

**ALABAMA TAX TRIBUNAL**

DEMARCUS J. STEWARD, §  
Taxpayer, § DOCKET NO. INC. 21-769-LP  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

**FINAL ORDER**

This appeal involves a final assessment of 2016 income tax. A hearing in this case was held on September 15, 2022. The Taxpayer appeared along with David M. Formar, Esq., representing the Department of Revenue. The Revenue Department’s position is that the Taxpayer was domiciled in Alabama during the tax year 2016 and, thus, he was subject to Alabama income tax. The Taxpayer asserts that the final assessment of 2016 income tax is incorrect because, he says, he was not domiciled in Alabama during tax year 2016.

At the hearing, the Taxpayer testified that he was born in Alabama in 1988 and that he lived there until 2015. He testified that he moved to Jacksonville, Florida, because his child had been born in there. According to the Taxpayer, he leased an apartment and lived with the mother of the child and the child. The Taxpayer testified that his intent in moving to Florida was to create some stability for his child and to build a family there. He testified that Jacksonville is a nice area and that he lived on the same street as the airport, which was convenient for him because he traveled for work. According to the Taxpayer, he attended church at First

Timothy Baptist Church in Jacksonville and used a dentist who was within walking distance from his apartment. The Taxpayer obtained a fishing license in September 2015 and fished in the area. He testified that, because 2015 was not an election year, he did not register to vote in Florida until October 2016. According to the Taxpayer, he did not have an operable vehicle in 2016; a vehicle was provided for him to use when he traveled. He testified that, although he traveled for work in 2016, he worked at “home” in Jacksonville for two months that year.

The Taxpayer admitted that he reinstated his driver’s license, which had been previously suspended, in Alabama on January 6, 2016, and that he renewed the license in Alabama later that same month. According to the Taxpayer, he completed the reinstatement transaction over the telephone. The license was mailed to his mother’s house, as that was the address on the license. The Taxpayer testified that, because he was living in a leased apartment in Florida and did not have a guaranteed address, he had not wanted to make a change to his driver’s license. He testified that he never obtained a Florida driver’s license.

The Taxpayer testified that, because of impacts of the Covid-19 pandemic on his employment, he ceased leasing an apartment in Florida in 2020; he testified that he has not yet established a new residence. According to the Taxpayer, his current mailing address is a post office box close to his mother’s residence in Alabama.

### Discussion

“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 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. ... 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).”

David A. Werner v. State of Ala. Dep't of Rev., Inc. 18-1009-LP (Ala. Tax Tribunal, 5/9/19).

In Werner, the Tax Tribunal noted that there was “overwhelming evidence indicating that [Werner] abandoned Alabama as his domicile”. The Tax Tribunal found that the fact that Werner had, among other things, maintained his Alabama driver's license, presumably for convenience, did not outweigh the overwhelming evidence of abandonment of his Alabama domicile. In Merrial B. Hare v. State of Ala. Dep't of Rev., Inc. 16-1133-CE (Ala. Tax Tribunal, April 12, 2018), the Tax Tribunal noted that Hare had “established a new permanent domicile in Texas with the intent to remain there indefinitely in 2013.” The Tax Tribunal noted that Hare had “quit his job to remain in Texas with his wife[,] sought a permanent employment in Texas[,] and] reported his Texas address on his federal income tax return and his federal withholding forms.” The Tax Tribunal stated that the “only factors favoring an Alabama domicile in this case are that [Hare] maintained his Alabama driver's license and that he did not register to vote in Texas.” Hare, supra. According to the Tax Tribunal, “[t]hose facts alone, especially in light of [Hare's] testimony regarding why he did so, do not outweigh the overwhelming evidence indicating that [Hare] was domiciled in Texas in tax year 2013.” Hare, supra.

In the present case, as noted previously, the Taxpayer testified that he moved to Florida to establish stability for his child and to build a family there. I find that the Taxpayer's testimony on this point is credible and that he had the intent to remain in Florida at least indefinitely so that his family would be together. Although the Taxpayer had his license reinstated and renewed in Alabama and had not obtained a Florida driver's license, the Taxpayer explained that he had not wanted to change his driver's license information because he had not purchased a home in Florida and was, instead, leasing an apartment. Like in Werner and Hare, in the present case, I conclude that the fact that the Taxpayer maintained an Alabama driver's license does not outweigh the other evidence indicating that the Taxpayer abandoned his Alabama domicile and established a new domicile in Florida prior to the beginning of tax year 2016.

Based on the foregoing, I conclude that the Taxpayer was not subject to Alabama income tax during tax year 2016. Therefore, the final assessment of individual income tax for tax year 2016 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 September 23, 2022.

/s/ Leslie H. Pitman

LESLIE H. PITMAN  
Associate Judge  
Alabama Tax Tribunal

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cc: Demarcus J. Steward  
David M. Folmar, Esq.