

ALABAMA TAX TRIBUNAL

GARY W. & TONYA R. HENDRICKSON,	§	
Taxpayers,	§	DOCKET NO. INC. 23-855-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

TONYA R. HENDRICKSON,	§	
Taxpayer,	§	DOCKET NO. INC. 23-856-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

Case No. INC. 23-855-JP involves the entry of a final assessment of income tax for 2014 against both Gary W. and Tonya R. Hendrickson. Case No. INC. 23-856-JP involves the entry of a final assessment of income tax for 2019 solely against Tonya R. Hendrickson. A trial of these appeals was held on July 11, 2024. The Taxpayers were represented by Swank Hurst, and Mr. Hendrickson (“Taxpayer”) appeared and testified. Ryan Corley represented the Revenue Department, and Pamela Blocton, a Tax Accountant for the Revenue Department, as well as Barbara Lowe, a Tax Auditor for the Revenue Department, appeared and testified. Following the trial, the Taxpayers requested the opportunity to submit additional information, and that request was granted by the Tax Tribunal. The

Taxpayers submitted their 2018 federal income tax return and an IRS transcript for that year. The Revenue Department was directed to review the Taxpayers' post-trial submissions and respond to the Tax Tribunal, which the agency did. Afterwards, the parties filed briefs.

The issue on appeal is whether the Taxpayers abandoned their Alabama domicile with no present intention to return and established a new domicile elsewhere with the intent to remain there permanently or at least indefinitely, such that they would not be liable for Alabama tax for tax years 2014 or 2019.¹

The Revenue Department received information from the Internal Revenue Service ("IRS") that indicated the Taxpayers should have filed Alabama returns in 2014 and 2019. Specifically, in 2014 the Taxpayers filed a federal return and state returns in Georgia, North Dakota, and Mississippi that each listed an Alabama address; similarly, Mr. Hendrickson's Forms W-2 each listed the same Alabama address, while Mrs. Hendrickson's W-2 listed a different Alabama address. In 2019, Mrs. Hendrickson's W-2s from Bilfinger Westcon and International Terminal Company, LLC, reported an Alabama address. Because the Revenue Department did not have a return on file for either year, the Department created estimated returns based on information available for the respective years. The Department then notified the Taxpayers on December 13, 2022, and April 21, 2023, respectively, that it did not have Taxpayer returns on file for the 2014 or 2019 tax years. The Revenue

¹ The Revenue Department raises a second issue of whether Alabama income tax would be levied on the rental income Mrs. Hendrickson earned from the Taxpayers' rental of a property they owned in Orange Beach, Alabama, during the 2019 tax year. While this is a distinct issue from the domicile issue identified and discussed at length here, the ultimate conclusion the Tax Tribunal reaches in the subsequent domicile discussion is that the Taxpayers were domiciled in Alabama in both 2014 and 2019 and, thus, Alabama income tax could be levied on *all* of the Taxpayers' sources of income, which would, of course, include the rental income. With that said, Ala. Code § 40-18-2(a)(6) clearly mandates that Alabama income tax is levied on "[e]very nonresident individual receiving income from *property owned* or business transacted in Alabama." (emphasis added).

Department entered a preliminary assessment for the 2014 tax year on February 16, 2023, and a preliminary assessment for the 2019 tax year on June 21, 2023. Final assessments for each tax year were entered on August 18, 2023, and August 29, 2023, respectively. The Taxpayers appealed both final assessments to the Tax Tribunal on September 19, 2023.

The Taxpayers argue that they abandoned their Alabama domicile in 2012, and thus were not subject to Alabama income tax in either 2014 or 2019. At trial, Mr. Hendrickson, testifying on behalf of himself and his wife, stated that both he and his wife were born in Mobile, Alabama, and have lived in Alabama for most of their lives. However, in 2010 they unfortunately lost their home to foreclosure due to the failure of their construction business. They then rented a home in Alabama, but continued to struggle financially as they could not find steady work within the state.

