

CARLTON L. CLIFTON	§	STATE OF ALABAMA
707 Geneva Street		DEPARTMENT OF REVENUE
Opelika, Alabama 36801,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 96-180
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed income tax against Carlton L. Clifton ("Taxpayer") for 1985 through 1993. 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 August 19, 1996. The Taxpayer appeared at the hearing. Assistant Counsel Gwen Garner represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama during 1985 through 1993, and thus liable for Alabama income tax in those years pursuant to Code of Ala. 1975, §40-18-2(7).

The Taxpayer was born and raised in Alabama and was living in Opelika, Alabama when he joined the military in 1975. He was assigned to Korea in 1975 and returned to the United States in 1978. He filed Alabama income tax returns in those years.

In 1979, the Taxpayer looked into changing his legal residence to the State of Florida. He subsequently completed a "State of Legal Residence Certificate" (Form DD 2058) indicating that he was changing his legal residence to Florida. The legal effect of Form 2058 is discussed below.

The Taxpayer was stationed in Phenix City, Alabama from 1981 until 1984, and then in Montgomery from 1984 until 1990. He was transferred to Germany in 1990, returned to the United States in 1993, and retired from the military in 1994. Shortly before retiring, the Taxpayer filed a second Form 2058 changing his legal residence for military purposes back to Alabama.

The Taxpayer failed to file state income tax returns for the years 1979 through 1993. The Department audited the Taxpayer, determined he was domiciled in Alabama during the subject years, and assessed Alabama income tax using information from the Taxpayer's federal returns. The Taxpayer appealed to the Administrative Law Division.

The Taxpayer argues that when he filed the Form 2058 in 1979, his legal residence changed to Florida and he was no longer liable for Alabama income tax.

The Department counters that filing the Form 2058 did not change the Taxpayer's domicile from Alabama. The Department argues that the Taxpayer remained domiciled in Alabama because he did not abandon Alabama and affirmatively establish a new domicile in Florida or elsewhere during the subject years. I agree with the Department.

Code of Ala. 1975, §40-18-2(7) levies an income tax on "every natural person domiciled in this State" A person's domicile is his true, fixed home to which he intends to return when

absent. A person may reside outside of Alabama but still be domiciled in Alabama. To change domiciles from Alabama, an individual must abandon Alabama with no intent to return and establish a new domicile elsewhere with the intent to remain permanently, or at least for an indefinite period. Whetstone v. State, 434 So.2d 796 (1983).

The Taxpayer was initially domiciled in Alabama. He claims that he changed his domicile to Florida. However, declaring on a Form 2058 that his legal residence had changed from Alabama to Florida was not sufficient, by itself, to change the Taxpayer's domicile from Alabama to Florida. The instructions on Form 2058 provide as follows:

The formula for changing your State of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile. In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly indicated. Your intent to make the new State your permanent home may be indicated by certain actions such as: (1) registering to vote; (2) purchasing residential property or an unimproved residential lot; (3) titling and registering your automobile; (4) notifying the State of your previous legal residence/domicile of the change in your State of legal residence/domicile; and (5) preparing a new last will and testament which indicates your new State of legal residence/domicile. Finally, you must comply with the applicable tax laws of the State which is your new legal residence/domicile. (underline in original).

Generally, unless these steps have been taken, it is doubtful that your State of legal residence/domicile has changed.

The above instructions comply with Alabama law. Consequently,

because the Taxpayer never moved his domicile to Florida with the intent to remain permanently, he remained domiciled in Alabama and is liable for Alabama income tax for the years in issue.

The final assessments are affirmed. (I note that no penalty was assessed by the Department for the Taxpayer's failure to timely file returns or pay the tax due.) Judgment is entered against the Taxpayer for 1985 income tax of \$1,802.67, 1986 income tax of \$1,716.30, 1987 income tax of \$888.30, 1988 income tax of \$825.91, 1989 income tax of \$888.57, 1990 income tax of \$1,770.22, 1991 income tax of \$1,243.32, 1992 income tax of \$1,252.17, and 1993 income tax of \$1,270.11.

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

Entered August 22, 1996.

BILL THOMPSON
Chief Administrative Law Judge