

GLENN ALLEN PRICE  
6436 East Patrick Court  
Montgomery, AL 36117-4703,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 97-296

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

#### FINAL ORDER

The Revenue Department assessed 1994 and 1995 Alabama income tax against Glenn Allen Price ("Taxpayer"). 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 December 22, 1997. Gregory C. Thomas represented the Taxpayer. William Kirkland represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama in 1994 and 1995, and thus subject to Alabama income tax in those years pursuant to Code of Ala. 1975, §40-18-2.

The Taxpayer lived in Montgomery, Alabama with his wife and children until 1993. The Taxpayer was employed as a construction consultant with Blount Corporation.

Blount started closing its construction operations in 1993. The Taxpayer began looking for another job, and accepted a job with Cogefar, Inc., an international construction corporation, in August 1993. The Taxpayer moved to Miami and began working at Cogefar's U. S. headquarters in Miami at that time.

When the Taxpayer moved to Miami, he intended, and his wife understood, that he would eventually be transferred to Atlanta, where his family would join him. The Taxpayer expected to move to Atlanta because Cogefar intended to move its Southeastern government contracting headquarters to Atlanta.

In October 1993, the federal government terminated Cogefar's contract to construct a large federal

prison in Florida. As a result, Cogefar canceled its plans to move its headquarters to Atlanta. The Taxpayer explained the effect of the contract termination, as follows:

ADMINISTRATIVE LAW JUDGE: ...

Okay. Mr. Price, there has been some discussion about what you intended to do when you left Alabama. And according to the Department, you told them that you intended to ultimately live in Atlanta; is that correct?

MR. PRICE:

What I told them is when the company hired me, there was a significant chance that the company would relocate to Atlanta. But until that happened, I had to come to Miami and live in Miami. That's where the office was. And very soon thereafter that changed. It changed before the end of the year. We were terminated by the federal government on the contract on October the 28th of '93. I remember the date very well. And that was kind of the beginning of the end. Everything changed from that point on before the end of '93. I was going to be stuck in Miami, and I knew that. And that was where the job was, and it still seemed like the right thing for me to do, and that was my intention.

(Transcript, at pp. 48, 49).

The Taxpayer lived in an apartment when he first moved to Miami. He later moved to a rented condominium. The Taxpayer's wife visited him in Miami after it became clear that he would not be transferred to Atlanta. She stayed for a week, and notified the Taxpayer that she and the children would never move to Miami. She and the children accordingly continued to reside in Alabama.

The Taxpayer obtained a temporary Florida driver's license while in Miami, which allowed him to keep his Alabama license. He also visited a doctor and dentist in Florida, and opened a Florida bank account.

The Taxpayer visited his family in Alabama approximately one weekend a month while living in Florida. He also sent his wife money twice monthly. The Taxpayer and his wife filed joint 1994 and 1995 federal returns showing an Alabama home address.

All individuals domiciled in Alabama are subject to Alabama income tax, even if they reside outside of Alabama during the year. §40-18-2(7). A person's residence is where the person currently resides. A person's domicile, however, is the person's true, fixed home to which he intends to eventually return when absent. State ex rel Rabran v. Baxter, 239 So.2d 206 (1970).

The burden is on a person claiming a change of domicile to prove that a change has occurred. A person changes domiciles from Alabama only if the person (1) abandons Alabama with the intent not to return, and (2) establishes a new domicile outside of Alabama with the 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).

This is a close case. The Department's able examiner had reason to conclude that the Taxpayer never changed domiciles to Florida. However, the evidence is sufficient to find that the Taxpayer abandoned Alabama and established a new domicile in Florida.

I agree with the Department that when the Taxpayer first moved to Florida, he did not intend to change his domicile to Florida. Rather, he intended to eventually move to Georgia. However, when the federal government canceled Cogefar's prison contract in October 1993, the Taxpayer knew that Cogefar's move to Atlanta was canceled, and that he would remain in Miami. He subsequently lived and worked in Miami for two years with the intent and understanding that he would remain there indefinitely.

The Taxpayer obviously retained some ties to Alabama. But those are explained by the presence of his wife and family in Alabama. It is normal that an individual living outside of Alabama for employment reasons would periodically visit his family in Alabama. He never changed his voter registration from Alabama to Florida only because he never voted. There was also no reason for the Taxpayer to give up his Alabama driver's license when he obtained his Florida license.

Because the Taxpayer was not domiciled in Alabama during 1994 and 1995, he is not liable for Alabama income tax on income earned outside of Alabama in those years. The final assessments 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 June 24, 1998.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

cc: Legal Division

Gregory C. Thomas, Esq.  
Kim Herman (422-64-4182)