

BRIAN BURKE
BFT-AVN
6BN101AV TF SHADOW
APO AE 09355,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

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DOCKET NO. INC. 10-1025

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FINAL ORDER

The Revenue Department assessed Brian Burke ("Taxpayer") for 2009 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 May 8, 2013. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer was born in Germany and moved with his family to Alabama in 1979. He joined the Army in 1998 and served a three year stint. He was reactivated in 2005, and was deployed in Iraq in 2005 and 2006.

The Taxpayer left the military and returned to Alabama to live with his parents in early 2007. He was hired by QinetiQ North America in September 2007 to work as a helicopter inspector for the U.S. Military. The company deployed him to Iraq, where he worked until the end of 2008. He returned to Alabama for a short stay, and was assigned by his employer to a position in Washington. He moved to Washington on February 2, 2009.

The Taxpayer lived and worked in Washington until he was transferred to Afghanistan in June or July 2010. While in Afghanistan, the Taxpayer's employer unexpectedly reassigned him to a position in Huntsville, Alabama. He returned from

Afghanistan to Alabama in June 2011.

The Taxpayer filed a 2009 part-year resident Alabama return on which he reported income of \$3,726. The return also claimed a refund of \$1,007 in Alabama income tax that QinetiQ had withheld from his wages in that year. The W-2 submitted with the return showed total income of \$51,022.71. The Department adjusted the return accordingly, and entered the final assessment in issue.

The Taxpayer explained at the May 8 hearing that he reported only one-twelfth of his 2009 income on his 2009 Alabama return because he only lived in Alabama in January 2009. He contends that he does not owe Alabama tax after January 2009 because he moved to Washington with the intent to abandon Alabama and remain permanently or at least indefinitely in Washington.

The Taxpayer rented a house and registered his vehicle in Washington in 2009. He also showed Washington as his residence on his 2009 federal income tax return and on his 2009 W-2. He maintained his Alabama driver's license while in Washington, but explained that he saw no need and was not required by law to obtain a Washington driver's license until his Alabama license expired. He also did not move his bank account to a bank in Washington because he did all of his banking transactions online or by wire.

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 establishes that the Taxpayer moved to Washington in February 2009 with the intent to remain permanently or at least indefinitely. His only connection with Alabama after he moved to Washington was that he still had family members in Alabama, but that, by itself, is not sufficient to show an intent to return to Alabama to live.

Importantly, the Taxpayer submitted into evidence several emails sent shortly after he moved to Washington to and from his employer's payroll office. The Taxpayer stated in the emails that he intended to return to Washington after his next deployment, and that Washington should be shown as his permanent address on his employment records. He also stated that Alabama income tax should not be withheld from his wages because he did not intend to return to Alabama to live.

The 2009 final assessment is voided.

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

Entered June 17, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Mark Griffin, Esq.
Brian Burke
Kim Peterson