

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

v.

THOMAS E. DUNCAN
239 Murfee Drive
Prattville, AL 36067,

Taxpayer.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 83-100

FINAL ORDER

This matter involves a preliminary assessment of income tax entered by the Revenue Department against Thomas E. and Mary Ellen Duncan for the calendar year 1982. On November 15, 1983, Thomas E. Duncan (taxpayer) requested a formal hearing with this office contesting the correctness of the income tax assessment entered by the Department on October 19, 1983. A hearing was held on January 20, 1984 at which the taxpayer was present and represented himself and the Revenue Department was represented by attorney Mark Griffin. Based on the evidence taken at the January 20, 1983 hearing, the following findings of fact and law are hereby entered.

FINDINGS OF FACT

A preliminary assessment for income tax for calendar year 1982 was entered on October 19, 1983 in the amount of \$968.38. Said assessment was based on the Revenue Department's determination that the taxpayer had improperly failed to report income of \$26,171.32, which represented the taxpayer's wages from Evergreen International for work performed in Turkey from May through December, 1982.

The taxpayer, who is 32 years old, was born in Atlanta,

Georgia and lived in various locations until 1976. In 1976, the taxpayer accepted a job with Evergreen Helicopters and moved to Alabama. The taxpayer remained in Alabama and in 1979 got married and purchased a house at 239 Murfee Drive, Prattville, Alabama. The taxpayer lived with his wife and stepchild in his Prattville home and worked with Evergreen Helicopters until May, 1982. At that time, the taxpayer was transferred to Evergreen International, a different division of Evergreen Helicopters, Inc., and was sent to work in Turkey. The taxpayer remained in Turkey for a period of 17 months during which time he rented an apartment and obtained a Turkish driver's license. The taxpayer also maintained a current Alabama driver's license while in Turkey. During his stay in Turkey, the taxpayer returned to Alabama on leave for approximately 28 days in the early fall of 1982.

During 1982, the taxpayer's wife and stepchild remained in Alabama and lived at the Prattville address. The stepchild, who is presently 13 years old, attended school in Prattville during 1982.

The taxpayer filed a joint 1982 Alabama income tax return and included income of \$9,500.00, which represented wages earned prior to his transfer to Turkey in 1982. The sum of \$26,171.32 in wages earned from May to December, 1982 were omitted.

Revenue Department agent Clesiby Thomas, Jr. examined the taxpayer 1982 return and determined that the taxpayer was domiciled in Alabama during the year 1982 and was therefore liable for

Alabama tax on his entire wages earned in that year.

CONCLUSIONS OF LAW

The issue in this case is whether the taxpayer was domiciled in Alabama during 1982 so as to make his entire earnings for that year subject to Alabama tax pursuant to Code of Alabama 1975, '40-18-2(7).

Code of Alabama 1975, '40-18-2(7) subjects to the Alabama income tax "every natural person domiciled in the State of Alabama". "Domicile" has been defined as a person's true, fixed home to which he intends to return when absent. Lucky v. Roberts, 100 So. 878; State ex rel. Rabran v. Baxter, 239 So.2d 206. A person's domicile is a place from which he does not intend to remain permanently away. Richardson v. Richardson, 53 So.2d 354.

An individual's domicile of origin is established at birth and is considered to be the domicile of his parents, which continues until a new one is established. A change of domicile occurs only with the physical abandonment of the old with no present intention of returning, along with the establishment of a new residence with the present intention to remain permanently. State ex rel. Rabran v. Baxter, supra. Mere absence from an established domicile, without additional evidence of abandonment, will not suffice to establish a change of domicile. Mitchell v. Kenney, 5 So.2d 788.

A person's domicile having once been determined is presumed to continue until a new one is acquired. Holmes v. Holmes, 103 So.

884; Jacobs v. Ryals, 401 So.2d 776; Whetstone v. State, 434 So.2d 796. The burden of establishing a change of domicile is on the one asserting it, and where the facts are conflicting, the presumption is currently in favor of an original, or formal domicile as against a newly acquired one. Jacobs v. Ryals, supra; State ex rel Rabran v. Baxter, supra. Further, there is a strong presumption in favor of a domestic domicile, as opposed to a foreign. Petition of Oganessoff, 20 F.2d 978.

In the present case, the taxpayer's domicile of origin was Georgia. However, a new domicile was established when the taxpayer permanently abandoned his Georgia residence and settled in Alabama.

This conclusion is supported by the fact that the taxpayer resided in Alabama from 1976 until May, 1982. Further, in 1979, the taxpayer married and purchased a house in Prattville, where he and his wife and stepchild lived together until his departure for Turkey. At all times from 1979 through the period in question, the taxpayer's wife and stepdaughter have remained in Alabama and lived in the Prattville house.

The only evidence of a change of domicile from Alabama to Turkey was the taxpayer's physical presence in Turkey for seventeen months. That alone is insufficient to carry the burden of establishing an abandonment of Alabama and adoption of Turkey as a permanent domicile.

Having failed by his actions to establish an intent to

permanently abandon Alabama and remain in Turkey, the taxpayer must be viewed as having been domiciled in Alabama in 1982. Accordingly, the preliminary assessment is correct and is hereby made final in the amount of \$982.77.

Done this 24th day of January, 1984

BILL THOMPSON
Chief Administrative Law Judge