

JEFFREY W. & JANIE HUBBARD
P.O. BOX 27582
HOUSTON, TX 77227-7582,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 08-167

FINAL ORDER

The Revenue Department assessed Jeffrey W. and Janie Hubbard (together “Taxpayers”) for 2004 income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on June 20, 2008. David Wooldridge represented the Taxpayers. Assistant Counsel Lionel Williams represented the Department.

The issue in this case is whether the Taxpayers were domiciled in Alabama in 2004. If so, they are liable for Alabama income tax on the income the husband (individually “Taxpayer”) earned outside of Alabama in that year. Code of Ala. 1975, §40-18-2(7).

The Taxpayer was born and raised in Alabama and graduated from the University of Alabama in the late 1970’s. He worked in the oil and gas business in Louisiana and then Alaska until 1990. He divorced his first wife while in Alaska. The ex-wife and the couple’s two children moved back to Alabama.

The Taxpayer married his current wife in Texas in 1990. The Taxpayer accepted a job in Indonesia, and the couple moved there in 1991. The couple had their only child together while living in Indonesia.

The Taxpayer lost his job in Indonesia in 1994 due to a downturn in the oil and gas industry. The couple and their child moved back to Alabama at that time because they still

had family in Alabama, and the wife still owned a house in Alabama.

The Taxpayer secured a job and began working full-time in Louisiana in late 1994. He visited his wife and child in Alabama on weekends when he could. From 1994 until 2001, the Taxpayer held a series of oil and gas-related jobs that required him to travel for extended periods around the world. The Taxpayer's wife and child continued to live in Alabama. The couple filed Alabama income tax returns from 1994 through 2001.

The stress and strain of the Taxpayer's constant travel caused marital problems, and the couple contemplated divorce in 2001. They decided instead that the Taxpayer would seek a permanent job at a fixed location where his wife and child could live with him. The Taxpayer accordingly applied for and was hired to a permanent position with Apache Corporation as an oil rig supervisor in Cairo, Egypt. The Taxpayers sold their house, cars, and furniture in Alabama and moved to Egypt in June 2001.

The Taxpayer obtained an Egyptian permanent residence card and an Egyptian driver's license. The couple rented an apartment, enrolled their son in school, and joined a church in Cairo, which has a large American ex-patriot community. They also began paying Egyptian taxes.

The Taxpayers returned to Alabama on four week vacations to visit family in both 2002 and 2003. They rented an apartment and a vehicle in Alabama during those stays.

The couple decided to buy a house while on vacation in Alabama in 2003. They intended to remodel the house and eventually sell it, which they had previously done with other houses. They also intended to stay at the house when visiting Alabama while the house was being remodeled. They consequently stayed at the house while on four week vacations in Alabama in both 2004 and 2005. They sold the house in 2006, and thereafter

purchased and sold two more houses in Alabama.

The Taxpayers purchased a vehicle in Alabama in 2003 because they did not want to have to continue renting vehicles when they visited Alabama in subsequent years. They also purchased a motorcycle in 2004, and another vehicle in 2006.

While visiting Alabama in 2004, the Taxpayer found some old stock options that he had received from a previous employer. He exercised the options at a brokerage firm in Alabama. Alabama and federal income tax was withheld from the proceeds. The Taxpayers subsequently filed a 2004 Alabama non-resident return and requested a refund of the Alabama tax withheld.

The Department reviewed the Taxpayers' 2004 return and determined that the Taxpayers were domiciled in Alabama in 2004, and thus liable for Alabama tax on the Taxpayer's 2004 income earned in Egypt. It consequently denied the refund claimed on the 2004 return, and instead assessed the Taxpayers for the tax and interest in issue.

The Taxpayers testified that when they moved to Egypt in 2001, they intended and expected to live in Egypt permanently, or at least for the foreseeable future. They expected to return to Alabama every year to visit family, but never to live. They also looked into buying a place to retire to in Egypt. Unfortunately, the Taxpayer's job became more and more stressful and took up more and more of his time. The couple finally decided to return to the United States in 2006. The wife explained as follows:

A. I loved it, every minute of it. It was - - we had a great school. We were a minute walk. My son could - - he was free to run with his friends. He was there from the time he was in third grade, and he - - we had a great church. We had a support system. We had everything. We had friends. There is a huge ex-pat community there.

* * *

A. And we had Egyptian friends. We had a wonderful life. And then Jeff, you know, he - - little by little, it was more and more and more. All night long the calls and nobody could sleep and - - you know, it just got to be too much. And I knew he wouldn't ever have somebody to take over those calls, you know, because he didn't feel comfortable leaving those calls with the Egyptian technicians or the engineers he had. So that's what really happened, and so we made plans to come back. I brought John back, and Jeff stayed until he could find another place.

Q. Now, before the job got to be too much, were you expecting to stay in Egypt indefinitely?

A. Yes. I - - I - - I loved it.

Q. Would you have been happy to retire there?

A. Yes.

Q. When you left Alabama in June of '01, did you expect to ever live in Alabama again?

A. No. I have an elderly mother. She's 89 and she can barely walk. And I have a sister who can't travel either because she's got a husband who's sick. And so I have to come back and see my - - my people, and I have to check on my mother; but I never expected to come back and live here indefinitely.

