

ALABAMA TAX TRIBUNAL

TODD R. BECKER,	§	
Taxpayer,	§	DOCKET NO. INC. 22-588-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND FINAL ORDER

This appeal involves a final assessment of 2018 Alabama individual income tax. A trial was held on May 29, 2024. The Taxpayer, Todd Becker, appeared and testified, and he was represented by Virginia O’Donnell. David Folmar represented the Revenue Department, and Barbara Lowe, the Revenue Department’s auditor, appeared and testified.

The issue on appeal is whether the Taxpayer abandoned his Alabama domicile when he moved to Memphis, Tennessee, in 2016, such that he was not liable for Alabama tax for tax year 2018.

The Revenue Department received information from the Internal Revenue Service (“IRS”) that indicated the Taxpayer resided in Alabama and had sufficient income to require him to file a 2018 Alabama individual income tax return. The Revenue Department then determined that the Taxpayer had not filed an Alabama return for 2018, and it issued a preliminary assessment against the Taxpayer on April 20, 2022, and a final assessment on May 19, 2022. The Taxpayer appealed.

The Taxpayer argues that he resided and was domiciled in Tennessee in 2018, and thus was not subject to Alabama income tax in that year. At trial, the Taxpayer

testified that he was born and raised in Birmingham, Alabama. He was married in Florida but never lived there and instead continued to live in Birmingham during the marriage. The Taxpayer has two children that were both born and raised in Birmingham, and both children continue to attend school in Birmingham. The Taxpayer operated his own business in Alabama in the early 2010s. He then became a licensed realtor in Alabama around 2015, working as an independent-contractor agent for small commercial restaurant contracts under a brokerage known as Retail Specialists, LLC, which is headquartered in Birmingham. Early in 2016, the Taxpayer and his then-spouse initiated divorce proceedings, requiring the Taxpayer, his then-spouse, and their two children to move into a home owned by the Taxpayer's mother in Vestavia Hills, Alabama, while the divorce proceeded. Before the conclusion of the divorce proceedings, the Taxpayer's then-wife and children moved out of the home owned by the Taxpayer's mother while the Taxpayer remained in that home.

In May 2016, the Taxpayer accepted a position with Beale Street Blues Company, Inc. (hereinafter "Beale Street"), and its subsidiary BSBC Management. Beale Street was headquartered in Memphis, Tennessee, and operated eleven restaurants in Memphis; New Orleans, Louisiana; Nashville, Tennessee; Orlando, Florida; and Montgomery, Alabama. The Taxpayer testified that he orally committed to move to and stay in Memphis for an indefinite number of years while working for Beale Street. However, the Taxpayer also testified that his intent was to return to Alabama even when he moved to Memphis. The Taxpayer's divorce then culminated in February of 2017. His ex-wife and children have remained in Birmingham since

the divorce. The Taxpayer has had “week-on-week-off” visitation with his children since the divorce, but he explained during the trial that the visitation dynamic is “more fluid,” and that he spent about ten days per month in Alabama utilizing the Vestavia Hills home owned by his mother for his visitation rights.

The Taxpayer resided in multiple apartments while living in Memphis. He testified that the leases for the apartments were in both his name and Beale Street’s name. He further testified that Beale Street would sometimes reimburse his living expenses if another Beale Street employee was staying in the apartment with him. Upon moving to Memphis, the Taxpayer opened a bank account with Regions Bank that is still his primary bank account. He also updated his mailing address, filed his taxes using a Memphis address, and had memberships with local gyms and golf courses.

However, the Taxpayer never updated his driver’s license, vehicle registration, or voter registration to reflect the move from Alabama to Tennessee. He explained that he simply never thought of updating his driver’s license and voter registration. He had considered updating his vehicle registration as it would have been cheaper to register in Tennessee, but ultimately decided against it. Further, the Taxpayer voted in the 2018 election cycle in Alabama using an absentee ballot. The Taxpayer also continued to receive treatment from a dentist in Birmingham and maintained his Alabama realtor license despite having moved to Memphis. The Taxpayer ultimately moved back to Alabama in 2021 when Beale Street closed its office in Memphis and transitioned its employees to remote status.

