

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. INC. 88-177

CARMAGE L. & YVONNE WALLS
3000 Mountain Brook Parkway
Birmingham, AL 35233,

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§

Taxpayers.

§

ORDER

The Revenue Department assessed income tax against Carmage L. & Yvonne Walls ("Taxpayers") for the year 1986. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on March 1, 1989. Charles H. Moses, Jr., Esq. and Charles H. Moses, III, Esq. appeared on behalf of the Taxpayers.

Assistant counsel Gwendolyn Garner represented the Department. Based on the evidence presented in the case, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The relevant facts are undisputed.

The Taxpayers resided in Texas during 1985 and prior years where Mr. Walls operated a television broadcasting business. In mid-1985, Mr. Walls decided to move his headquarters from Texas to Birmingham, Alabama. The Taxpayers visited Birmingham on several occasions in 1985 and purchased a house there in October, 1985. The house was subject to a lease in favor of the Alabama Symphony Orchestra through May 31, 1986. However, the Taxpayers were allowed to repair and renovate the house while under lease to the

Symphony. The Taxpayers also paid all utilities on the house after October, 1985.

The Taxpayers traveled back and forth between their Texas residence and Birmingham during late 1985 and early 1986. Mr. Walls joined several private clubs and also opened business and personal checking accounts in Birmingham during that period. The Taxpayers had fully relocated their business headquarters in Birmingham by May 1, 1986.

The Taxpayers contracted to sell their Texas residence to the University of Texas on April 24, 1986. The Alabama Symphony vacated the Taxpayers' Birmingham house on May 13, 1986 and the Taxpayers immediately moved in and spent their first night there on May 14, 1986. The Taxpayers stayed in the Birmingham house for several days and then traveled back to Texas in late May, 1986 to pack their furniture and close on

the sale of the Texas house. The closing occurred on May 29, 1986.

The Taxpayers returned to Alabama almost immediately and subsequently obtained Alabama driver's licenses and registered to vote in Alabama during June, 1986.

The Taxpayers filed a 1986 Alabama income tax indicating a part-year residency in Alabama from May 31, 1986 through December 31, 1986. The Taxpayers claimed a charitable contribution deduction on the return of approximately \$200,000.00 based on the May 29, 1986 sale of the Texas house to the University of Texas.

The Revenue Department denied the charitable contribution

deduction, arguing that the Taxpayers were not residents of Alabama at the time of the contribution. The Taxpayers argue that their return incorrectly indicated that their Alabama residency began on May 31, 1986, and that they had in fact changed their domicile to Alabama prior to May 29, 1986.

CONCLUSIONS OF LAW

This is an unusual domicile case in that the Revenue Department normally argues that a taxpayer is domiciled in Alabama so as to be subject to the Alabama income tax. However, the Department is now contending that the Taxpayers were not residing or domiciled in Alabama when the Texas house was sold on May 29, 1986, and thus cannot claim a charitable deduction in Alabama based on the sale.

Code of Ala. 1975, §40-18-2(1) levies an income tax on every individual residing in Alabama. Subsection (7) provides that every natural person domiciled in Alabama shall be presumed to be residing in Alabama for purposes of computing the income tax.

The criteria for determining domicile for tax purposes was set out in Whetstone v. State, 434 So.2d 796, as follows:

Our Alabama Supreme Court concisely stated the relevant Alabama law in the question of domicile in Jacobs v. Ryals, 401 So.2d 766 (Ala. 1981.) Domicile once acquired is presumed to exist until a new one has been acquired. Jacobs v. Ryals, supra; 134, 239 So.2d 206 (1970). In order to displace the former, original domicile by acquisition of a new domicile, actual residence and intent to remain at the new domicile must both concur. Jacobs v. Ryals, supra; 8 Ala. Digest, Domicile, Key No. 4(2).
A change of domicile cannot be inferred from

absence, temporary or due to employment, where there is an intent to return. *Jacobs v. Ryals*, supra; *Wilkerson v. Lee*, 236 Ala. 104, 181 So.2d 296 (1938). The intent to return is usually of controlling importance. *Jacobs v. Ryals*, supra; *Hilley v. Hilley*, 275 Ala. 617, 157 So.2d 215 (1963).

One who asserts a change of domicile has the burden of establishing it, and where the facts are conflicting, the presumption is strongly in favor of an original, or former domicile, as against a newly acquired one. *Jacobs v. Ryals*, supra; *State ex rel. Rabren v. Baxter*, supra.

Actual physical residence on a day to day basis is not required. See *Jacobs v. Ryals*, supra, holding a couple who resided only two weeks a year in Alabama were domiciled in Alabama. See also *Hogue v. Auburtin*, 291 F.Supp. 1003 (S.D. Ala. 1969), stating that domicile and physical presence are not necessarily synonymous.

The Department agrees that the Taxpayers changed their domicile from Texas to Alabama during 1986. The only issue is whether the change occurred prior to the sale of the Texas house, i.e. the charitable contribution, on May 29, 1986.

As set out above, both "actual residence and intent to remain at the new domicile must both occur". Whetstone, supra, at page 797. The Taxpayers clearly intended to change their domicile as early as 1985. The only issue then is whether the Taxpayers resided in Alabama prior to the date of sale of the Texas property.

Prior to May, 1986, the Taxpayers shuttled back and forth between Texas and Alabama. They had no permanent residence in Alabama during that period and Texas was still their domicile. However, on May 13, 1986 the Alabama Symphony gave up

possession of the Taxpayers' Birmingham house and the Taxpayers moved in immediately, albeit without their furnishings from the Texas house. But by establishing a residency in Birmingham with the intent to remain permanently, the Taxpayers clearly effected a change of domicile to Alabama at the time they moved on May 14, 1986.

The above considered, the Taxpayers should be allowed a charitable deduction as claimed on their 1986 Alabama return. The Department is accordingly directed to reduce and make final the assessment in issue showing no additional tax due.

Entered this 7th day of March, 1989.

BILL THOMPSON
Chief Administrative Law Judge