

**ALABAMA TAX TRIBUNAL**

MARK E. BOLLINGER,	§	
Taxpayer,	§	DOCKET NO. INC. 22-390-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

This appeal involves a final assessment of 2020 income tax. The case came before the Tax Tribunal for a hearing, held via videoconference, on January 27, 2023. David Folmar represented the Revenue Department, and Lashanda Sanford, a Revenue Tax accountant, appeared and testified. The Taxpayer also appeared and testified.

I. Facts

Ms. Sanford testified that the Taxpayer had not reported on his individual income tax return for 2020 all of the Alabama income reported on his Form W-2. She testified that the Revenue Department made an adjustment to add the income to the return, and the final assessment at issue resulted from that adjustment. According to Ms. Sanford, the Revenue Department had not received a corrected Form W-2.

The Taxpayer testified that, during 2020, he was working for BBVA in the repossessions department taking calls from customers who were in repossession status. He testified that he was renting an apartment in Alabama, and his office was in Homewood. According to the Taxpayer, during the Covid-19 pandemic, his job was

changed to a remote job, and he was able to work from his apartment. He stated that he initially thought about going to visit family in Idaho; however, after receiving approval from his supervisors, he decided to relocate permanently to Idaho. He was allowed to maintain his position working remotely from Idaho although BBVA did not have any business operations in Idaho. The Taxpayer stated that the move took place in September 2020, and he continued working for BBVA until October 2021. He testified that he was still living in Idaho at the time of the trial.

The Revenue Department pointed out that the Taxpayer kept his Alabama driver's license through 2021. The Taxpayer stated that he had not updated his license immediately upon his move because it was still a valid license. He stated that he voted in the 2020 election in Idaho. According to the Taxpayer, he had attempted to obtain a corrected Form W-2 but had been unable to do so because his employer did not have an Idaho business presence.

## II. Discussion

On appeal, the Taxpayer argues that he should not have to pay Alabama taxes on the income he earned after relocating to Idaho. The Revenue Department stated that its position is that the Taxpayer did not abandon his Alabama domicile in 2020 and that, even if he did, the income was taxable as Alabama-sourced income.

### A. Domicile

I first address the issue of domicile.

“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, the Taxpayer testified unequivocally that he relocated to Idaho with the intention of making a permanent change in residence. When he relocated, he gave up the lease for his apartment in Alabama, and he owned no property in Alabama. The Taxpayer testified that he had voted in the 2020 election in Idaho. Although he maintained an Alabama driver’s license through 2021, he testified that he had only done so because the license was still valid. As noted in the above-cited cases, maintenance of an Alabama driver’s license is not determinative of domicile. Because the evidence indicates that the Taxpayer’s intent was to permanently relocate to Idaho in September 2020, the Taxpayer abandoned his Alabama domicile at that time. Therefore, the Taxpayer was not subject to tax as a domiciliary of Alabama from that date forward.

#### B. Income Source

I next turn to the issue of whether the income earned by the Taxpayer after he moved to Idaho was taxable as Alabama-sourced income. Pursuant to Section 40-18-2, Ala. Code 1975, every “nonresident individual receiving income from property owned or business transacted in Alabama” is subject to Alabama income tax. See also Ala. Admin. Code r. 810-3-2-.01(3) (“Nonresident individuals receiving taxable income from property owned or business transacted (including wages for personal services) within Alabama are taxable on such income.”) Ala. Admin. Code r. 810-3-14-.05 provides, in pertinent part:

(1)(a)“The gross income of a nonresident includes compensation for personal services only to the extent that the services were rendered

in this State.

“(b) Compensation for personal services rendered by a nonresident outside this State and not connected with the management or conduct of a business in this State is excluded from gross income even if payment is made from a point within this State or the employer is a resident individual, partnership or corporation.

“....

“2. Where compensation is received for personal services rendered partly within and partly without this State, that part of the income attributable to this State is included in gross income. In such cases the test of physical presence is used to determine the situs of the rendition of the services, except where the peculiar nature of such services causes the objective of the employment to be accomplished or to take effect within this State, as, for example, where a nonresident acts as a fiduciary of an Alabama estate or trust.... The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of working days employed within this State bears to the total number of working days employed both within and without this State during the taxable period.”