In March 2012, the Taxpayers moved to Wisconsin because Mr. Hendrickson accepted a job as a safety manager for a construction company on a two-year project in Tomah. In Wisconsin, they rented a home, purchased two vehicles, enrolled their grandchildren in school, and Mrs. Hendrickson registered to vote. Mr. Hendrickson then left Wisconsin in late 2013 to work on a short project in Florida before returning to Wisconsin. Mr. Hendrickson worked on additional projects that required him to travel to Georgia, Florida, and Mississippi in late 2013 through early 2014. At some point in 2014, the Taxpayers returned to Alabama for a five-to-six-week period while Mr. Hendrickson was between jobs. In September of 2014, Mr. Hendrickson accepted another construction job in North Dakota, where he worked, and his family lived, until June of 2015. Mr. Hendrickson obtained a North Dakota driver's license while living there. Mr. Hendrickson also worked on a three-

week project in Mississippi at some point in 2015. Mr. Hendrickson explained that they lived in a recreational vehicle (“RV”) while he worked in Georgia, Florida, and Mississippi, then lived in an apartment while in North Dakota.

In June of 2015, the Taxpayers moved to Iowa as Mr. Hendrickson was transferred to a job in Ft. Madison. There, the Taxpayers leased a home, registered to vote, and enrolled their grandchildren in school. The Taxpayers also attempted to buy real property while in Iowa; however, they ultimately bought a vacation home in Orange Beach, Alabama, in March of 2017 instead. Mr. Hendrickson testified they intended to use the Orange Beach property as a rental property. He referred to this purchase and the prospect of returning to Alabama as “coming home.” Mr. Hendrickson also testified that, in 2019, they had a tenant in the Orange Beach property who paid \$800.00 in monthly rent for about seven-or-eight months. The tenant ceased paying in 2020, which forced the Taxpayers to evict the tenant.

The Taxpayers moved to Texas in April of 2017 as Mr. Hendrickson accepted a job on a 4-year project, and Mrs. Hendrickson was able to acquire employment working for the same company. The grandchildren that had accompanied the Taxpayers to Wisconsin and Iowa did not enroll in school in Texas as the Taxpayers relinquished custody to the children’s mother in 2017. Unfortunately, both Taxpayers were laid off from their Texas jobs in June of 2020 due to the coronavirus pandemic, at which time the Taxpayers first returned to Mississippi for a short period before settling in Alabama again. Once back in Alabama, the Taxpayers initially moved into the Orange Beach property after they had evicted the prior tenant. The Taxpayers were able to stay in the Orange Beach property for only a few weeks before they had to move because of a hurricane. They then rented a home in Saraland,

Alabama, until June of 2021, at which time they moved back into the Orange Beach property where they have lived continuously since that time.

Testifying on behalf of the Revenue Department as to the 2014 tax year, Ms. Blocton stated at trial that the Revenue Department received W-2s for the Taxpayers that listed Alabama addresses, as well as 2014 tax returns for the Taxpayers from the federal government and other states that also listed Alabama addresses for the Taxpayers. Ms. Blocton also noted that the Taxpayers had claimed a loss from two S-corporations in Alabama, and that Mrs. Hendrickson registered to vote in Alabama in 2013.

Ms. Barbara Lowe then testified on the Department's behalf as to the 2019 tax year. She stated that the Taxpayers had leased the Orange Beach property to a tenant beginning in May of 2019, but did not report any rental income for that year on an Alabama tax return. However, Mrs. Hendrickson reported the rental income on her federal return. Further, the Taxpayers had claimed a homestead exemption for the Orange Beach property, and Mrs. Hendrickson had registered to vote in Alabama, registered her vehicle in Alabama, and had an active Alabama driver's license in 2019. Ms. Lowe explained that a Dodge Avenger was registered in Alabama under Mrs. Hendrickson's name from 2012 to 2021.

Alabama income tax is levied on individuals residing in Alabama, Ala. Code § 40-18-2(a)(1), and on nonresident individuals receiving income from property owned or business transacted in Alabama. Ala. Code § 40-18-2(a)(6). "Every natural person domiciled in . . . [or] who maintains a permanent place of abode within the state . . . shall be presumed to be residing within the state[.]" Ala. Code § 40-18-2(b). Simply put, Alabama law provides that a taxpayer domiciled in Alabama is presumed to be liable for Alabama tax on income earned

