

TARA J. KOLSTAD
3122 RENFRO RD.
BIRMINGHAM, AL 35216-4123,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. INC. 05-443

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Tara J. Kolstad (“Taxpayer”) for 2003 Alabama income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on June 7, 2005. The Taxpayer attended the hearing. Assistant Counsel Glen Powers represented the Department.

The Taxpayer lived in Birmingham, Alabama in 2002 and prior years. She graduated from UAB in 2002 with a degree in psychology. She worked part-time for the University after graduating. In February 2003, she accepted a job working on a cruise ship owned by Cruise West. The cruise line operates out of Seattle, Washington. After taking the job, the Taxpayer sublet her apartment in Birmingham, canceled her car insurance and gave her vehicle to her brother, sold or gave away her furniture, and took a one-way flight to Seattle.

While on duty, the Taxpayer lived and worked aboard ship. She worked on two ships from February until November 2003, when the normal cruise season ended. When not on duty during the cruise season, the Taxpayer traveled to various states.

The cruise line business is seasonal, and only one of Cruise West’s eight ships operate in the winter months (Mexico cruises only). The Taxpayer could not work on

the Mexico cruises because her position on the ship was already filled. She notified the cruise line, however, that she intended to return for the 2004 season.

The Taxpayer looked into getting an apartment in Seattle after the cruise season ended, but could not afford to do so. Consequently, she visited friends in various locations, including Alabama, Arizona, Tennessee, and China. During a trip to Alabama in the Fall of 2003, she was offered a job as a research specialist at UAB. She took the job in November 2003 and moved back to Alabama at that time.

The Taxpayer filed a 2003 Alabama return in April 2004. She failed, however, to report the income she earned while working for the cruise line. The Department assessed the Taxpayer for Alabama tax on that income. The Taxpayer appealed.

The issue in this case is whether the Taxpayer was still domiciled in Alabama when she worked on the cruise ships in 2003. If so, she is liable for Alabama tax on the income she earned from the cruise line. The Administrative Law Division addressed the issue of domicile in *Cobb v. State of Alabama, Inc.* 96-272 (Admin. Law Div. 1/21/97), as follows:

Alabama income tax is levied on all individuals domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A person's domicile is his true, fixed home to which he intends to return when absent. The burden is on a person claiming a change of domicile to prove that a change has in fact occurred. There is a presumption in favor of the former domicile, and a change occurs only if the person (1) abandons Alabama with the intent not to return, and (2) establishes a new residence outside of Alabama with the intent to remain at the new location permanently, or at least indefinitely. See generally, Whetstone v. State, 434 So.2d 796 (Ala. 1983).

"The intent to return is usually of controlling importance." Whetstone, 434 So.2d at 797, citing Jacobs v. Ryals, 401 So.2d 776 (Ala. 1981). A person's intent must be discerned primarily from the person's actions.

Cobb v. State of Alabama, Inc. 96-272 at 4 – 5.

In *Cobb*, the taxpayer accepted a job and moved from Alabama to Argentina in mid-1991. The taxpayer and his wife thereafter took various actions which showed an intent to abandon Alabama and establish Argentina as their permanent domicile. The taxpayer was unexpectedly fired in mid-1993. He looked for another job in South America, but was unsuccessful and returned to Alabama to live in late 1993. The Administrative Law Division found that based on the facts, the taxpayer had abandoned Alabama as his domicile in 1991 with the intent of making Argentina his new, permanent home. The taxpayer thus was not liable for Alabama tax on his income earned in Argentina in 1992 and 1993.

This is a close case. The Taxpayer was domiciled in Alabama before 2003. After graduating from UAB, she took a job with Cruise West in February 2003. She testified that she wanted to work on all of the different itineraries that Cruise West had available, which could have taken five years. As indicated, however, she accepted a job at UAB and returned to Alabama to live in November 2003.

For a taxpayer to change domiciles from Alabama, the taxpayer must abandon Alabama with the intent not to return, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. *Whetstone v. Dept. of Revenue, supra*; *State ex rel Rabren v. Baxter*, 239 So.2d 206 (1970). While it could be found that the Taxpayer in this case abandoned Alabama when she left in early 2003, she failed to establish the State of Washington as her new, permanent domicile with the intent to remain permanently.

In *Whetstone*, the taxpayers moved from Alabama to Nigeria in 1976. The couple lived continuously in Nigeria through 1983. Nonetheless, the Revenue

Department assessed them for 1976 and 1977 Alabama tax. The taxpayers appealed, claiming that they had changed their domicile from Alabama to Nigeria.

The Court of Civil Appeals disagreed, holding that the taxpayers had failed to change their domicile from Alabama because they did not intend to live in Nigeria permanently, or for an indefinite period, and thus did not establish a new domicile outside of Alabama. Alabama thus remained their domicile, even though they had not resided in Alabama for seven years.

The taxpayers have failed to meet their burden in establishing Nigeria as their domicile in another critical way; that is, they have not shown an intent to remain in Nigeria. In order to establish Nigeria as their domicile, they need to show their intent to remain permanently, or at least for an unlimited time from which the intent to remain may be inferred. *State ex rel. Rabren v. Baxter, supra; Holmes v. Holmes*, 212 Ala. 597, 103 So. 884 (1925). By their actions, the taxpayers have indicated an intent to remain at the most only until the husband retires. Although no specific date is involved, a specific event – retirement – will cause the taxpayers to leave Nigeria. Put another way, they will not be there for an “unlimited time,” because they will leave upon the husband’s retirement.

Whetstone, 434 So.2d at 798.

In this case, the Taxpayer intended to work for the cruise line until she had sailed everywhere the line went, which she estimated might have taken five years. As discussed, she quit the cruise line and returned to Alabama after nine or ten months when she was offered a permanent job at UAB. But even if the Taxpayer had stayed with the cruise line for a longer period, she still intended to quit the job after she had completed her goal of sailing all of the routes offered by the cruise line. Consequently, the Taxpayer failed to prove that her move to Seattle was permanent.

Because the Taxpayer failed to carry the burden of proving that she moved to Washington with the intent of remaining permanently or indefinitely, she failed to

establish a new domicile outside of Alabama. Alabama thus remained her domicile in the subject year.

The tax and interest due as assessed by the Department is affirmed. The penalty included in the final assessment is waived for reasonable cause pursuant to Code of Ala. 1975, §40-2A-11(h). Judgment is entered against the Taxpayer for tax and interest of \$608.18. Additional interest is also due from the date of entry of the final assessment, March 31, 2005.

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

Entered July 11, 2005.

BILL THOMPSON
Chief Administrative Law Judge