

STEVEN D. JONES	§	STATE OF ALABAMA
P.O. BOX 120597		DEPARTMENT OF REVENUE
NASHVILLE, TN 37212-0597,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 06-1196
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER ON TAXPAYER'S
APPLICATION FOR REHEARING**

The Revenue Department assessed Steven D. Jones ("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 January 4, 2008.¹ The Taxpayer attended the hearing. Assistant Counsel Billy Young represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama in the subject years, and thus liable for Alabama income tax on his income earned in those years.

The Taxpayer failed to file Alabama income tax returns for the subject years. The Department received IRS information indicating that the Taxpayer resided in Alabama and had income sufficient to require him to file returns for those years. It consequently assessed the Taxpayer for the tax due, plus penalties and interest. The Taxpayer appealed.

¹ The Administrative Law Division had earlier dismissed the Taxpayer's appeal because the Taxpayer had requested that the Administrative Law Division "dismiss this case." The Taxpayer subsequently contacted the Administrative Law Division and explained that he wanted the final assessments dismissed, not the appeal. The appeal was accordingly reinstated on the Administrative Law Division docket.

The Taxpayer contends that he was domiciled in Tennessee in the subject years. He explained at the January 4 hearing that he was born and raised in the Tri-City area in Northwest Alabama. He was interested in music, and began writing songs at an early age. He worked at a bank in Florence, Alabama until 1991, when he began writing songs full-time. He continued living in Florence, Alabama with his wife and children.

The Taxpayer and his wife separated in the Fall of 1996. He moved to an apartment in Nashville, Tennessee at that time. He divorced in May 2007, and deeded his ex-wife their jointly-owned house in Florence as part of the settlement agreement. He thereafter owned no property and had no contacts with Alabama, other than his children. He remarried in Nashville in 1998, and has lived and worked in Nashville since that time.

The Taxpayer explained that he has regularly visited his children since his divorce. He initially leased an efficiency apartment in Florence so that his children would not have to stay in a hotel room during his visits. He subsequently determined that renting an apartment was impractical. Consequently, he began staying in a motel with his children during his visitations. He estimated that he spent approximately 40 nights per year visiting his children in Alabama during the years in issue.

All individuals domiciled in Alabama are subject to Alabama income tax, even if they reside outside of Alabama during the year. Code of Ala. 1975, §40-18-2(7). A person's residence is where the person currently resides. A person's domicile, however, is the person's true, fixed home to which he intends to eventually return when absent. *State ex rel Rabran v. Baxter*, 239 So.2d 206 (1970).

The burden is on a person claiming a change of domicile to prove that a change has occurred. A person changes domiciles from Alabama only if the person (1) abandons

Alabama with the intent not to return, and (2) establishes a new domicile outside of Alabama with the intent to remain at the new location permanently, or at least indefinitely. See generally, *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). “The intent to return is usually of controlling importance.” *Whetstone*, 434 So.2d, at 797, citing *Jacobs v. Ryals*, 401 So.2d 776 (Ala. 1981).

The 1099s provided by the IRS and relied on by the Department showed that the Taxpayer resided in Alabama. The Taxpayer explained, however, that he did not change the address on his 1099s after he moved from Alabama because he is required by his divorce decree to share his royalty income with his ex-wife. Consequently, his 1099s are still sent to his ex-wife’s house in Florence because she is entitled to see his 1099 income information.

The Department also points out that the Taxpayer renewed his Alabama drivers license after he moved to Tennessee. The Taxpayer explained that he attempted to obtain a Tennessee license when his Alabama license was about to expire, but that he would have been required to wait in line for hours to do so. Consequently, he decided to simply renew his Alabama license on his next trip to Alabama to visit his children. He later obtained and currently has a Tennessee license.

The evidence indicates that the Taxpayer abandoned Alabama with the intent not to return when he separated from his wife in late 1996. Although he did not immediately buy a house in Tennessee, he clearly established a residence or domicile in Tennessee with the intent to remain permanently. The Taxpayer did not retain an Alabama domicile only because he regularly visited his children in the State. Consequently, the Taxpayer effectively changed domiciles from Alabama to Tennessee before the years in issue, and

thus is not liable for his non-Alabama-sourced income earned in those years.

The final assessments are voided.

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

Entered January 15, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Warren W. Young, Esq.
Steven D. Jones
Tony Griggs