

AMANDA B COOK
108 MIMOSA DRIVE
MONTGOMERY, AL 36109,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 13-645

FINAL ORDER

The Revenue Department assessed Amanda B. Cook (“Taxpayer”) for 2007 Alabama 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 May 15, 2014. The Taxpayer attended the hearing. Assistant Counsel Craig Banks represented the Department.

The Taxpayer failed to file a 2007 Alabama income tax return. The Department received IRS information indicating that the Taxpayer was required to file an Alabama return for that year. It consequently assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information.

The issue in this case is whether the Taxpayer was domiciled in Alabama in 2007, and thus subject to Alabama income tax in that year pursuant to Code of Ala. 1975, §40-18-2(b).

The Taxpayer was born and raised in Alabama. She moved to New York to attend New York University in 1997. She graduated from NYU in 2001, and worked and lived in New York and New Jersey until 2007.

The Taxpayer testified that after graduation from NYU, she never intended to return to Alabama to live. Unfortunately, she developed back problems, and consequently

returned to Alabama in May 2007 so that her stepfather, a surgeon in Montgomery, Alabama, could operate on her back. After recovering, she returned to New Jersey in July 2007, but stayed there only a short time before deciding to move to Georgia. Before doing so, however, her parents talked her into coming to Alabama to study for tests to get into either law school or graduate business school. She stayed in Alabama for a couple of months, and then traveled to various countries in Europe.

The Taxpayer returned to Georgia in late 2007, but moved to Alabama in January 2008 to work and save money so she could return to Georgia to attend school. She met her future husband in Alabama in the Spring in 2008, and the couple and their two young children now live in Montgomery, where the Taxpayer practices law.

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 evidence in this case shows that the Taxpayer moved to New York in 1997, and that after she graduated from NYU in 2001, she intended to remain in New York permanently, or at least indefinitely. She also did not reestablish Alabama as her domicile until she returned to Alabama permanently in 2008. Because she abandoned Alabama and established a new domicile in New York with the intent to remain permanently, and did not reestablish Alabama as her domicile until 2008, the Taxpayer was not domiciled in Alabama in 2007.

The 2007 final assessment is voided. 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 May 21, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Craig A. Banks, Esq.
Amanda B. Cook, Esq.
Stoney Trammel