

HENRY L. COBBS, JR.
436 GARDENIA ROAD
MILLBROOK, AL 36054-5008,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-528

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Henry L. Cobbs, Jr., (“Taxpayer”) for income tax for 1997 through 2001. 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 November 29, 2006. Jim Sizemore represented the Taxpayer. Assistant Counsel David Avery represented the Department.

The Taxpayer lived in Kentucky until he joined the U.S. Air Force in 1960 at the age of 19. He was transferred to Maxwell Air Force Base in Montgomery, Alabama in December 1979.

The Taxpayer purchased a house in Millbrook, Alabama in 1981. He left the military in 1982. He thereafter worked in Montgomery for six years as an assistant professor at Alabama State University (“ASU”).

The Taxpayer moved to Georgia in 1988 and remained there until 1992. He continued to own his house in Millbrook while in Georgia. He returned to Alabama and again lived in Millbrook and worked for ASU from 1992 until 1996.

In March 1996, the Taxpayer resigned from his job at ASU and took a job with the Royal Saudi Air Force in Saudi Arabia. He put his Millbrook house up for sale, and shipped all of his belongings to Saudi Arabia at that time.

The Taxpayer lived and worked in Saudi Arabia until his contract was unexpectedly terminated in June 2001. He moved back to the United States and applied for jobs in Georgia and Florida. He was subsequently rehired by ASU, and moved back to Alabama in late 2001. He never sold his Millbrook house, which he moved back into in the Summer of 2002.

The Taxpayer had H & R Block prepare his 1997 through 2001 federal returns in 2002. He used his sister's Montgomery address on the federal returns because he was living at a friend's house when the returns were prepared and did not want to use that address on the returns. He did not file Alabama returns for those years because he was informed that he was not required to file Alabama returns.

The Department subsequently received IRS information that the Taxpayer resided in Alabama (at his sister's address), and had income sufficient to require him to file Alabama returns for 1997 through 2001. The Department allowed the Taxpayer the standard deduction and a personal exemption in each year, and thereafter assessed him for the tax due.

After the Department notified the Taxpayer that he was liable for Alabama tax in the subject years, the Taxpayer had Alabama returns prepared for those years. He claimed various itemized deductions on the returns, which he filed with the Department in mid-2006.

This case involves two issues. First, was the Taxpayer domiciled in Alabama and thus subject to Alabama tax in the subject years. If so, the issue becomes how much the Taxpayer owes in each year.

The parties agreed at the November 29 hearing that the domicile issue should be

decided first. This Preliminary Order thus addresses only the domicile issue. It was further agreed that if it was determined that the Taxpayer was domiciled in Alabama in the subject years, the parties would confer and determine how much the Taxpayer owed in each year.

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 Taxpayer in this case claims that he has always intended to live in Florida after he retired. He designated Florida as his home when he left the military in 1982. He purchased a condominium in Florida in 1990, which he still owns. He argues that when he moved to Saudi Arabia in 1996, he intended to work there long enough so that he could afford to buy a permanent home in Florida. He asserts that because he did not reside in Alabama in the subject years, and did not intend to return to and live in Alabama after he left Saudi Arabia, he was not domiciled in Alabama in those years. I disagree.

The Taxpayer established Alabama as his domicile when he moved back to Alabama from Georgia in 1992. I agree that he abandoned Alabama when he moved to Saudi Arabia in 1996. As indicated, however, to change domiciles from Alabama a person must not only abandon Alabama, but also establish a new domicile elsewhere with the intent to remain permanently. The Taxpayer failed to do so in this case because he admitted that he did not intend to remain permanently in Saudi Arabia.

The Alabama Court of Civil Appeals' holding in *Whetstone, supra*, is on point. The taxpayers in that case were domiciled in Alabama when Mr. Whetstone took a job in Nigeria and the couple moved there in 1975. They continued to live in Nigeria through 1982, when the Revenue Department assessed them for Alabama income tax for 1976 and 1977. The taxpayers appealed.

The Court of Civil Appeals affirmed the trial court's finding that the taxpayers were domiciled in Alabama in the subject years. The Court first cited the fact that the taxpayers maintained some ties to Alabama in those years. It then opined that the taxpayers had otherwise failed to prove a change of domicile from Alabama because they failed to establish a new domicile in Nigeria with the intent to remain permanently.

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. The fact that the taxpayers have established a home in Florida further supports the trial court's finding that the taxpayers are not domiciled in Nigeria because they have no intent to remain.

Whetstone, 434 So.2d at 797.

The Taxpayer in this case did not retain the number of ties to Alabama after he left the State in 1996 that the taxpayers in *Whetstone* retained, although he did continue to own a house in Millbrook. However, the above quote from *Whetstone* is directly on point because the Taxpayer admittedly did not intend to remain permanently in Saudi Arabia. Ironically, just as in *Whetstone*, he intended to retire to Florida. Circumstances were such,

however, that he instead returned to Alabama, where he currently lives and works. Because the Taxpayer failed to establish a new domicile in Saudi Arabia or elsewhere during the subject years, he remained domiciled in Alabama in those years.

The representatives for the Taxpayer and the Department are directed to confer and attempt to agree concerning the Taxpayer's liabilities in the subject years. They should notify the Administrative Law Division by June 1, 2007 if they are able to agree, and if so, the amounts due. Appropriate action will then be taken.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 13, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
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Tony Griggs