

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

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DOCKET NO. INC. 92-310

BUTCH J. and MARGARET I. MOORE
P. O. Box 431819
Big Pine Key, FL 33043,

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§

Taxpayers.

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FINAL ORDER

Butch J. and Margaret I. Moore (Taxpayers) requested a refund of \$13,858.00 on their joint 1991 Alabama income tax return. The return did not include \$301,095.17 received by Butch J. Moore (Taxpayer) as severance pay from Southern Natural Gas Corporation (SONAT) on December 2, 1991. The Department reviewed the return, included the severance pay as taxable income, and thereby reduced the Taxpayers' refund to \$124.02. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on January 27, 1993. The Taxpayer attended the hearing. Assistant counsel Dan Schmaeling represented the Department.

The issue is whether the Taxpayer was domiciled in Alabama when he received the severance pay on December 2, 1991. Alabama tax is not due if the Taxpayer changed domiciles from Alabama to Florida prior to receiving the income. The facts are undisputed.

The Taxpayers moved into a house in Mount Olive, Alabama in 1973. The wife still lives in the house, but, as will be discussed, the Taxpayer now lives in Florida.

The Taxpayer started working for SONAT as a pilot in 1973. His wife started working for the Jefferson County Board of Education where she is still employed.

The Taxpayers purchased a lot on Little Torch Key in South Florida in 1986 or 1987. The Taxpayers intended to build a house on the lot and move there permanently after they retired. At the time, the Taxpayer expected to retire in approximately eleven years and his wife in approximately ten years.

The Taxpayers built a house on the lot in 1989. From 1989 until December, 1991, the Taxpayers lived in Mount Olive and visited the house in Little Torch Key approximately three or four weeks a year while on vacation.

The Taxpayer rented a Florida post office box in 1989 or 1990. The Taxpayer also obtained a Florida drivers license in June, 1991 and gave up his Alabama license at that time.

SONAT forced the Taxpayer to take early retirement effective Friday, November 29, 1991. The Taxpayer traveled to Little Torch Key that weekend to work on his house, but hurriedly returned to Alabama on Monday, December 2nd to receive the lumpsum retirement pay in issue. The Taxpayer remained in Alabama for several days and then returned to Florida.

The Taxpayer has lived in Florida approximately 95% of the time since December, 1991. However, his wife still lives in the Mount Olive house and she intends to continue living there until

she retires in approximately four years. She intends to move to Florida at that time. The Taxpayer visits Mount Olive several times a year.

The Taxpayer registered to vote in Florida on December 16, 1991 and his wife registered on December 26, 1991. The couple's bank accounts are all in Alabama. The Taxpayer testified that he kept his account in Alabama because he could get a better interest rate in Alabama.

Every person domiciled in Alabama is subject to Alabama income tax. Code of Ala. 1975, §40-18-2. "Domicile" has been defined for Alabama income tax purposes as an individual's true, fixed home to which he intends to return when absent. Whetstone v. State, 434 So.2d 796. To change domiciles, the old domicile must be abandoned and a new one acquired, along with the intent to remain permanently at the new domicile. Jacobs v. Ryals, 401 So.2d 776. The presumption is that a person's domicile remains the same, and the burden is on the one asserting a change of domicile to prove that a change has in fact occurred. Whetstone v. State, supra.

The Taxpayer concedes that he was domiciled in Alabama through November 29, 1991, his last day at SONAT. The question then is whether the Taxpayer changed domiciles from Alabama to Florida between Friday, November 29th and the next Monday, December 2, 1991, when he received the income in question.

To change domiciles a person must actually reside in a new location with the intent to remain permanently. While the Taxpayer may have intended to move to Florida permanently sometime shortly after retiring, even sometime later in December 1991, he traveled to Florida the weekend after his last day at work only to make repairs on his house. He obviously intended to return and did return to Alabama shortly thereafter to receive his lumpsum severance pay.

The burden is on the Taxpayer to prove that he changed domiciles to Florida prior to receiving the income in question. Unfortunately for the Taxpayer, he has failed to carry that burden.

The fact that the Taxpayer traveled to Florida the weekend before receiving the income is not sufficient evidence of a permanent change of domicile. Accordingly, I must hold that the Taxpayer was still domiciled in Alabama on December 2, 1991.

The above considered, the Department properly taxed the income in Alabama and thereby reduced the Taxpayers' refund for 1991 to \$124.02. The Department is directed to issue a refund to the Taxpayers in that amount, plus applicable interest. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on February 18, 1993.

BILL THOMPSON

Chief Administrative Law Judge