in the year, regardless of where the income was earned. *See* Ala. Code §§ 40-18-2(a); 40-18-15.1; and 40-18-14(4). A person's domicile is his true, fixed home to which he intends to return when absent. *Whetstone v. State*, 434 So. 2d 796, 797 (Ala. Civ. App. 1983) (*citing* *Jacobs v. Ryals*, 401 So.2d 776 (Ala. 1981)). Once Alabama is established as a person's domicile, that domicile is presumed to exist until a new one is established. *Id.* To change one's domicile from Alabama, a taxpayer must abandon Alabama with no present intention to return and establish a new domicile elsewhere with the intent to remain there permanently, or at least indefinitely. *Jacobs v. Ryals*, 401 So. 2d 776, 778 (Ala. 1981). "The intention to return is usually of controlling importance in the determination of the whole question." *Id.* The burden is on a taxpayer who asserts a change of domicile to prove that a change has occurred. *Rabren v. Baxter*, 239 So. 2d 206, 211 (Ala. Civ. App. 1970) (*citing* *Caldwell v. Pollak*, 8 So. 546 (Ala. 1890)). And the presumption is in favor of the original or former domicile, as against a newly-acquired one. *Horwitz v. Kirby*, 197 So. 3d 943 (Ala. 2015) (*citing* *Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945)).

In the present case, Mr. Hendrickson consistently testified at trial that his family left Alabama in 2012 with no intent to return. His testimony also evidenced that he and his family took steps in each new locale to integrate themselves into the community. However, it is also clear from his testimony that their residency in each new locale would be only temporary, given the impermanent nature of each of the jobs he accepted between 2012 and 2017 and the transient habits of his family between 2012 and 2020.

The out-of-state work projects undertaken by Mr. Hendrickson had a defined temporal term rather than being open-ended in nature. For example, the initial project in

Wisconsin was intended to last only two years; similarly, the final project in Texas was only for a four-year term. Mr. Hendrickson's testimony also showed that these longer projects were broken up regularly by shorter, interim projects in other states. While the Hendricksons established new "home bases" in Wisconsin, North Dakota, Iowa, and Texas at different points between 2012 and 2017, these bases always seemed to be intended as temporary. Such temporary arrangements did not establish for the Hendricksons their true, principal home, at which they intended to remain permanently or indefinitely. *Jacobs, supra.*

It also is understood from Mr. Hendrickson's testimony, as well as his family's actions between 2012 and 2020, that Alabama remained their true "home," or the place to which they knew they could return. Each of the Hendricksons' 2014 W-2s and tax returns listed an Alabama address. The Hendricksons continued to use an Alabama address as their mailing address through 2014. Further, during a lull between jobs in 2014 the Hendricksons returned to Alabama for a five-to-six-week period. Mrs. Hendrickson registered to vote in Alabama in both 2013 and 2019. When discussing their purchase of the Orange Beach property in March of 2017, Mr. Hendrickson went so far as to refer to coming back to Alabama as coming home. The Taxpayers then proceeded to claim a homestead exemption on the Orange Beach property during the 2019 tax year. Mrs. Hendrickson also registered her vehicle in Alabama and had an active Alabama driver's license in 2019. Ultimately, the Hendricksons did return home to Alabama in 2020 after the premature end of the project in Texas due to the coronavirus pandemic, and Alabama has been their continuous home since.

Based on the evidence, the Tax Tribunal rules that the Taxpayers were liable for Alabama income tax in both 2014 and 2019 as Alabama residents because they never abandoned their Alabama domicile, nor did they establish domicile in any other state.

The Taxpayers are given the opportunity to submit Alabama full-year-resident returns for the years 2014 and 2019. If they desire to do so, they are directed to submit those returns to the Tax Tribunal no later than **May 23, 2025**. The returns then will be submitted to the Revenue Department for review and recalculation, if any, of the final assessments in issue.

Further, the Revenue Department is directed to inform the Tax Tribunal, no later than **May 16, 2025**, whether it has recalculated the Taxpayers' proposed liabilities after giving the Taxpayers credit for tax paid to other states for the years in question.

Also, the Revenue Department is directed to inform the Tax Tribunal, no later than **May 16, 2025**, of the Taxpayers' recent filing history regarding the timeliness of individual income tax returns for years other than 2014 and 2019.

It is so ordered.

Entered April 25, 2025.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:thb:ml

cc: Gary W. & Tonya R. Hendrickson
Swank Hurst
Ryan N. Corley, Esq.