

ALABAMA TAX TRIBUNAL

FRONICA A. & LUKE W. SAURMAN,	§	
Taxpayers,	§	DOCKET NO. INC. 19-1172-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

This appeal involves a final assessment of 2018 income tax. A video hearing was conducted on March 12, 2020. Mr. Saurman (“Taxpayer”) participated. Assistant Counsel Sarah Bell represented the Alabama Department of Revenue.

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. 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 works for the United States government and is moved around frequently by his employer. He was raised on the west coast and moved to Washington, D.C., following college to begin his career with the government.

According to his testimony, the Taxpayer established domicile in Texas in 2009. He purchased property and moved a trailer to Texas, he obtained a Texas driver's license, and registered to vote. He maintains that physical address as well as a mailing address there. He and his family lived there a short time before a five-year deployment abroad.

In 2014, the Taxpayer and his family moved to Madison, Alabama, under orders for a temporary assignment to last three to five years. The Taxpayer was on loan to an agency there. He testified that there are no permanent assignments for his agency in Alabama. In February 2018, while he and his family were still living in Madison, the Taxpayer was deployed to Afghanistan until August 2018. In June of 2018, the Taxpayer received orders to be stationed in Ottawa in August 2018. Because of the lead time, the Taxpayer's wife and children returned to their home in Texas in June of 2018. Upon the Taxpayer's return to the U.S. in August 2018, he flew into Washington, D.C., for post-deployment evaluation. His family met him there, and together they vacationed and drove to Ottawa. He did not return to Texas at that time, nor did he return to Alabama.

When the Taxpayer received his orders to move from Alabama in June 2018, he attempted to change his state of residence with his employer via the internet from Afghanistan. However, the Defense Finance and Accounting Service ("DFAS") online system would not allow him to change his domicile to Texas because Texas does not impose a state income tax. The change of residence was required to be made in person by the Taxpayer. Neither his wife nor supervisor were permitted to make the change. The Taxpayer changed his residence in January 2019 with his employer.

However, by that time, his employer had issued a W-2 with Alabama as the Taxpayer's residence for the full year of 2018.

The Taxpayer contends that he was only a part-year resident of Alabama in 2018 and that the remainder of the year he was a resident of Texas.

Domicile, once established in Alabama, is presumed to exist until a new domicile is established. *Grant T. Salsman v. State of Alabama*, Dkt. No. Inc. 16-1424-CE (Ala. T.T. 8/6/2018).

The evidence, including documents and Taxpayer testimony, shows that the Taxpayer did not establish domicile in Alabama. He moved to the state on temporary assignment and intended to return to Texas when in between assignments. He maintains a domicile in Texas and has for most of his career.

Although he was unable to persuade DFAS to issue a corrected W-2, the Taxpayer has proven he was not domiciled in Alabama 2018.

The 2018 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 March 19, 2020.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:dr

cc: Luke & Fronica Saurman
Sarah E. Bell, Esq.