

EDWARD M. BOUDREAUX §  
33529 ALDER CIRCLE §  
SPANISH FORT, AL 36527-9094, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. INC. 07-848

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed Edward M. Boudreaux (“Taxpayer”) for 2003 and 2004 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 March 18, 2008. The Taxpayer and his attorney, John Crowley, attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama in 2003 and 2004, and thus subject to Alabama income tax in those years.

The Taxpayer got married and moved to Alabama in the early 1990’s. He and a partner started a telecommunications business in Alabama in the late 1990’s. The business primarily involved installing and servicing public pay telephones.

The Taxpayer explained at the March 18 hearing that the public’s increased use of cellular telephones began hurting his business in the early 2000’s. He consequently began looking for business opportunities in the Caribbean, where cellular telephones were not as widely used.

He visited the U.S. Virgin Islands on several occasions in 2002, and determined that the prevalence of pay telephones in the Islands offered him an opportunity to continue/expand his pay telephone business. He and his partner accordingly purchased

and began operating two existing pay telephone companies in the Virgin Islands in 2002.

The Taxpayer initially lived at his brother-in-law's house in the Virgin Islands. He subsequently purchased a condominium in early 2003. He also purchased a vehicle, obtained a Virgin Islands drivers license, opened a bank account, registered to vote, and had his mail forwarded to the Virgin Islands. He filed 2003 and 2004 federal returns as a resident of the Islands.

The Taxpayer's wife and children continued to live at the couple's house in Alabama in 2003 and 2004. The Taxpayer regularly returned to the States to visit his family, although they usually stayed at the Taxpayer's family house on the Mississippi coast during his visits. The Taxpayer's wife and children also regularly visited the Taxpayer in the Virgin Islands, including a full month in the Summers of 2003 and 2004. The Taxpayer explained that he intended to move his family to the Virgin Islands permanently once he established his business there. With that in mind, he put his oldest child on the waiting list for an exclusive private school on the Islands.

The Taxpayer and his partner hoped to eventually expand their business into the British Virgin Islands and other surrounding islands. The two companies they purchased in 2002 already had existing contracts to provide pay telephones in the U.S. Virgin Islands. The Taxpayer renewed the contracts in the Fall of 2003. He explained that he had to be recognized as a resident of the Virgin Islands before he could get the contracts renewed.

In late 2004, the Virgin Islands authorities unexpectedly awarded most of the pay telephone business in the Islands to an established competitor of the Taxpayers. That development in effect ended the Taxpayer's ability to grow his business in the Caribbean. He and his partner consequently decided to no longer pursue business in the Virgin

Islands. He sold his condominium in the Islands and returned to Alabama in early 2005.

The Taxpayer testified that he had remained involved with his stateside business in 2003 and 2004 via e-mail, but that the business had continued to shrink in those years due to increased cellular competition. Upon returning to Alabama, he and his partner began installing air and vacuum systems at convenience stores and other locations to make up for their shrinking pay telephone business.

A person's 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 Department determined that the Taxpayer had not changed his domicile from Alabama in the subject years because his wife and children never moved, he periodically returned to the States during the subject years, and he returned permanently to Alabama in 2005 "when the opportunities (in the Virgin Islands) did not pan out, . . ." (T. at 7) The Taxpayer and his wife also claimed a homestead exemption on their residence in Alabama in the subject years.

The above facts support a conclusion that the Taxpayer may not have changed domiciles from Alabama. But various other facts show that the Taxpayer intended to and did change domiciles to the Virgin Islands.

A person changes domicile from Alabama only if they abandon Alabama with the intent of remaining permanently at a new domicile outside of Alabama, or at least remaining for an indefinite period. *Whetstone, supra*. The Taxpayer in this case testified that he intended to establish his business in the Virgin Islands and live there indefinitely. He claimed that he intended to move his family there once he got the business established. The Department cannot, however, be required to rely solely on the Taxpayer's self-serving testimony concerning his intent. Rather, his stated intent must be supported or verified by various actions.

The Taxpayer purchased two on-going businesses in the Islands in 2002. He thereafter actively managed the businesses. His purchase of and active involvement in running the businesses shows that he intended to live and work on the Islands for an extended or indefinite period. The fact that he purchased a place to live on the Islands further evidences his claim that he intended to remain indefinitely. The Taxpayer also purchased a vehicle and obtained a Virgin Islands drivers license. He registered to vote and filed federal returns as a resident of the Islands. Importantly, he put his oldest child on a waiting list at a private school on the Islands, which verifies his claim that he intended to eventually move his family there.

The above actions, considered with the Taxpayer's forthright testimony, show that the Taxpayer intended to live in the Virgin Islands indefinitely when he moved there in 2002. The Taxpayer's long-range plan to stay in the Islands changed only when the authorities unexpectedly awarded the pay telephone business on the Islands to a competitor in 2004. He consequently moved back to Alabama in 2005. But the fact that his intent to live and work indefinitely on the Islands did not work out due to unforeseen

circumstances does not mean that he never changed domiciles to the Virgin Islands. Rather, he did so in 2002 when he moved to the Islands with the intent to live there indefinitely. He was thus domiciled in the Virgin Islands from mid-2002 until he moved back to Alabama in early 2005.

The final assessments are accordingly voided.

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

Entered April 15, 2008.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
John J. Crowley, Jr., Esq.  
Tony Griggs