

**ALABAMA TAX TRIBUNAL**

ROSEMAN, II, & CRYSTAL DEAS,	§	
Taxpayers,	§	DOCKET NO. INC. 20-436-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**OPINION AND FINAL ORDER**

This appeal involves a final assessment of 2016 individual income tax. A hearing was held via videoconference on August 16, 2022. The Taxpayers were present along with Morgan B. Beckman, Esq., representing the Revenue Department.

Issue

The issue presented in the Taxpayers’ notice of appeal is whether the Taxpayers, who moved to Alabama in 2014 after Mr. Deas was assigned to an active-duty station in Alabama by the United States Air Force, were domiciled in Alabama during the tax year 2016 such that they were subject to Alabama individual income tax.

Facts

At the hearing, Tina Smith, an examiner for the Revenue Department, testified that, based on public records and Revenue Department records, the Revenue Department had determined that the Taxpayers’ domicile during 2016 was Alabama. Specifically, she testified that the Taxpayers had moved to Alabama in 2014, had purchased a home, and had claimed a homestead exemption for that home. Additionally, she testified that the Taxpayers had registered their motor vehicles in

Alabama in 2014 and thereafter and that both Taxpayers had renewed their drivers' licenses in Alabama after their previous licenses had expired. Smith further noted that Mrs. Deas had registered to vote in Alabama in 2016 and that Mr. Deas had done so in 2017. According to Smith, although the Taxpayers had submitted certain documents tending to show that they were not domiciled in Alabama and had only been living in Alabama by virtue of Mr. Deas's assignment by the United States Air Force, the Revenue Department had not accepted those documents as proof of his domicile because, the Revenue Department contended, those documents were based only on the Taxpayers' own statements of their domicile.

Mr. Deas testified that, because his father had been in the military, he had lived in various places during his childhood. After high school, Mr. Deas moved to Colorado Springs, Colorado, to attend the United States Air Force Academy. Mr. Deas testified that he had purchased a house in Colorado and had remained in Colorado for six years. Once Mr. Deas left Colorado, he began leasing the Colorado house to tenants; he continued to do so at the time of the hearing. From Colorado, Mr. Deas moved to Mississippi for four or five months for pilot training. Thereafter, he moved to Texas to complete his training. Although he only lived in Texas for 10 months, Mr. Deas testified that he had been familiar with the area because his father had previously been stationed there. According to Mr. Deas, he loved Texas and decided that he wanted it to be the home to which he returned once his military service was completed.

Mr. Deas testified that he had been informed by the United States Air Force command that, for Texas to be listed as his domicile in his military paperwork, he must live in Texas for six months, obtain a Texas driver's license and motor-vehicle registration, and have an intent to return to Texas after his military service was complete. According to Mr. Deas, he completed the requirements, as communicated to him by the United States Air Force command, so that Texas would be listed as his domicile. The Taxpayers submitted a copy of his "State of Legal Residence Certificate" dated February 11, 2008, indicating that his legal residence was Nueces County, Texas, for the purpose of withholding state income taxes from Mr. Deas's military pay.

Mr. Deas testified that, from Texas, he was sent to Arkansas for copilot training. According to Mr. Deas, he purchased a house in Arkansas but did not intend to stay there.<sup>1</sup> The Taxpayers submitted a copy of a "Special Power of Attorney" signed by Mr. Deas on March 15, 2010, that stated that he was a legal resident of Texas but was presently residing Arkansas. Although Mr. Deas was deployed at various times between 2010 until 2014, he was not ordered to make a permanent change of station from Arkansas until April 30, 2014, when the United States Air Force sent him to Birmingham, Alabama. While stationed in Alabama, Mr. Deas was deployed at various times. On June 22, 2016, Mr. Deas executed a Last Will and Testament indicating that he was a resident of Texas stationed in Birmingham,

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<sup>1</sup> Mr. Deas testified that he had sold the Arkansas house when he was later transferred from Arkansas.

Alabama. He testified that, also in 2016, he established a Limited Liability Company (“LLC”) to buy and rent homes in Alabama.

