

JASON W. STANDRIDGE
6228 CARDINAL DRIVE
PINSON, AL 35126,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 05-649

FINAL ORDER

The Revenue Department assessed Jason W. Standridge (“Taxpayer”) for 1997 and 1998 income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 17, 2006. The Taxpayer and his CPA, David Hogan, attended the hearing. Assistant Counsel J.R. Gaines represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama in the subject years, and thus subject to Alabama income tax pursuant to Code of Ala. 1975, §40-18-2.

The Taxpayer was born and lived in Alabama before 1997. He was drafted in the first round by the Tampa Bay Devil Rays major league baseball team in June 1997, shortly after he graduated from high school in Pinson, Alabama. He joined the team later that month in St. Petersburg, Florida.

The Devil Rays assigned the Taxpayer to a Gulf Coast League team in St. Petersburg from June until September 1997. He returned to his parents’ home in Alabama for two weeks, and then returned to an instructional league in Florida from mid-September through October 1997. He came back to Alabama at the end of October and stayed until March 1998.

The Taxpayer returned to extended Spring training in Florida from March through June 1998. He was then assigned to a rookie ball team associated with the Devil Rays in Princeton, West Virginia. The next year, 1999, the Taxpayer played for a single A league team in Charleston, South Carolina.

The Taxpayer started dating his current wife in 1999. The wife and her family are also from Birmingham. Consequently, the Taxpayer regularly returned to Birmingham during the off-season and otherwise when feasible. The Taxpayer decided to start filing Alabama resident returns in 2001. He married in 2003, and currently plays for the Cincinnati Reds. He lives in Birmingham during the off-season.

The Taxpayer testified that when he signed with the Devil Rays in 1997, he intended to make Florida his home for the foreseeable future. He intended on looking for a place to rent or buy, but learned when he arrived in St. Petersburg in June 1997 that he had to stay in housing provided by the Devil Rays. Consequently, the Taxpayer never rented or purchased a home in Florida. He did, however, obtain a Florida drivers license.

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). In order to change domiciles 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. The presumption is in favor of the original or former domicile, as against a newly acquired one. See generally, *Cobb v. State, Inc.* 96-272 (Admin. Law Div. 2/24/97).

The Taxpayer cites *State of Alabama v. Hammond, Inc.* 87-126 (Admin. Law Div. 1/18/88) in support of his case. Hammond is a native of Alabama that was drafted by the

Dallas Cowboys professional football team in the Spring of 1982. He played for Dallas through the 1984 season. He lived in an apartment in Dallas during football season, which lasted from early Summer until the next December or January. He traveled during the off season, which included occasional visits to his family in Alabama.

The Department determined that Hammond was still domiciled in Alabama in 1983 and 1984. It assessed him accordingly. The Administrative Law Division held that Hammond had changed his domicile to Texas, and thus was not liable for Alabama tax in those years. The Order reads in pertinent part:

Domicile is not decided by actual residence on a day-to-day basis. *Jacobs v. Ryals*, 401 So.2d 776. Rather, of utmost importance is the intention to abandon the old domicile and remain for an indefinite period at the new. *Whetstone v. State, Dept. of Revenue*, supra.

The Taxpayer never intended to return to Alabama to live after graduating from Vanderbilt. His remaining ties with the State were continuing in nature and were simply carried over from earlier years. No affirmative action was taken indicating an intention to return to Alabama. Continuing contact with an old domicile may in some cases be evidence of an intention to return, but in the present case the Taxpayer clearly intended not to return to Alabama to live.

Further, the Taxpayer manifestly hoped and intended to remain with the Cowboys and make Dallas his home for as long as possible. Dallas was the Taxpayer's base, to which he at all times intended to return. The fact that the Taxpayer traveled and lived elsewhere during the off-season is not significant. As noted, actual presence at a location is not determinative. The fact that the Taxpayer intended to remain in Dallas for an indefinite period establishes that the Taxpayer's state of domicile was Texas, not Alabama.

Hammond, at 4.

The facts in *Hammond* are similar to the facts in this case in that in both cases the taxpayers left Alabama to play professional sports. The similarity ends there.

Hammond knew when he moved to Texas in 1982 that he would actually reside in Texas for at least six or seven months every year during the football season. He thus

obtained an apartment where he kept his own furniture and personal belongings, even when he traveled outside of Texas during the off season.

In this case, the Taxpayer may have thought in 1997 that he would be with the Devil Rays organization for the foreseeable future. However, he did not know where he would play and reside because minor league players are routinely moved from team to team in different states. The Taxpayer's representative conceded as much when he stated in a May 26, 2005 letter to the Administrative Law Division that "while playing in the minor leagues, (Taxpayer) did not know where he would be playing, but most likely it would not be Florida."

Hammond clearly established a new home in Texas where he intended to stay for the foreseeable future. Conversely, the Taxpayer never established a permanent residence in Florida. I understand that he never rented an apartment or bought a house in Florida because the Devil Rays required him to live in facilities provided by the team. But that fact also illustrates the temporary nature of the Taxpayer's stay in Florida. The team, as well as the Taxpayer, knew that the Taxpayer would be assigned to play at locations outside of Florida during his early years with the organization. He sometimes returned to Florida, but only for short periods.

Under the facts of this case, I cannot find that the Taxpayer established a new, permanent domicile in Florida when he moved there in 1997. He may have hoped to eventually work his way up to the Devil Rays' major league team in Tampa/St. Petersburg, but hoping and expecting to do so is not the same as actually settling in the area.

Because the Taxpayer did not establish a new domicile in Florida, he remained domiciled in Alabama in the subject years. The tax and interest due as assessed by the

Department is affirmed. Under the circumstances, the penalties are waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). Judgment is entered against the Taxpayer for 1997 tax and interest of \$37,327, and 1998 tax and interest of \$39,401. Additional interest is also due from the date the final assessments were entered, April 27, 2005.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 28, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Cleophus Gaines, Jr., Esq.
David C. Hogan, CPA
Clisby Thomas