

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 89-162

RICHARD N. CASTRO, JR.
Route 1, Box 938
Codan, AL 36523,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed income tax against Richard N. Castro, Jr. (Taxpayer) for the years 1984, 1985 and 1986. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted. on July 11, 1990. Robert M. Galloway, Esq. appeared for the Taxpayer. Assistant counsel Mark D. Griffin represented the Department. This Final Order is entered based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The issue in this case is whether the Taxpayer was domiciled in Alabama during 1984, 1985 and 1986 so as to be subject to Alabama income tax pursuant to Code of Ala. 1975, §40-18-2. The relevant facts are as follows:

The Taxpayer was born in Texas in 1935 and lived and worked in Texas until 1976. The Taxpayer worked for Brown and Root as an ironworker and was assigned to a job in the Mobile area in 1976.

The Taxpayer lived and worked in Alabama during 1976 and 1977 and filed individual Alabama income tax returns for those years.

The Taxpayer met his future wife while working in Alabama in

1976 and the couple (Taxpayers) moved to Texas in December, 1977 and were married there in 1978. The Taxpayers rented an apartment in Texas from 1978 until 1980, when the Taxpayer was assigned by Brown and Root to a job in Pascagoula, Mississippi. The Taxpayers moved to Alabama at that time because of the Taxpayer's job in Pascagoula and also because the Taxpayer's wife wanted to move closer to her children by a previous marriage and other relatives in Alabama.

The Taxpayers rented a house in Grand Bay, Alabama for a short period and then purchased a house in Coden, Alabama in 1981. The Taxpayer's wife has lived continuously in Coden since 1981.

The Taxpayer lived in Alabama and commuted to Pascagoula until that job ended in late 1980 or early 1981. The Taxpayer then lived with his wife in Coden for approximately six months until he was assigned by Brown and Root to another job in Mississippi.

The Taxpayer stayed in a travel trailer at the Mississippi job site during the week and returned to Coden every weekend. The Mississippi job ended in 1982 and the Taxpayer lived in Coden for approximately nine months until he was reassigned to a third job in Mississippi. Again the Taxpayer lived in his travel trailer at the Mississippi job site during the week and returned to Coden on the weekends.

The third Mississippi job ended in 1983 or early 1984 and the Taxpayer lived in Coden until May, 1984. The Taxpayer worked in

Columbus, Georgia for a short period and was subsequently transferred by Brown and Root to a job in Texas beginning in mid-1984.

The Texas job lasted from mid-1984 until March, 1986. The Taxpayer lived in his travel trailer at the job site during the week and stayed with his parents in Port Arthur, Texas on the weekends. The Taxpayer visited his wife in Alabama every four to six weeks. The Texas job ended in March, 1986 and the Taxpayer worked for a short period in Florida before returning to Alabama in 1987.

The Taxpayers filed joint Alabama income tax returns for 1981, 1982 and 1983 indicating Coden, Alabama as their residence. The Taxpayer didn't file Alabama returns for 1984, 1985 and 1986 but his wife filed "married, filing separate" returns for those years.

The Taxpayers again began filing joint Alabama returns in 1987. The Taxpayers also filed joint federal returns for 1981 through 1987 showing Coden, Alabama as their address.

The Taxpayer argues that Texas has always been his domicile and that he has never been domiciled in Alabama. The Taxpayer points out that he was born and raised in Texas, obtained a Texas drivers license and registered numerous vehicles in Texas, has always been a registered voter in Texas, opened a Texas. bank account in February, 1986, and has always considered himself a resident of Texas and not Alabama.

The Department contends that the Taxpayer changed his domicile

to Alabama in 1981 based on the following facts: The Taxpayers have claimed a homestead exemption on the house in Coden since 1981; the Taxpayers filed joint Alabama returns in 1981, 1982 and 1983 and also joint federal returns for those years, all showing Coden as their permanent address; the Taxpayers maintained an Alabama bank account during the subject period into which the Taxpayer deposited his pay; the Taxpayer obtained an Alabama drivers license at some point in the early 1980's and gave up his Texas license at that time; the Taxpayer has registered numerous vehicles in Alabama; the Taxpayer did not have a permanent Texas residence after 1980; the Taxpayer's wife resided in Coden at all times after 1981; and finally, the Taxpayer lived in Coden for extended periods between jobs during 1980 through mid-1984 and always returned to Coden on weekends when possible except during the Texas job when he was effectively prevented from returning because of time and distance limitations.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-2 provides that every person domiciled in Alabama shall be liable for Alabama income tax. The criteria for determining a person's domicile was set out in Whetstone v. State, 434 So.2d 796, as follows:

Our Alabama Supreme Court concisely stated the relevant Alabama law in the question of domicile in Jacobs v. Ryals, 401 So.2d 766 (Ala. 1981.) Domicile once acquired is presumed to exist until a new one has been acquired. Jacobs v. Ryals, supra; 134, 239 So.2d 206 (1970). In order to displace the former, original domicile by

acquisition by 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.

Actual physical residence on a day to day basis is not required. See *Jacobs v. Ryals*, supra, holding a couple who resided only two weeks a year in Alabama were domiciled in Alabama. See also *Rogue v. Auburtin*, 291 F .Supp. 1003 (S.D. Ala. 1969), stating that domicile and physical presence are not necessarily synonymous.

While intent is an important consideration in determining domicile, a person's intentions can only be ascertained from his actions. In this case, the Taxpayer by his actions clearly established Alabama as his domicile in 1981 and Alabama remained the Taxpayer's domicile through the years in issue.

The Taxpayers have owned and claimed a homestead exemption on their home in Coden since 1981 and the wife has lived there continuously since that time. The Taxpayer lived in Coden for months at a time between jobs from 1981 through mid-1984 and also returned to Coden every weekend while working in Mississippi during those years. The Taxpayers filed joint Alabama and federal income tax returns for 1981, 1982 and 1983 indicating Coden as their permanent address. The Taxpayers also maintained an Alabama bank

account beginning in 1980. Finally, the Taxpayer did not maintain a residence in Texas after 1980 and there is no evidence that he returned to Texas prior to mid-1984 except to visit his parents for short periods in Port Arthur, Texas. The above facts clearly indicate that the Taxpayer abandoned Texas and adopted Alabama as his permanent domicile in 1981.

The Taxpayer worked on a temporary job in Texas during 1984, 1985 and 1986 but never maintained a permanent residence there and never reestablished Texas as his state of domicile. The Taxpayer continued to file joint federal returns with his wife for 1984, 1985 and 1986 showing Alabama as his residence. The Taxpayer also deposited his Texas pay into the couple's Alabama bank account in February, 1986 but the purpose for that account is unclear because the Taxpayer left Texas when his job there ended one month later in March, 1986. Aside from working in Texas and his parents living in Port Arthur, Texas, the Taxpayer had no substantial connection with Texas during the subject years.

Domicile has been defined as a person's "true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning", see State ex rel. Rabren v. Baxter, 239 So.2d 206, 209. The above facts clearly show that Coden, Alabama was the Taxpayer's permanent home and residence to which he always intended to return after moving there in 1981.

Consequently, although the Taxpayer temporarily resided and worked in Texas for part of 1984, all of 1985, and part of 1986, he was

domiciled in Alabama and thus liable for Alabama income tax during those years.

The above considered, the Department is directed to make the assessments in issue final, with appropriate interest.

Entered this 30th day of August, 1990.

BILL THOMPSON
Chief Administrative Law Judge