Ms. Lowe, testifying for the Revenue Department, stated that the Revenue

Department learned that the IRS had received a 2018 Form 1099 from Retail Specialists and a 2018 Form W-2 from Beale Street for the Taxpayer, both featuring a Birmingham, Alabama, address attributed to the Taxpayer. The information the IRS provided also showed income from BSBC Management; however, this income was not attributed to an Alabama address. The Taxpayer believed that the income from Beale Street attributed to the Birmingham address was a clerical error in which Beale Street's payroll department failed to update his address to reflect his move to Memphis. Concerning the income from Retail Specialists, the Taxpayer suggested that the income could have resulted from a commission earned prior to 2018 as he could not recall performing any work for Retail Specialists, or realty work at all, in 2018.

Alabama income tax is levied on individuals residing in Alabama, Ala. Code § 40-18-2(a)(1), and also on nonresident individuals receiving income from property owned or business transacted in Alabama. Ala. Code § 40-18-2(a)(6). "Every natural person domiciled in . . . [or] who maintains a permanent place of abode within the state . . . shall be presumed to be residing within the state[.]" Ala. Code § 40-18-2(b). Simply put, Alabama law provides that a taxpayer domiciled in Alabama is presumed to be liable for Alabama tax on income earned in the year, regardless of where the income was earned. A person's domicile is his true, fixed home to which he intends to return when absent. *Whetstone v. State*, 434 So. 2d 796, 797 (Ala. Civ. App. 1983) (citing *Jacobs v. Ryals*, 401 So.2d 776 (Ala. 1981)). Once Alabama is established as a person's domicile, that domicile is presumed to exist until a new one is established. *Id.* To change one's domicile from Alabama, a taxpayer must abandon Alabama with

no present intention to return, and establish a new domicile elsewhere with the intent to remain there permanently, or at least indefinitely. *Jacobs v. Ryals*, 401 So. 2d 776, 778 (Ala. 1981). “The intention to return is usually of controlling importance in the determination of the whole question.” *Id.* The burden is on a taxpayer who asserts a change of domicile to prove that a change has occurred. *Rabren v. Baxter*, 239 So. 2d 206, 211 (Ala. Civ. App. 1970) (citing *Caldwell v. Pollak*, 8 So. 546 (Ala. 1890)). And the presumption is in favor of the original or former domicile, as against a newly acquired one. *Horwitz v. Kirby*, 197 So. 3d 943 (Ala. 2015) (citing *Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945)).

In the present case, the Taxpayer admitted at trial that he moved to Tennessee with the intention to return to Alabama. Although he stated later in the trial that his return to Alabama was uncertain and that he merely “hoped” to return to Alabama one day, the facts presented at trial show otherwise. In addition to the Taxpayer’s expression of his intent to return, the Taxpayer maintained strong family ties to Alabama and further testified that he would spend a substantial portion of each month, approximately ten days by his own estimate, in Alabama despite his Memphis residence. Further, the Taxpayer continued to carry on as an Alabama citizen by both maintaining his Alabama driver’s license, vehicle registration, Alabama voter registration, and Alabama realtor license, and by acting as an Alabama resident in choosing to vote as an Alabamian in the 2018 election cycle. Therefore, the Revenue Department correctly concluded that the Taxpayer was liable for 2018 Alabama income tax because he continued to be domiciled in Alabama.

The final assessment in issue is affirmed. Judgment is entered against the

Taxpayer and in favor of the Revenue Department in the amount of \$7,543.14, plus additional interest that continues to accrue from the date of entry of the final assessment until the liability is paid in full.

This Opinion and Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered August 26, 2024.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:thb

cc: Todd R. Becker
Virginia O'Donnell, Esq.
David Folmar, Esq.