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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 13-1226

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER ON TAXPAYER'S APPLICATION FOR REHEARING

This appeal involves a final assessment of 2010 Alabama income tax entered against the above Taxpayer. A Final Order was entered on January 23, 2014 affirming the final assessment because the Taxpayer failed to comply with a Preliminary Order directing her to submit information to the Administrative Law Division.

The Taxpayer timely applied for a rehearing, and a hearing was conducted on May 6, 2014. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

The Department received IRS information indicating that the Taxpayer lived in Alabama in 2010 and had sufficient income to require her to file an Alabama income tax return for that year. The Department accordingly entered the final assessment in issue based on the IRS information.

The Taxpayer testified at the May 6 hearing that she was born and raised in Alabama. She graduated from college in Alabama in 2005, and worked as a volunteer for U.S. Senator Richard Shelby from 2005 through 2007.

The Taxpayer took a job with the State of Texas and consequently moved to Houston, Texas in 2008. She testified that she intended to live and work permanently in

Texas at that time. Unfortunately, the Taxpayer was required to move back to Alabama in February 2011 to help care for two sick family members. She subsequently accepted a job with Pepsi Cola in Alabama in September 2011. She currently works for Pepsi and resides in Alabama.

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 Department assessed the Taxpayer based solely on the IRS information showing that she gave an Alabama address on her 2010 federal return. The Taxpayer explained, however, that she filed the 2010 federal return only after returning to Alabama in 2011.

Other facts also suggest that the Taxpayer was domiciled in Alabama in 2010. Specifically, she drove a car that was registered in Alabama and carried an Alabama

license tag, she was still registered to vote in Alabama during the year, and she still had an Alabama driver's license during the year.

The Taxpayer testified, however, that she drove her mother's car while in Texas. The car was previously registered in Alabama, and her mother simply renewed the tag every year in Alabama. She explained that she never voted in Alabama while living in Texas, except in the 2008 presidential election. She never obtained a Texas driver's license because her Alabama license was still valid while she was in Texas, and she saw no need to.

Determining a person's domicile must be done on a case-by-case basis by objectively viewing all relevant facts. The fact that the Taxpayer drove a car still titled and registered in Alabama, was registered to vote in Alabama, and had an Alabama driver's license in the subject year tends to indicate that the Taxpayer was still domiciled in Alabama in 2010. But the Taxpayer adequately explained at the May 6 hearing why she retained the above ties to Alabama. As indicated, she also testified that when she moved to Texas in 2008, she intended to reside and work in Texas indefinitely, if not permanently.

Objectively viewing the facts and the Taxpayer's testimony, I find that the Taxpayer changed domiciles from Alabama to Texas in 2008, and did not reestablish Alabama as her domicile until February 2011. The 2010 final assessment and the January 23, 2014 Final Order are voided. Judgment is entered accordingly.

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

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Entered May 8, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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