Mr. Deas testified that, in 2019, he was offered the opportunity to leave active-duty status with the Air Force and join the Air National Guard in Alabama.<sup>2</sup> According to Mr. Deas, guardsmen are employed by the state, and his new assignment would be one in which he was not subject to changes of station as he had been while on active duty. He testified that, once he was offered the position with the Air National Guard, he decided to accept that position, to stay in Alabama, and to “put roots down”. Therefore, he asserted that he changed his legal residency at that time.<sup>3</sup> Mr. Deas testified that, once he accepted the position with the Air National Guard and prior to being audited by the Revenue Department, he changed his official military documents to reflect that he was an Alabama resident. Mr. Deas submitted a copy of his “Defense Finance and Accounting Service Military Leave and Earnings Statement” for pay date May 6, 2022, reflecting that Alabama withholding taxes had been applied. He also submitted a copy of a “Last Will and Testament” dated March 12, 2020, indicating that he is a resident of Alabama.

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<sup>2</sup> Mr. Deas submitted a copy of his “Certificate of Release of Discharge from Active Duty” dated February 27, 2019. He also submitted a copy of his “Oath of Office” for his commission to the Reserve of the Air Force” signed on March 1, 2019.

<sup>3</sup> Mr. Deas stated that, if he had not been appointed to the Air National Guard position, he had been accepted into the school at Maxwell Air Force Base in Montgomery; his plan was to attend school for one year, teach there for one year, and then move to whichever duty station he was ordered to after that.

Mr. Deas testified that their tax preparer had mistakenly filed both a resident and a non-resident Alabama Income Tax form for the tax year 2016 and that his 2016 resident return had thereafter been audited by the Revenue Department.

Mrs. Deas also testified at the hearing. According to Mrs. Deas, her home state is Georgia. She attended pharmacy school in Louisiana and then returned to Georgia in 2008 to complete her one-year residency. According to Mrs. Deas, she completed her residency in July 2009 and married Mr. Deas two days thereafter. She then joined Mr. Deas in Arkansas. According to Mrs. Deas, she was aware that Mr. Deas had intended to return to Texas after the completion of his military service and shared that intention.

According to Mrs. Deas, she initially began a teaching job in Arkansas but left that job and began working in the Veterans Affairs (“VA”) health system in 2012. According to Mrs. Deas, working with the VA health system would help facilitate her ability to maintain employment despite having to move pursuant to Mr. Deas’s military orders. She testified that she had remained in Arkansas throughout Mr. Deas’s various deployments and had been employed by the VA until Mr. Deas was transferred to Alabama. Mrs. Deas testified that shortly after moving to Alabama, she began working with the VA in Birmingham and then transferred to the VA in Tuscaloosa. She testified that, because her commute to Tuscaloosa was difficult to balance with her family life, she took a position teaching at the Samford Pharmacy school in February 2016.

Mrs. Deas testified that she was happy that Mr. Deas received the Air National Guard appointment so that she did not have to keep changing jobs. She testified that, before she was notified of the Revenue Department's audit, she had changed her information with the Human Resources Department at Samford University to reflect that she was no longer exempt from Alabama withholding taxes due to her husband's appointment.

### Law and Analysis

On appeal, the Taxpayers' position is that they did not establish Alabama as their domicile until 2019; therefore, the Taxpayers say, they were not subject to Alabama income taxes in 2016.

“Alabama income tax is levied on every person domiciled in Alabama. Code of Ala. 1975, § 40-18-2(7). A person's domicile is their true, fixed home to which they intend to return when absent....

“Alabama's courts have also held that once [a state] is established as a person's domicile, that domicile is presumed to exist until a new one is acquired. And to change an existing domicile, the person must both abandon the former domicile, and also establish a new domicile elsewhere. ‘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.’ Whetstone v. State, Dept. of Revenue, 434 So. 2d 796 (Ala. Civ. App. 1983) .

“The issue of domicile is also affected by the Servicemembers' Civil Relief Act, PL 108-189, formerly the Soldiers' and Sailors' Relief Act, 50 USCA § 501, et seq. That federal law provides in substance that the original domicile of a person in the military does not change solely because the person is assigned to duty in a particular state. For example, if a soldier's state of domicile is Georgia, and the soldier is assigned to duty in Alabama, Alabama does not automatically become the soldier's state of domicile.

“The above Act does not, however, prevent or prohibit a soldier from affirmatively abandoning an original domicile and establishing a new domicile in another state.”