In Jonathan R. & Gail K. Smith v. State of Ala. Dep’t of Rev., INC. 12-253 (Admin. Law. Div. 1/30/13), the Administrative Law Division of the Revenue Department addressed a situation in which the “[Revenue] Department determined that the [Smiths] failed to report all of the income shown on Gail Smith's W-2 from Birmingham Southern College.” The Smiths stated that that their preparer had reported the income that Ms. Smith earned while she resided in state; however, the income that she earned after she permanently moved to Canada, was not reported. The Administrative Law Division of the Revenue Department quoted then Department Reg. 810-3-14-.05(2) which stated, similarly to the present regulation,

“[w]here compensation is received for personal services rendered partly within and partly without this State, that part of the income attributable to this State is included in gross income. In such cases the test of physical presence is used to determine the situs of the rendition of the services.” In accordance with that regulation, the Administrative Law Division held the Smiths “not liable for Alabama tax on the income from Ms. Smith's personal services performed outside of Alabama.”

The facts set forth in the Smith opinion are sparse, but, considering the facts included, the Smith opinion seems analogous to the present case. I note, however, that the Alabama Tax Tribunal is not bound by the decisions of the former Administrative Law Division. But see, Ala. Code 1975 40-2B-2(l)(7) (“The Alabama Tax Tribunal's interpretation of a taxing statute subject to contest in one case shall be followed by the Alabama Tax Tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the Alabama Tax Tribunal in subsequent cases involving similar facts, unless the Alabama Tax Tribunal's interpretation or application conflicts with that of an appellate court or the Alabama Tax Tribunal provides satisfactory reasons for reversing prior precedent.”). Therefore, I look anew to the construction of § 40-18-2 and r. 810-3-14-.05, particularly, to whether the Taxpayer's income was from “business transacted in Alabama.”

The Administrative Law Division addressed whether certain proceeds were derived from “business transacted in Alabama” by looking to binding precedent from the Alabama Supreme Court. The Administrative Law Division explained:

“Doing business’ is not statutorily defined for Alabama tax purposes. The Alabama Supreme Court has held, however, that a corporation is doing business in Alabama if it is ‘engaged (in Alabama) in the transaction of business, or any part of the business, for which it was created.’ State v. Anniston Rolling Mills, 27 So. 921, 922 (1900); See also, State v. City Stores Co., 171 So. 2d 121 (Ala. 1965); Dial Bank v. State of Alabama, Docket Inc. 95289 (Admin. Law Div. 8/10/1998) (“On the other hand, doing business in Alabama is a practical question of whether a taxpayer is engaged in a primary business activity in Alabama.’ Dial Bank at 13). ‘Alabama courts have, on occasion, construed the term “engage in business” ... to indicate a regular and legal employment....’ Scott & Scott, Inc. et al. v. City of Mountain Brook, 844 So. 2d 577, 591 (Ala. 2002).”

John A. and Ann A. Gasser v. State of Ala. Dep’t of Rev. Inc., 11-489 (October 15, 2012).

In the present case, the Taxpayer was clearly engaged in business, i.e., a regular and legal employment with BBVA, which was in Alabama. The Taxpayer contends that because the services he rendered as an employee of BBVA beginning in September 2020 were rendered in Idaho and because he was not physically present in Alabama, his income was not Alabama-sourced. Because of the availability of remote work, however, the Taxpayer’s physical presence in Alabama was not needed in order for him to maintain his employment in Alabama. See, e.g., Burger King Corporation v. Rudzewicz, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed. 2d 528 (1985) (“[I]t is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted.”). The Taxpayer testified that he was able to continue his duties while working remotely and reported to the same Alabama supervisors to whom he had reported while working physically in Alabama.

I conclude that the Taxpayer in this case continued to transact business in Alabama via his employment with BBVA. Thus, his income from BBVA was a result of his conducting business in Alabama and was properly taxable to this State. Therefore, the final assessment is affirmed. Judgment is entered against the Taxpayer in the amount of \$33.72, plus additional interest that continues to accrue from the date of the entry of the final assessment until the liability is paid in full.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code 1975 § 40-2B-2(m).

Entered March 8, 2023.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Judge

Alabama Tax Tribunal

lhp:ac

cc: Mark E. Bollinger  
Tom Czarniecki, CPA  
David M. Folmar, Esq.