

HENRY A. HILL	§	STATE OF ALABAMA
P.O. BOX 511		DEPARTMENT OF REVENUE
BAY MINETTE, AL 36507,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 08-177
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

The Revenue Department denied refunds of 1997 through 2000 income tax requested by Henry A. Hill ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on July 2, 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 1997 through 2000. If so, he is liable for Alabama income tax in those years pursuant to Code of Ala. 1975, §40-18-2.

The Taxpayer did not file Alabama income tax returns for the subject years. The Department received IRS information indicating that the Taxpayer listed an Alabama address on his federal returns for those years. He had also filed extension requests with the Department in those years. The Department consequently assumed that the Taxpayer had resided in Alabama in those years, and assessed him for the Alabama tax due, plus penalties and interest. The Taxpayer subsequently paid the assessed amounts and requested refunds. The Department denied the refunds. The Taxpayer appealed.

The Taxpayer was in the woodworking/furniture business before and during the years in issue. He initially worked in Indiana, and then as a production manager for Singer

Company in Selma, Alabama from 1973 until the plant closed in the early 1980's. He subsequently moved to Mississippi in 1985. While living in Mississippi, he did consulting work in Chile and China.

In 1995, the Taxpayer accepted a permanent position with Universal Furniture in Taiwan. The Taxpayer and his wife sold their house, furniture, cars, etc. in Mississippi and moved to Taiwan at that time. The Taxpayer granted a power-of-attorney to his daughter in Bay Minette, Alabama to handle his personal affairs while he was overseas. He also opened a post office box and bank account in Bay Minette that his daughter could use to handle his business.

The Taxpayer's wife became ill in 1996, and the couple returned to Alabama in May 1996 to seek medical treatment. The Taxpayer lived with his daughter in Bay Minette while his wife was hospitalized in Mobile. The wife died in July 1996.

The Taxpayer accepted employment and moved to Mexico in August 1996. He worked and lived in Mexico until he took a job in Indonesia in late 2000. He later moved to China in 2002. He continued to work in China until he retired in 2006. He has lived with his daughters in North Carolina and Alabama since 2006.

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).

The Department determined that the Taxpayer was liable for Alabama tax in the subject years because his daughter's Bay Minette address was on his federal returns for those years. The Taxpayer explained, however, that he only used his daughter's address for convenience, and to insure that his daughter, as his attorney-in-fact, could promptly tend to his business while he was overseas.

The Department also argues that the Taxpayer had filed extensions to file Alabama returns in the subject years. The Taxpayer's accountant explained in an affidavit that when he files a federal extension request, which he did for the Taxpayer in the subject years, his office also automatically files a State extension request. He concedes that he should not have filed the Alabama extension requests, which the Taxpayer never knew about.

The Taxpayer briefly resided in Alabama in mid-1996 due to his wife's illness and subsequent death. There is no evidence, however, that he ever intended to remain permanently or indefinitely in Alabama. To the contrary, he testified that he intended to leave Alabama as soon as he could find a job. He subsequently took a job and moved to Mexico in August 1996. He explained that he intended to live and work in Mexico indefinitely.

The facts clearly show that the Taxpayer did not establish a domicile in Alabama when he briefly lived in the State in 1996. And even if a domicile had been established, he clearly abandoned his Alabama domicile and established a new domicile in Mexico when he moved there in August 1996. He consequently was not domiciled in Alabama in 1997 through 2000, and thus was not subject to Alabama income tax in those years.

The Department is directed to issue the Taxpayer the refunds in issue, plus applicable interest. 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 July 10, 2008.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
John J. Crowley, Jr., Esq.  
Kim Peterson