

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. INC. 85-142

JAMES D. & LENA HAMILTON
300 Tatum Avenue
Atmore, AL 36502,

§

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Taxpayer.

§

ORDER

This matter concerns four contested income tax preliminary assessments entered against the Taxpayers by the Revenue Department. Two of the assessments, for the calendar years 1980 and 1981, are entered jointly against James D. and Lena Hamilton. The remaining two assessments, for the calendar years 1982 and 1983, are against James D. Hamilton, individually. Mr. Hamilton will hereinafter be referred to as the Taxpayer. A hearing was conducted by the Administrative Law Division on July 18, 1985. The parties were represented at the hearing by attorney Jeffrey W. Crabtree, for the Taxpayer, and assistant counsel Mark Griffin, for the Department. Based on the evidence submitted by the parties at said hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer was born in Montgomery County, Alabama in 1942. The Taxpayer moved to Miami, Florida in 1949 and resided there, except for a period of service in the military, until the mid 1970's. The Taxpayer was married in 1966 to his present wife, Lena

Hamilton. The couple have four children.

In 1974 or early 1975, the Taxpayer's wife and children moved to Atmore, Alabama. The Taxpayer followed shortly thereafter and resided in Alabama for approximately one year. There is no dispute that the Taxpayer was domiciled in Alabama during that period.

In September, 1975, the Taxpayer accepted employment overseas. From September, 1975 until 1979, the Taxpayer worked in Indonesia, Algeria, Iraq and Malaysia. The Taxpayer obtained permanent residence status in both Algeria and Iraq while working in those countries.

In 1979, the Taxpayer accepted a job in Saudi Arabia and has worked there since that time. The Taxpayer has a permanent residence visa in Saudi Arabia, and for purposes of federal income taxation, the United States government recognizes the Taxpayer's status as a permanent resident of Saudi Arabia.

The Taxpayer's wife and children have resided in Atmore, Alabama in a house owned jointly by the Taxpayer and his wife at all times since 1976. The Taxpayer testified that since 1979 he has returned to the United States for two week visits every four to six months. During said visits, the Taxpayer resides with both his mother in Florida and his wife and children in Atmore. The Taxpayer has an Alabama drivers license, and also a bank account in Alabama in which he deposits approximately \$2,000.00 a month for the support of his family in Atmore.

For the years 1976 through 1980, the Taxpayer and his wife filed joint Income tax returns in Alabama. The Taxpayer testified that he filed said returns because he had not yet been granted permanent residence status in Saudi Arabia by the Internal Revenue Service, and thus, still considered himself a resident of the United States, and Alabama. The Taxpayer stopped filing Alabama returns when he gained IRS recognition as a permanent resident of Saudi Arabia.

The Taxpayer testified that he intends to work in Saudi Arabia until he becomes vested in the Saudi Arabian Retirement System (Saudi Social Security), which requires a minimum of ten years continuous employment. The Taxpayer presently has been working six years in Saudi Arabia. Further, the Taxpayer expressed that upon retirement, he intends to reside in Florida where he presently owns property.

CONCLUSIONS OF LAW

The determinative issue in this case is whether the Taxpayer was domiciled in Alabama during the years in question within the scope of Code of Alabama 1975, §40-18-2(7). Under that section, "[E]very natural person domiciled in the State of Alabama" is subjected to liability for the Alabama income tax.

The law on the question of domicile has been well-settled by Alabama's appellate courts. In Whetstone v. State, Department of Revenue, 434 So.2d 796 (1983) the Alabama Court of Civil Appeals

stated as follows:

Our Alabama Supreme Court concisely stated the relevant Alabama law in the question of domicile in *Jacobs v. Ryals*, 401 So.2d 776 (Ala. 1981). Domicile once acquired is presumed to exist until a new one has been acquired.

Jacobs v. Ryals, supra; *State ex rel. Rabren v. Baxter*, 46 Ala.App. 134, 239 So.2d 206 (1970). In order to displace the former, original domicile by acquisition of a new domicile, actual residence and intent to remain at the new domicile must both concur. *Jacobs v. Ryals*, supra; 8 Ala.Digest, Domicile, Key No. 4(2). A change of domicile cannot be inferred from absence, temporary or due to employment, where there is an intent to return.

Jacobs v. Ryals, supra; *Wilkerson v. Lee*, 236 Ala. 104, 181 So. 296 (1938). The intent to return is usually of controlling importance. *Jacobs v. Ryals*, supra; *Hilley v. Hilley*, 275 Ala. 617, 157 So.2d 215 (1963).

One who asserts a change of domicile has the burden of establishing it, and where the facts are conflicting, the presumption is strongly in favor of an original, or former domicile, as against a newly acquired one. *Jacobs v. Ryals*, supra; *State ex rel. Rabren v. Baxter*, supra.

Succinctly stated, the facts in the Whetstone case were as follows: The taxpayers (husband and wife) moved from Alabama to Nigeria in 1975. The couple's three children remained in school in Alabama, and resided in a house owned by the taxpayers. The couple maintained an Alabama bank account, and the wife maintained her Alabama drivers license. Finally, the couple purchased property in Florida in 1978 with the intention of residing there permanently upon the husband's retirement. The taxpayers disputed the Revenue Department's finding that they were domiciled in Alabama for the years 1976 and 1977.

The Court found that the taxpayers failed to overcome the presumption that Alabama remained as their domicile, citing the

taxpayers' continued ties to the State. Also, the taxpayers failed to establish an intention to remain permanently in Nigeria because, by their own admissions, they intended to abandon Nigeria as their home at some future date.

The facts in the present case are in substance very close to the Whetstone facts. To an even greater extent than in Whetstone, the Taxpayer in the present case maintained strong ties with Alabama during the period In question. For example, the Taxpayer's wife and children lived in Alabama, the Taxpayer retained his Alabama drivers license, and the Taxpayer deposited some \$2,000.00 per month in a bank account maintained by him in the State. In addition, the evidence is undisputed that the Taxpayer intended to leave Saudi Arabia upon retirement and thereafter reside in Florida.

Based on the above facts, it must be found that the Taxpayer failed to establish that he had abandoned Alabama as his domicile in 1975. The Taxpayer further failed to establish Saudi Arabia as his subsequent domicile in that by his own testimony he established an intention to leave that country permanently at some future date.

Accordingly, based on the above findings and conclusions, the Revenue Department is hereby directed to make the preliminary assessments final as entered, plus interest as required by law.

Done this 17th day of September, 1985.

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BILL THOMPSON
Chief Administrative Law Judge