

ALABAMA TAX TRIBUNAL

ABE WRIGHT,	§	
Taxpayer,	§	DOCKET NO. INC. 22-999-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND PRELIMINARY ORDER

This appeal involves a final assessment of 2018 income tax. A trial was held, via videoconference, on April 28, 2023. Andrew Gidiere represented the Revenue Department, and Tynisha Cunningham, the Revenue Department’s auditor, appeared and testified. The Taxpayer also appeared and testified.

At the hearing, the Taxpayer stated that his position is that he was not domiciled in Alabama in 2018 and, therefore, he is not subject to Alabama tax on his wages during that year. The Revenue Department, on the other hand, contended that the Taxpayer had not abandoned Alabama as his domicile in 2018 and, therefore, was subject to Alabama tax in 2018.

The Taxpayer testified that he had lived his whole life in Alabama until 2015. He testified that he married his spouse in 2013. According to the Taxpayer, his spouse is in the United State Navy and was assigned to a Virginia Naval Base at the time of their marriage. He testified that his spouse deployed for a period of time and then returned to Virginia in 2015. At that point, the Taxpayer moved to Virginia to live with his spouse. He testified that he was able to secure a job transfer from

Alabama to Virginia with his employer. The Taxpayer testified that his spouse deployed again for a period of months in 2017. During her deployment, he moved back to Alabama because his family, including his two children, live in Alabama and he had few friends in Virginia. The Taxpayer stated that his spouse returned to Virginia in September 2017, and he moved back to Virginia at that time to live with her. He testified that he and his spouse moved to Hawaii in November 2018 because of his spouse's military orders; they subsequently moved to San Diego because the Taxpayer's spouse was transferred there. The Taxpayer testified that he and his spouse plan to retire in a southern city; however, they have not decided on a specific retirement location.

“Alabama income tax is levied on every person domiciled in Alabama. Code of Ala. 1975, § 40-18-2(7). A person's domicile is their true, fixed home to which they intend to return when absent....

“Alabama's courts have also held that once [a state] is established as a person's domicile, that domicile is presumed to exist until a new one is acquired. And to change an existing domicile, the person must both abandon the former domicile, and also establish a new domicile elsewhere. ‘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 occur.’ Whetstone v. State, Dept. of Revenue, 434 So. 2d 796 (Ala. Civ. App. 1983) .

“The issue of domicile is also affected by the Servicemembers' Civil Relief Act, PL 108-189, formerly the Soldiers' and Sailors' Relief Act, 50 USCA § 501, et seq. That federal law provides in substance that the original domicile of a person in the military does not change solely because the person is assigned to duty in a particular state. For example, if a soldier's state of domicile is Georgia, and the soldier is assigned to duty in Alabama, Alabama does not automatically become the soldier's state of domicile.

“The above Act does not, however, prevent or prohibit a soldier from affirmatively abandoning an original domicile and establishing a

new domicile in another state.”

Dennis T. and Angela M. Jackson, v. State of Alabama Department of Revenue, Inc., 15-1302, (August 8, 2016).¹ ; see also Stephanie Bauer v. Alabama Department of Revenue, Inc., 02-244 (June 20, 2002) (“When an individual joins the military, the individual is presumed to maintain his or her original state of domicile ‘until proof of change of domicile has been made.’ Dept. Reg. 810-3-2-01(1)(c).”). The Act also contains similar provisions regarding domicile for tax purposes with respect to a servicemember’s spouse.²

In the present case, the Taxpayer’s lifelong domicile has been Alabama. That domicile is presumed to continue until the Taxpayer acquires a new domicile. The Taxpayer here moved away from Alabama but has not established actual residence with an intention to remain at a new domicile. Instead, he has merely relocated multiple times with his spouse’s military assignments. He admitted that he had not determined where he and his spouse would live when his spouse retired from the Navy.

Based on the foregoing, I conclude that the Taxpayer was domiciled in Alabama during the 2018 tax year. Therefore, the Taxpayer is directed to submit a

¹ The relevant provision of the Act is presently codified at 50 USC §4001(A)(1) and provides: “A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.”

² 50 USC §4001(A)(2)(A) provides: “A spouse of a servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the servicemember in compliance with the servicemember's military orders if the residence or domicile, as the case may be, is the same for the servicemember and the spouse.”

completed and signed 2018 Alabama individual income tax return, along with all applicable schedules, forms, and supporting documentation. The Taxpayer should submit a Schedule CR along with a certified copy of his Virginia tax return to obtain credit for taxes paid to Virginia. The Taxpayer's submissions are due to the Tax Tribunal by **June 15, 2023**.

If the Taxpayer has any questions, the Taxpayer should contact the Tax Tribunal at 334-954-7195. The Tribunal's mailing address is 7515 Halcyon Summit Drive, Suite 103, Montgomery, AL 36117. The Taxpayer also may respond by email to taxtribunal@att.alabama.gov.

Entered May 3, 2023.

/s/ Leslie Pitman
LESLIE PITMAN
Associate Judge
Alabama Tax Tribunal

lhp:ac

cc: Abe Wright
Andrew P. Gidiere, Esq.