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| SAMUEL KILLINGSWORTH | § | STATE OF ALABAMA |
| 2706 PINECREST LANE | | ALABAMA TAX TRIBUNAL |
| MOODY, AL 35004, | § | |
| | | DOCKET NO. INC. 14-804 |
| Taxpayer, | § | |
| | | |
| v. | § | |
| | | |
| STATE OF ALABAMA | § | |
| DEPARTMENT OF REVENUE. | | |

FINAL ORDER

The Revenue Department assessed Samuel Killingsworth (“Taxpayer”) for 2010 and 2011 Alabama income tax. The Taxpayer appealed to the Alabama Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 8, 2015. The Taxpayer and his attorney, Brad Howell, attended the hearing. Assistant Counsel Bo Stone represented the Department.

The Department moved to have the Taxpayer’s appeal of the 2010 final assessment dismissed as untimely. A Preliminary Order was entered on September 11, 2014 granting the motion and indicating that the appeal of the 2010 final assessment would be dismissed when a Final Order was entered in the case.

Concerning the 2011 final assessment, the issue is whether the Taxpayer changed his domicile from Alabama to Florida before 2011. If so, the 2011 final assessment is due to be voided.

The Taxpayer was born and raised in Alabama, and resided at a house in Moody, Alabama through mid-June 2010. He has worked as a merchant marine based out of Louisiana for 35 years.

The Taxpayer testified at the January 8 hearing that he purchased a house in Milton, Florida in April 2010. He moved into the house in June 2010. He explained that he

purchased the house because it is much closer than his house in Moody to his Louisiana work base, and also because he wants to live in Florida when he retires. He further explained that his wife and child continued to live in the couple's house in Moody because his wife continued working there. The wife has since retired and currently lives with the Taxpayer in Florida. The Taxpayer's adult son currently lives in the Moody house, but the Taxpayer intends to sell the house when the housing market sufficiently recovers.

The Department argues that the Taxpayer did not obtain a Florida driver's license or register to vote in Florida until 2012, after the years in issue. It further contends that the Taxpayer has not otherwise proved that he moved to Florida in 2010 with the intent to remain there permanently, or at least indefinitely.

As indicated, the Taxpayer claimed that he purchased a house and moved to Florida in 2010 because it is much closer to his work in Louisiana, and he wants to live in Florida when he retires. He explained that he did not register to vote or obtain a Florida driver's license until 2012 because he saw no pressing need to. He registered to vote in Florida in 2012 because he wanted to support and elect members of a certain political party in the 2012 election. The Taxpayer also submitted a letter from the president of Bay Point Facilities, Inc. in Milton, Florida indicating that the Taxpayer has been a member of Bay Point Facilities, Inc., which presumably is a homeowner's association, and has resided in Milton since 2010.

Alabama income tax is levied on individuals residing in Alabama, Code of Ala. 1975, §40-18-2(1), and also on individuals residing and earning income outside of Alabama that are still domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A persons' domicile is his true, fixed home to which he intends to return when absent. *Whetstone v. State*, 434

So.2d 796 (Ala. 1983). In order to change domiciles from Alabama, a taxpayer must abandon Alabama, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. The burden is on a taxpayer asserting a change of domicile to prove that a change of domicile has occurred. The presumption is in favor of the original or former domicile, as against a newly acquired one. See generally, *Cobb v. State, Inc.* 96-272 (Admin. Law Div. 2/24/97).

The evidence in this case sufficiently proves that the Taxpayer moved to Florida in 2010 with the intent to reside there permanently. He consequently changed domiciles from Alabama to Florida at that time.

The 2011 final assessment is voided. The appeal of the 2010 final assessment is dismissed as untimely. Judgment is entered accordingly. The Taxpayer may, however, pay the 2010 final assessment in full, and then petition for a refund of the amount paid for that year.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered January 9, 2015.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Mary Martin Majors, Esq.
Brad Howell, Esq.