(T. at 92 – 93)

The Taxpayer's wife and child moved back to Alabama in mid-2006. The Taxpayer followed shortly thereafter. He subsequently obtained a job in Argentina, and he and his wife and child moved there in 2007. They currently reside in Argentina.

The Department argues that the Taxpayers were domiciled in Alabama in 2004 because: (1) they purchased a house in Alabama in 2003 and resided in the house for four weeks while on vacation in Alabama in 2004; (2) they claimed a homestead exemption on the house; (3) they owned a vehicle in Alabama which was titled in Alabama; (4) they purchased and titled a motorcycle in Alabama in 2004; (5) they maintained a checking account in Alabama in 2004; and (6) the Taxpayer's two children by his first marriage

attended college in Alabama in the subject year.

The Taxpayers contend that they never intended to return to Alabama to live when they left in 2001. They returned to Alabama in 2002 through 2005 only to visit family. They explained that they purchased the house in Alabama in 2003 as an investment, and also as a place to stay instead of renting when vacationing in the State.¹ They purchased the vehicle in 2003 so they could use it while in Alabama instead of renting a vehicle. They explained that they both maintained their Alabama driver's licenses so they could legally drive while in Alabama. They maintained an Alabama checking account only because many Alabama merchants do not accept out-of-state checks.

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 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. 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).

In *Whetstone*, the taxpayers were domiciled in Alabama when the husband accepted a job in Nigeria. The couple moved to Nigeria, but their three children remained in Alabama. The taxpayers kept their house in Alabama, were registered to vote in Alabama, and retained their Alabama bank account. Importantly, while in Nigeria, the taxpayers purchased a condominium in Florida, acquired Florida driver's licenses, and

¹ The Taxpayers improperly claimed a property tax homestead exemption on the house. They explained that their real estate agent encouraged them to do so.

moved their bank account to a Florida bank.

In deciding that the taxpayers in *Whetstone* had not changed domiciles from Alabama, the Court of Civil Appeals noted that the taxpayers had retained substantial ties to Alabama. The deciding factor, however, was that the taxpayers failed to prove that they intended to remain in Nigeria indefinitely, i.e., they failed to establish a permanent domicile in Nigeria.

The taxpayers have failed to meet their burden in establishing Nigeria as their domicile in another critical way; that is, they have not shown an intent to remain in Nigeria. In order to establish Nigeria as their domicile, they need to show their intent to remain permanently, or at least for an unlimited time from which the intent to remain may be inferred. *State ex rel. Rabren v. Baxter, supra; Holmes v. Holmes*, 212 Ala. 597, 103 So. 884 (1925). By their actions, the taxpayers have indicated an intent to remain (in Nigeria) at the most only until the husband retires. Although no specific date is involved, a specific event – retirement – will cause the taxpayers to leave Nigeria. Put another way, they will not be there for an “unlimited time,” because they will leave upon the husband’s retirement.

Whetstone, 434 So.2d at 797.

The Taxpayers in this case also maintained some ties to Alabama in the subject year. But while the presence of one’s extended family in Alabama is one indicia of domicile, it is by no means conclusive. The evidence also shows that the Taxpayers did not purchase the house in Alabama in 2003 as a future permanent residence, but rather as an investment, and also as a place to stay while they annually vacationed in Alabama. The Taxpayers have a history of buying houses, fixing them up, and then selling them for a profit, as they did concerning the house they purchased in 2003. Finally, they explained that they needed a car in Alabama so they would not have to rent one while on vacation in the State, and they needed an Alabama checking account because many Alabama merchants do not take out-of-state checks. Those ties to Alabama do not establish that the

Taxpayers intended to return to Alabama to live.

This case can be further distinguished from *Whetstone* in one critical way. The evidence in *Whetstone* showed that the taxpayers intended to eventually leave Nigeria and retire to Florida. In this case, however, the evidence is uncontroverted that the Taxpayers intended to live in Egypt indefinitely. They sold everything but their personal possessions when they moved to Egypt in 2001. They set up a household, joined a church, and put their only child in school in Egypt. Importantly, there is no evidence that the Taxpayers intended to leave Egypt at some point in the future, as was the case in *Whetstone*. Also, the Taxpayers actually stayed in Egypt for five years, and only left because the nature of the Taxpayer's job dramatically and unexpectedly changed.

The facts, considered together, show that the Taxpayers abandoned Alabama as their domicile in 2001 and established a new domicile in Egypt at that time with the intent to remain indefinitely. The Taxpayers may always be "from Alabama" because they were born and raised here, but they were not legally domiciled in Alabama after 2001. Because the Taxpayers were not domiciled in Alabama in 2004, the final assessment in issue is voided. The Department should issue the Taxpayers the refund claimed on their 2004 Alabama return in due course. Judgment is entered accordingly.

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

Entered August 21, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.
David M. Wooldridge, Esq.
Kim Peterson