DOCKET NO. INC. 18-1064-LP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves a final assessment of 2015 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.

Facts

The Taxpayer did not file a 2015 Alabama income tax return. The Department received IRS information indicating that the Taxpayer was required to file an Alabama return for that year. 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 did not reside in Alabama in 2015 and thus did not owe Alabama taxes. The Department claims the Taxpayer was domiciled in Alabama in 2015 and does owe the assessed taxes.

The Taxpayer did not grow up in Alabama. His father was in the military, and the family moved around for his job. The Taxpayer thinks that his family may have lived in Montgomery for a brief period when he was younger. He spent 40 years in Pensacola, Florida. Also, the Taxpayer was sent to work in Dothan for approximately five months in the 1990's by his employer, which was based in Pensacola. In 2013, the Taxpayer was living in Tennessee. His father came to see him and

asked him to come live with him in Seminole, Alabama, because he was terminally ill. After a few months, the Taxpayer's father told the Taxpayer about an opportunity to work in Alaska in the oil industry. The Taxpayer was required to obtain a driver's license to apply for the job. Thus, he obtained an Alabama driver's license with his father's address on it. The Taxpayer moved to Alaska, and he began working for Udelhoven on April 5, 2013.

While working for Udelhoven, the Taxpayer lived in a camp with about 500 other men. The camp provided room, clothing, physicians, a gym, a cafeteria, and other amenities. The Taxpayer worked twelve hours per day, seven days per week for four to five weeks at a time. Then he would have one to two weeks off. Often he would fly to Pensacola, Florida, which is near Seminole, and visit his family. His father was still living in Seminole, Alabama, and several family members lived in Pensacola. He would go back and forth staying with family or in a motel during visits.

On other off-weeks, the Taxpayer would stay in Alaska, where he would visit with his girlfriend there or with other people from the camp.

The Taxpayer used his father's Alabama address on all formal documentation including his federal tax return. The Taxpayer traveled for work for twenty years prior to moving to Alaska and used his father's address for convenience. He maintained a bank account at a Pensacola bank, for which he set up direct deposit from his Alaska employer.

The Taxpayer testified that he intended to stay in Alaska permanently. He had planned to "homestead" a large piece of property there. However, on May 13, 2016, he was laid off. Additionally, his father's health was declining. So he returned to Seminole to live with his father. After his father died in June 2017, the Taxpayer wanted to return to Alaska, but his family – sister, son, grandchildren – convinced him to stay. He took over his father's lease in Seminole and still

lives there. However, the Taxpayer would like to return to Alaska and is currently applying for a job there. He plans to retire in Alaska although he feels he will not be able to homestead property.

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 who 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 Taxpayer maintained no ties to Alabama other than family and the driver's license, 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. *Marsh v. State of Alabama*, Docket Inc. 17-963-CE (T.T. 8/14/2018); *Killingsworth v. State of Alabama*, Docket Inc. 14-804 (T.T. 1/9/2015). The Taxpayer obtained the driver's license so that he could work in Alaska. His bank account was in Florida. He owned no property in Alabama and testified of his intent to stay in Alaska in 2015 as well as his intent to return there now. Having family and a driver's license in Alabama, especially in light of the

Taxpayer's testimony, does not outweigh the evidence indicating that the Taxpayer was domiciled in Alaska in tax year 2015.

The 2015 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 June 12, 2019.

/s/ Leslie H. Pitman _____

LESLIE H. PITMAN

Associate Tax Tribunal Judge

lhp:dr

cc: Robert W. Dunn
Duncan R. Crow, Esq.