

BRIAN KEITH CHANCELLOR
12945 Cottonwood Drive
McCalla, Alabama 35111,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 96-439

FINAL ORDER

The Revenue Department assessed income tax against Brian Keith Chancellor ("Taxpayer") for 1989, 1990, and 1991. 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 January 15, 1997. The Taxpayer and his wife, Renee Chancellor, appeared at the hearing. Assistant Counsel Margaret McNeill represented the Department.

This is a domicile case. The sole issue is whether the Taxpayer was domiciled in Alabama during 1989, 1990, and 1991, and thus subject to Alabama income tax in those years pursuant to Code of Ala. 1975, §40-18-2(7).

The Taxpayer was born and raised in Birmingham, Alabama. He joined the United States Navy at age 21 in December 1986. The Navy immediately assigned the Taxpayer to submarine training school in Chicago. He trained at several different locations, and was permanently stationed in Jacksonville, Florida in October 1988.

The Taxpayer initially enlisted for four years, which he extended one year for training purposes. He decided after moving to Florida that he would make the Navy his career. However, he

decided in mid-1991 to accept a job with his father in Birmingham.

He accordingly left the Navy and returned to Alabama when his enlistment ended in December 1991.

The Taxpayer filed Alabama income tax returns in 1987 and 1988 because he still considered Alabama his home. However, when he moved to Florida in October 1988, he filed a new military Leave and Earnings Statement ("LES") which showed he was changing his permanent residence to Florida. Consequently, the Taxpayer failed to file Alabama returns for 1989, 1990, and 1991.

The Department determined that the Taxpayer remained domiciled in Alabama during 1989, 1990, and 1991. The Department accordingly computed the Taxpayer's Alabama liability and entered the final assessments in issue using the information on his federal returns. The Taxpayer appealed to the Administrative Law Division.

The Taxpayer testified that he changed his official residence to Florida in October 1988 because he had no remaining ties with Alabama, except his relatives, and he liked Florida and intended to live there permanently.

The Taxpayer received his mail at his parent's house in Birmingham before moving to Florida. After moving, he changed his mailing address to Florida. The Taxpayer kept his Alabama driver's license after moving to Florida, but only because his Alabama license was valid with his military identification. He renewed his Alabama license only after he decided to return to Alabama in 1991.

The Taxpayer did not register to vote in Florida, but he also was

not registered to vote in Alabama during the subject years. The Taxpayer established an account with a credit union in Florida, and also registered his motor vehicle in Florida. He did keep a credit card issued by an Alabama bank.

Finally, the Taxpayer was unaware that Florida did not have a state income tax when he changed his official residence to Florida in 1988. He visited a post office in Florida in early 1989 to obtain a federal and State of Florida income tax return. Only then did he learn that Florida does not have an income tax.

The Department determined that the Taxpayer was domiciled in Alabama during the subject years because he kept his Alabama driver's license and a credit card with an Alabama bank. A Department employee told the Taxpayer that if he had been a civilian when he moved to Florida in 1988, he would have effectively changed domiciles at that time, but that because he was in the military, his domicile did not change.

All individuals domiciled in Alabama are subject to Alabama income tax. Code of Ala. 1975, §40-18-2(7). A person's domicile is his true, fixed home to which he intends to return when absent.

The burden is on a person claiming a change of domicile to prove that a change has in fact occurred. A change occurs only if a person abandons Alabama with the intent not to return, and establishes a new residence outside of Alabama with the concurrent intent to remain at the new location permanently, or at least indefinitely. See generally, Whetstone v. State, 434 So.2d 796 (Ala. 1983). "The intent to return is usually of controlling

importance." Whetstone, 434 So.2d at 797, citing Jacobs v. Ryals, 401 So.2d 776 (Ala. 1981).

When an Alabama resident joins the military, the individual is presumed to remain domiciled in Alabama. However, just as with civilians, an Alabama native in the military may also change domiciles from Alabama by establishing a new residence elsewhere with the intent to remain at the new location permanently. Dept. Reg. 810-3-2-.01(1)(c) provides that military personnel previously domiciled in Alabama continue to be so domiciled during military service "until proof of change of domicile has been made."

The Department concluded that the Taxpayer remained domiciled in Alabama because he took only a few of the usual actions indicating an intent to move permanently from Alabama. But those actions, when considered with the Taxpayer's sworn testimony, establish that the Taxpayer intended to abandon Alabama and make Florida his permanent home when he moved there in 1988.

A taxpayer's after-the-fact testimony concerning intent must be closely scrutinized, but it should not be ignored altogether.

The Taxpayer in this case was a credible, believable witness. He testified that he formally changed his residence from Alabama to Florida because he intended to make Florida his permanent home. His motive was not to avoid state income tax because he did not know at the time that Florida does not have an income tax.

Other than family, which he had no control over, the Taxpayer's only ties to Alabama during the subject years were his Alabama driver's license and his credit card with an Alabama bank.

I give no weight to the Alabama credit card. The Taxpayer also had no practical reason to get a Florida driver's license because his Alabama license was good with his military identification. He renewed his Alabama license only after he had decided to move back to Alabama in late 1991.

The above considered, the Taxpayer changed domiciles to Florida in 1988 and remained domiciled in Florida until December 1991. The final assessments in issue are accordingly dismissed.

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

Entered January 29, 1997.

BILL THOMPSON
Chief Administrative Law Judge