

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

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vs.

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LARRY J. AND TERESA C. DAVIDSON
1090 West First Ave. No. 107 §
Tooele, Utah 84074,

DOCKET NO. INC. 94-106

§

Taxpayers.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Larry J. and Teresa C. Davidson for income tax for the year 1992. Larry J. Davidson ("Taxpayer") appealed to the Administrative Law Division and a hearing was scheduled for March 24, 1994. The Taxpayer notified the Administrative Law Division prior to the hearing that he would not attend. Assistant counsel Duncan Crow represented the Department.

The primary issue in dispute is whether the Taxpayer was domiciled in Alabama in 1992 and thus liable for Alabama income tax on income earned in Utah in that year. If the Taxpayer is liable for 1992 Alabama income tax, a second issue is whether the Taxpayer should be allowed to deduct his business expenses incurred while earning the income in question.

The Taxpayer resided and worked in the State of Utah during 1992. However, his wife worked in Alabama and lived in Alabama along with the couple's two children.

The Taxpayer and his wife filed a joint 1992 Alabama income tax return on February 22, 1993. The return included the wife's

income, but omitted the Taxpayer's income earned outside of Alabama.

The Department included the Taxpayer's income as taxable income in Alabama, excluded \$1,800 in unemployment compensation erroneously reported on the return, and then adjusted the standard deduction to reflect the above adjustments. The final assessment in issue is based on the above adjustments.

Alabama's income tax is levied on every person domiciled in Alabama. Code of Ala. 1975, §40-18-2. A taxpayer's domicile is his permanent home to which he intends to return when absent. State ex rel. Rabren v. Baxter, 239 So.2d 206. The burden is on the person asserting a change of domicile from Alabama to prove that he has abandoned Alabama and established a new domicile elsewhere. Whetstone v. State, 434 So.2d 796.

The Taxpayer's family lived in Alabama in 1992, and he filed a joint Alabama return with his wife in 1992 showing his home to be Alabama. He also filed a non-resident State of Utah return on which he indicated Alabama as his home state. Based on the above, and without evidence showing that the Taxpayer had abandoned Alabama and intended to live permanently in Utah, I must hold that the Taxpayer was domiciled in Alabama during 1992 and thus subject to Alabama income tax in that year.

A taxpayer can deduct all ordinary and necessary business expenses incurred while employed away from his tax home. Code of Ala. 1975, §40-18-15(1). If the Taxpayer in this case was

domiciled in Alabama during 1992, it seems inconsistent not to allow him to deduct his expenses incurred while employed outside of Alabama during that year. However, if the Taxpayer's job in Utah was for an indefinite period, he is considered to have changed his tax home (but not his domicile) to Utah, and thus his job-related expenses cannot be deducted. Kasum v. U.S., 671 F.2d 1059.

Employment is indefinite in duration if its termination cannot be foreseen within a reasonably short period of time. Dahood v. U.S., 585 F.Supp. 93. If a job lasts for more than one year, it is presumed to be an indefinite employment, but that assumption can be rebutted depending on the facts of the case. Walraven v. C.I.R., 815 F.2d 1246.

The burden is on the Taxpayer to prove that his job in Utah in 1992 was temporary in nature. If the Taxpayer fails to do so, the expenses must be disallowed. The Taxpayer is allowed until May 25, 1994 to present evidence to the Department proving that he can deduct the expenses in issue. The Taxpayer must also present evidence verifying his claimed expenses. The Taxpayer should provide all relevant information to Department assistant counsel Duncan Crow, Suite 3002, LaClede Building, 150 Government Street, Mobile, Alabama 36602. Assistant counsel Crow's telephone number is (205) 432-3569.

The Department should thereafter contact the Administrative Law Division, and a Final Order will be entered setting out the Taxpayer's final liability.

Entered on April 18, 1994.

BILL THOMPSON
Chief Administrative Law Judge