

## ALABAMA TAX TRIBUNAL

GRANT T. SALSMAN,	§	
Taxpayer,	§	DOCKET NO. INC. 16-1424-CE
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

### FINAL ORDER

The Revenue Department assessed Grant T. Salsman (“Taxpayer”) for 2012 and 2013 Alabama income tax. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 18, 2017. The Taxpayer attended the hearing and testified under oath. Assistant Attorney General Keith Maddox represented the Department.

The Department received IRS information indicating that the Taxpayer was required to file a 2012 and 2013 Alabama income tax return. The Department determined that the Taxpayer did not file returns for those years, and billed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information. Billing progressed to assessment, and final assessments were entered against the Taxpayer as follows: final assessment entered on September 5, 2017 for tax year 2012 in the amount of \$6,155.78, consisting of tax due in the amount of \$4,448.60, interest in the amount of \$25.88, and penalties in the amount of \$1,681.30; final assessment entered on November 28, 2016 for tax year 2013 in the amount of \$10,316.91, consisting of tax due in the amount of \$8,203.00, interest in the amount of \$700.32, and penalties in the amount of \$1,413.59. It is not clear from the record why the 2012 final assessment was entered nearly a year after the 2013 final assessment.

The Taxpayer filed his Notice of Appeal with the Tax Tribunal on December 27, 2016. The appeal was postmarked December 21, 2016. The Taxpayer asserts in his appeal that he did not reside in Alabama and did not earn income in Alabama in tax years 2012 and 2013. Specifically, the Taxpayer asserts that he was a resident of Texas in tax years 2012 and 2013. Therefore, he argues, he is not liable for Alabama income tax in those years.

The Department filed its Answer on March 2, 2016. The Department asserted that the Taxpayer's appeal of the 2012 assessment was untimely and moved to have the appeal regarding that year dismissed for lack of jurisdiction. Regarding the 2013 assessment, the Department argued that the Taxpayer was domiciled in Alabama in the 2013 tax year. Consequently, it argues, the Taxpayer is liable for 2013 Alabama income tax.

The Taxpayer's appeal of the 2012 assessment is due to be dismissed for lack of jurisdiction. A taxpayer may appeal to the Tax Tribunal from any final assessment entered by the Department by filing a notice of appeal within 30 days from when the assessment was mailed to or personally served on the taxpayer. Code of Ala. 1975, §40-2A-7(b)(5)a. A taxpayer cannot initiate an appeal until a final assessment has been entered. In other words, a taxpayer cannot pre-file an appeal. If a taxpayer files an appeal before a final assessment has been entered by the Department, the taxpayer's appeal shall be dismissed. He may bring a new appeal once a final assessment has been entered.

When the Taxpayer filed his appeal on December 27, 2016 regarding tax years 2012 and 2013, the Department had not yet entered a final assessment for tax year 2012. Consequently, the Taxpayer's December 27 appeal concerning tax year 2012 is due to be

dismissed. Additionally, because the Taxpayer failed to appeal the 2012 final assessment within 30 days after it was mailed, the Tax Tribunal would not have jurisdiction to hear an appeal of that assessment if later filed by the Taxpayer. The Taxpayer may, however, pay the final assessment in full and then petition for a refund. If the refund is denied, the Taxpayer may appeal to the Tax Tribunal or to circuit court pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. or b., respectively.

Regarding the Taxpayer's appeal of the 2013 assessment, the relevant facts are undisputed. The Taxpayer is an engineer in the oil and gas industry. He was born and raised in Alabama. He attended college in Alabama and worked in Alabama after college until he accepted a position with Bechtel, a large construction company, and moved to Africa in May 2011 to work on a construction project. The Taxpayer remained in Africa until mid-2012 when he moved to Australia to work on another Bechtel construction project. In March 2014, the Taxpayer returned to the United States and moved to Houston, Texas.

At the hearing, the Taxpayer testified that he always intended to return to the United States to live when his work overseas was completed. The Taxpayer also testified that he never intended to return to Alabama to live or work when he left the state in 2011. Specifically, he testified that he intended to live somewhere near Houston when he returned from overseas because Houston is the center of the oil and gas industry in the United States.

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 domiciled in Alabama. Code of Ala. 1975, §40-182(7). Simply put, Alabama law provides that a taxpayer domiciled in Alabama is liable for Alabama tax on income earned

in the year, regardless of where the taxpayer resided or 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 (Ala. 1983). Once Alabama is established as a person's domicile, that domicile is presumed to exist until a new one is acquired. *Id.* To change domicile from Alabama, a taxpayer must *abandon Alabama, and also establish a new domicile elsewhere* with the intent to remain permanently, or at least indefinitely. *Id.* (emphasis added). The burden is on a taxpayer asserting a change of domicile to prove that a change of domicile has occurred. *Rabren v. Baxter*, 239 So.2d 206 (1970).

Every person must have one and only one domicile. The evidence indicates that the only state that qualified as the Taxpayer's domicile in 2013 was Alabama. According to his own testimony, the Taxpayer did not intend to permanently or indefinitely reside overseas, and he had no personal ties with Texas in 2013. Though limited, the Taxpayer also maintained ties to Alabama while he was living overseas – he maintained and renewed his Alabama driver's license and listed an Alabama address on his federal returns. While the Taxpayer abandoned Alabama as his residence when he left in 2011, he did not establish a new domicile elsewhere until he moved to Houston in March 2014. Therefore, Alabama law considers the Taxpayer's legal domicile for income tax purposes in tax year 2013 to be Alabama. Consequently, the Taxpayer was liable for Alabama income tax in that year.

The Taxpayer's appeal of the 2012 final assessment is dismissed for lack of jurisdiction. The 2013 final assessment, less the penalties which are hereby waived for reasonable cause, is affirmed. Judgment is entered against the Taxpayer for 2013 tax and interest in the amount of \$8,903.32. Additional interest is also due from the date the final

assessment was entered, November 28, 2016.

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

August 6, 2018.

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CHRISTY O. EDWARDS  
Associate Tax Tribunal Judge

cc: Keith Maddox, Esq.  
Gwendolyn B. Garner, Esq.  
Grant T. Salsman