

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 85-180

HERBERT J. & SHIRLEY J. NELSON§
502 North 9th Avenue
Lanett, AL 36863,

§

Taxpayers.

§

ORDER

This case involves a joint preliminary assessment of income tax entered against Herbert J. and Shirley J. Nelson (hereinafter individually referred to as "husband" or "wife", jointly as "Taxpayers") for the year 1981, and preliminary assessments against the same parties, individually, for the years 1982 and 1983. A hearing was conducted by the Administrative Law Division on March 13, 1987. The Taxpayers were present at said hearing and represented themselves. The Revenue Department was represented by Assistant Counsel Adolph Dean. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The issue in question is whether the husband was domiciled in Alabama during 1982 and 1983 so as to be liable for Alabama income tax under the provisions of Code of Ala. 1975, §40-18-2. Three of the five assessments, i.e., the 1981 joint assessment and the 1982 and 1983 individual assessments against the wife were entered by the Department as a result of the Taxpayers' failure to

substantiate various claimed deductions. Those assessments are not challenged by the Taxpayers. Only the 1982 and 1983 assessments entered against the husband are in dispute.

The Taxpayers were married in 1971, while the husband was serving in the military. Upon the husband's discharge in late 1971, the Taxpayers together moved to various locations in the southeastern United States. In 1973, the wife moved to Lanett, Alabama and began living with her mother. At the same time, the husband moved into an apartment in Columbus, Georgia and began working in Alabama with the Uniroyal Corporation as a refrigeration/air conditioner repairman.

From 1973 until 1980, the husband resided in Columbus and worked at Uniroyal in Alabama. During that period, the wife and the couple's two children lived in Lanett with the wife's mother, and the wife worked in Alabama as a teacher.

In late 1980, the husband was laid off by the Uniroyal Corporation. In April, 1981, the husband accepted employment with the United States Army in Columbus, Georgia. In May, 1982, the husband was transferred by the Army to Key West, Florida. In September, 1984, the Army again changed the husband's work location, this time to New Jersey.

From 1973 until April, 1982, the husband maintained a bank account in his name at a Columbus, Georgia bank. The wife had a separate account in Alabama. Neither of the Taxpayers have ever

owned any property in Alabama. The husband does have an Alabama drivers license. During the husband's stay in Columbus, from 1973 through April, 1982, he visited his family in Alabama once or twice a month. The family visited the husband in Columbus on an average of four or five times a month.

For 1981 and all prior years during which the husband worked at Uniroyal in Alabama, the Taxpayers filed joint returns with both Alabama and the federal government. For 1982 and 1983, the couple continued to file joint federal returns, but only the wife filed an individual Alabama return. Upon examination by the Revenue Department, the Department auditor determined that the husband had been domiciled in Alabama in both 1982 and 1983, and consequently, computed the husband's liability for those years using the husband's W-2 forms and allowing for a personal exemption and a deduction for federal tax paid.

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-18-2 levies an income tax in pertinent part on the following parties:

In addition to all other taxes now imposed by law, there is hereby levied and imposed a tax on the entire net income..... Persons and subjects taxable under this chapter are:

- (1) Every individual residing in Alabama;
- (6) Every nonresident individual receiving taxable income from property owned or business transacted in Alabama;
- (7) Every natural person domiciled in the state of

Alabama . . . shall be presumed to be residing within the state for the purposes of determining liability for income taxes under this chapter.

The law on domicile in Alabama is well-settled. Briefly stated, a person's domicile is his true, fixed home to which he intends to return when absent. State ex rel. Rabren v. Baxter, 339 So.2d 206; Lucky v. Roberts, 100 So. 878. A domicile once established continues until a new one is acquired, and an effective change of domicile requires both an abandonment of the old domicile with no intention of returning, along with the establishment of a new permanent residence. Whetstone v. State, 434 So.2d 796; Jacobs v. Ryals, 401 So.2d 776. The presumption is in favor of the original domicile, and the burden is on the one seeking a change to establish that a change has in fact occurred. Whetstone v. State, supra.

The determinative issue in the present case is not whether the husband had effectively abandoned Alabama prior to 1982 and established a new domicile elsewhere, but rather, was Alabama the Taxpayer's domicile in the first instance. From 1973 through 1980, the husband worked for Uniroyal in Alabama. Thus, regardless of the question of domicile, the husband was liable for Alabama income tax during those years under subsection (6) cited above, as a non-resident earning income in Alabama.

On the question of domicile, it is undisputed that the husband resided continuously in Columbus, Georgia from 1973 until April,

1982. Thus, although his wife and children resided in Alabama, it is clear that the husband was domiciled in Georgia, and not Alabama, prior to his move to Florida in April, 1982. A determination of whether the 1982 move to Florida effectuated a change of domicile is irrelevant to the issue at hand. It is clear that the husband was not domiciled in Alabama prior to and during the years in question, and consequently, that the husband is not liable for Alabama income tax for those years.

The above considered, it is hereby determined that the 1982 and 1983 preliminary assessments entered against Herbert J. Nelson, individually, are incorrect and should be reduced and made final in the amount of zero. The 1981 joint assessment and the 1982 and 1983 individual assessments against Shirley J. Nelson are correct and should be made final as entered, with applicable interest as required by law.

Done this 16th day of March, 1987.

BILL THOMPSON
Chief Administrative Law Judge