

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. INC. 91-219

CHARLES H. & JACQUELYN S. TUNINK
5459 Vienna Avenue
Mobile, AL 36618,

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed income tax jointly against Charles H. and Jacquelyn S. Tunink (Taxpayers) for 1985 and individually against Charles H. Tunink (Taxpayer) for 1986, 1987, 1988 and 1989. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on November 22, 1991. George Whitfield, Jr. appeared for the Taxpayers. The Department was represented by Dan Schmaeling.

FINDINGS OF FACT

The issue is whether the Taxpayer was domiciled in Alabama during 1985 through 1989 and therefore liable for Alabama income tax pursuant to Code of Ala. 1975, §40-18-2. The facts are undisputed.

The Taxpayer was hired by Sperry Remington (now UNISYS) in 1960 and was transferred to Mobile in 1961. The Taxpayer lived with his wife and children in Mobile and worked at the UNISYS facility in Mobile as a computer maintenance expert until 1985.

The Taxpayer was permanently transferred by UNISYS to Pensacola, Florida effective July 1, 1985. The Taxpayer asked if

he could commute to Pensacola from his house in Mobile, but the request was denied. The Taxpayer was required to live in the Pensacola area so that he could respond to emergency calls on short notice.

The Taxpayer's wife was unemployed in mid-1985 and intended to move to Pensacola with her husband. The Taxpayers put their house up for sale and the Taxpayer bought a trailer, rented a permanent lot for the trailer, and moved to Pensacola in mid-1985. His wife and children continued to live in Mobile pending the sale of the house. The Taxpayers intended to buy a house in Pensacola when the Mobile house sold.

However, before the house sold the wife was rehired by her previous employer, AT&T, in December, 1985. She had over twenty years employment with AT&T and wanted to get her full thirty years for retirement. Consequently, the Taxpayers took the Mobile house off the market and the wife continued to live in Mobile with the children and work toward retirement. The couple visited on weekends, the Taxpayer sometimes travelling to Mobile and vice versa. The Taxpayer has lived and worked in Pensacola since mid-1985.

The Taxpayers filed a joint 1985 Alabama income return but reported only the Taxpayer's wages earned in Alabama. The Taxpayer did not file Alabama returns in 1986 through 1989. The wife filed individual Alabama returns during those years. The couple filed

joint federal returns in all years listing the Mobile house as their permanent address. However, the Taxpayer's W-2 forms from UNYSIS showed the Taxpayer's permanent address after mid-1985 to be the trailer in Pensacola.

The Department argues that the Taxpayer failed to abandon Alabama as his domicile for the following reasons:

The Taxpayer's wife and children continued to live in Mobile and the Mobile house was listed as the couple's permanent address on their federal returns during the subject years. The Taxpayers continued to claim a homestead exemption on the Mobile home. The Taxpayer failed to file a declaration of domicile and citizenship in Florida as required by Florida law. Finally, the Taxpayer continued to use his Alabama driver's license and did not register to vote in Florida.

The Taxpayers counter that they kept the Mobile house because the wife elected to continue working with AT&T in Mobile. The Taxpayers also explain that the federal return has only one space for a permanent address. The Taxpayers continued to claim the homestead exemption on the Mobile house because the wife is on the deed and resided permanently at the house. The Taxpayer was unaware that he was supposed to file a declaration of domicile and citizenship in Florida and immediately complied upon learning of the requirement. Finally, the Taxpayer didn't obtain a Florida's driver's license because he saw no need to, and didn't change his

voter registration to Florida because he never voted during the subject years.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-2 provides that every person domiciled in Alabama shall be presumed to be residing in Alabama for Alabama income tax purposes. A person's domicile is his true, fixed home to which he intends to return when absent. To change domiciles, the previous residence must be abandoned and a new permanent residence must be established elsewhere with the intent to remain permanently, or at least for an indefinite period. Whetstone v. State, Department of Revenue, 434 So.2d 796.

The Taxpayer retained some incidental ties to Alabama after he moved to Florida in 1985, primarily due to the fact that his wife continued to live in Alabama and work toward retirement. However, a married couple is not prohibited from keeping separate domiciles and still filing joint federal returns. The Taxpayer's remaining ties to Alabama were also adequately explained and do not show that the Taxpayer intends to move back to Alabama in the future. The fact that the Taxpayer was permanently transferred by his employer to Pensacola and required to reside in the Pensacola area shows that the Taxpayer abandoned Alabama and moved to Florida with the intent to remain permanently. There is no evidence that the Taxpayer intends to move back to Alabama in the future.

The above considered, the preliminary assessments in issue

should be reduced and made final showing no additional tax due.

Entered on December 4, 1991.

BILL THOMPSON
Chief Administrative Law Judge