

ALABAMA TAX TRIBUNAL

RICHARD S. & BRANDA D. SUTHER, §
Taxpayers, § DOCKET NO. INC. 24-0363-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND FINAL ORDER

The Taxpayers appealed to the Alabama Tax Tribunal from the entry by the Alabama Department of Revenue of a final assessment of individual income tax for the year 2018. A trial was held by the Tax Tribunal on November 14, 2024. The Taxpayers represented themselves, and the Alabama Department of Revenue was represented by one of its assistant counsel, Margaret McNeill. Ms. Tynisha Cunningham of the Revenue Department’s Income Tax Division also appeared and testified.

During the trial, Mr. Suther testified that he was born in Selma, Alabama, in December 1962, but that he moved to Ponce De Leon, Florida, in 1965. Mrs. Suther was born in Indiana, Pennsylvania. Mr. Suther lived in Florida until 1980, at which time he returned to Alabama for six months before joining the Army in 1981. He then moved to Kentucky for basic training before being stationed in Germany.

Mr. Suther retired from the Army in 2001 in California. He then returned to Florida—to Mexico Beach—in 2001, but moved to Houston, Texas, in 2002. Mr. and Mrs. Suther lived in Texas until 2019, at which time they moved to Andalusia,

Alabama, in February of that year.

While the Suthers lived in Texas, Mr. Suther performed services as an insurance adjuster for an independent Alabama company, among others. However, Mr. Suther did not live or work in Alabama during 2018. Instead, he performed services in Florida and North Carolina during that year.

Because of Mr. Suther performing some insurance adjuster services in North Carolina during 2018, the Suthers filed a 2018 North Carolina income tax return in 2019, on which they reported his North Carolina income. And their North Carolina return listed an Alabama address because of the Suthers' move to Alabama in February of 2019. Based on the Alabama address appearing on the Suthers' 2018 North Carolina return, the Revenue Department entered the final assessment in issue, which was premised upon the Revenue Department's claim that the Suthers were domiciled in Alabama during 2018.

Following the filing of the Taxpayers' Notice of Appeal, the Revenue Department moved to have the appeal dismissed for untimeliness based on the requirement of Ala. Code § 40-2A-7(b)(5)a. that the appeal be filed "within 30 days from the date of mailing or personal service, whichever occurred earlier, of the final assessment..." With its motion, the Revenue Department attached tracking information from the U.S. Postal Service showing that the Revenue Department's final assessment was accepted for mailing on April 9, 2024. The Taxpayers' appeal to the Tax Tribunal was postmarked on May 7, 2024. Therefore, the Taxpayers' appeal was mailed within the 30-day statutory period and, thus, was timely. The Revenue Department's motion is denied.

Concerning the substantive issue of domicile, the evidence presented by the Taxpayers with their Notice of Appeal and at trial showed overwhelmingly that they were not domiciled in Alabama during 2018 and that they did not establish an Alabama domicile until 2019. Mr. Suther's 2018 W-2 form listed his address as Houston, Texas, and listed wages during that year attributable to Florida and North Carolina, but not Alabama. Several invoices and account statements listed the Taxpayers' Houston, Texas, address. Specifically, the Taxpayers provided invoices concerning the servicing and emissions testing of their vehicle, both of which were performed in Texas and which listed the Suthers' home address in Texas. One of these invoices was dated January 23, 2019. Also, the Suthers provided documents from the U.S. Department of Veterans Affairs and the Defense Finance and Accounting Service which were addressed to the Taxpayers in Texas. And one of those documents was dated in January 2019. Soon thereafter, the Taxpayers moved to Alabama and Mr. Suther obtained an Alabama driver's license on April 9, 2019.

Based on the documentary evidence and testimony, the Taxpayers showed that they were not domiciled in Alabama during 2018. Therefore, the final assessment for 2018 is declared void. Judgment is entered accordingly.

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

Entered November 26, 2024.

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

jp:maj

cc: Richard S. & Branda D. Suther
Margaret Johnson McNeill, Esq.