Dennis T. and Angela M. Jackson, v. State of Alabama Department of Revenue, Inc., 15-1302, (August 8, 2016).<sup>4</sup> ; see also Stephanie Bauer v. Alabama Department of Revenue, Inc., 02-244 (June 20, 2002) (“When an individual joins the military, the individual is presumed to maintain his or her original state of domicile ‘until proof of change of domicile has been made.’ Dept. Reg. 810-3-2-01(1)(c).”); and Darman C. Place v. State Department of Revenue, Inc., 06-602 (April 29, 2009) (“A service member is not protected by the Act ... if the member affirmatively elects by his or her actions to establish Alabama as their domicile.” “[A] state may tax a serviceperson as long as other factors exist, in addition to physical presence in the state, which leads to the conclusion that a serviceperson has affirmatively chosen the state of posting as home.” Jackson, supra (quoting Martin J. Carr and Hollie L. Carr v. Department of Revenue, State of Oregon, TC-MD 040979A (November 4, 2005)). The Act also contains similar provisions regarding domicile for tax purposes with respect to a servicemember’s spouse.<sup>5</sup>

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<sup>4</sup> The relevant provision of the Act is presently codified at 50 USC §4001(A)(1) and provides: “A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.”

<sup>5</sup> 50 USC §4001(A)(2)(A) provides: “A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.”

In the present case, although the Taxpayers were physically present in Alabama during 2016, the evidence indicates that Mr. Deas had been assigned to duty to Alabama in 2014 by the United States Air Force and remained on active-duty status until 2019. He unequivocally testified that he had only moved to Alabama because of his military assignment and that he had intended to return to Texas after his military career concluded. The Revenue Department noted that the Taxpayers had obtained Alabama driver's licenses, had registered to vote in Alabama, and had registered their motor vehicles in Alabama. However, in Darman C. Place v. State Department of Revenue, Inc., supra, it was recognized that obtaining an Alabama driver's license and registering to vote in Alabama would be insufficient to establish Alabama domicile where a servicemember was stationed in Alabama but intended to return to a previous state.<sup>6</sup> With respect to the Taxpayers' actions of registering their motor vehicle in Alabama, I conclude that those actions are similarly insufficient to establish domicile in Alabama in a case in which a servicemember is stationed in Alabama with a stated intent to return to a previous state. Additionally, although Mr. Deas purchased a home in Alabama, he testified that he had also purchased a home in Arkansas previously despite having had no intent to remain there. Similarly, although Mr. Deas established an LLC for the purposes of purchasing

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<sup>6</sup> After the hearing in Place, the taxpayer was found to have been domiciled in Alabama during the relevant years because he had lived in Alabama previously and had never established a new domicile before returning to Alabama. Darman C. Place v. State of Alabama Department of Revenue, Inc., 06-602 (November 16, 2009).



rental properties in Alabama, he indicated that he also owned a home in Colorado that he leased to tenants, despite not being domiciled there.

In summary, as noted previously, Mr. Deas testified that, for years, his plan had been to return to Texas at the conclusion of his military career and that he and Mrs. Deas had only decided to remain in Alabama in 2019 after he was given the opportunity to leave active-duty status and to be assigned to the Air National Guard and reside in Alabama permanently. Considering the testimony of the Taxpayers, which I find credible, as well as the documentary evidence corroborating their stated intent, I conclude that, during the tax year 2016, the Taxpayers did not have the intent to remain in Alabama so as to establish domicile in Alabama for tax purposes. Therefore, the Taxpayers were not subject to Alabama income taxes for the tax year 2016.

### Conclusion

Based on the foregoing, the final assessments of individual income tax entered by the Revenue Department against the Taxpayers for 2016 are voided. Judgment is entered accordingly.<sup>7</sup> This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

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<sup>7</sup> At the hearing, the Revenue Department's disallowance of certain adjustments on the Taxpayers' 2016 individual income tax return was discussed. Because, however, I have determined that the Taxpayers were not subject to Alabama individual income tax during 2016, the resolution of those issues is not necessary.

Entered August 18, 2022.

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

lhp:ac

cc: Roseman & Crystal Deas  
Morgan B. Beckman, Esq.