

MICHAEL S. FOTI
5648 Foti Lane
Birmingham, AL 35215,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-154

FINAL ORDER

The Revenue Department denied a refund of 1991 income tax requested by Michael S. Foti (ATaxpayer@). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on May 11, 1999. CPA John Neal Ingram represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department.

This is a domicile case. The issue is whether the Taxpayer was domiciled in Alabama in 1991, and thus subject to Alabama income tax in that year pursuant to Code of Ala. 1975, ' 40-18-2.

The Taxpayer lived in Alabama until he moved to Texas in the early 1980's to attend chiropractor school. He returned to Alabama in 1983, where he lived and worked until 1986.

In 1986, the Taxpayer accepted a job as a chiropractor in Pescara, Italy. He moved to Italy and began working there in late 1986. He received a certificate of Italian residency in 1987. He also filed Italian income tax returns from 1987 through at least 1995.

The Taxpayer visited his family in Alabama for approximately one week a year from 1986 through 1994, usually at Christmas. He and his fiancée, a native of Italy, visited the Taxpayer's parents in Alabama in 1994. The Taxpayer stayed in Alabama until March 1995, when he returned to Italy. He intended to get married and start his own practice as a chiropractor in Italy. Unfortunately, the Taxpayer and his fiancée canceled the engagement in mid-1995. The Taxpayer quit his job and moved back to Alabama in September 1995.

The Taxpayer was unsure of his future plans when he returned to Alabama. He traveled in Mexico and Central America from February 1996 until late 1996. Since that time, the Taxpayer has lived with his parents and attended school in Birmingham, Alabama.

All United States citizens residing abroad are required to file a United States income tax return. The Taxpayer accordingly filed U. S. returns from 1986 through 1995. The Taxpayer did not file Alabama returns in those years. However, when the Taxpayer's accountant applied for an extension to file the Taxpayer's 1991 federal return, he inadvertently filed an Alabama extension request for that year. The accountant also filed Alabama extension requests for the Taxpayer for 1992 - 1995. As indicated, the Taxpayer did not file Alabama returns for any of those years.

Because the Taxpayer filed a 1991 Alabama extension request, the Department determined that the Taxpayer was domiciled in Alabama in that year.

The Department

accordingly assessed the Taxpayer on his 1991 income. The Taxpayer paid the tax and applied for a refund. The Department denied the refund. The Taxpayer appealed.

Alabama income tax is levied on all individuals domiciled in Alabama. Section 40-18-2(7). An individual may reside outside of Alabama but still be domiciled in Alabama, and thus subject to Alabama income tax. A person's domicile is his true, fixed home to which he intends to return when absent. A change of domicile from Alabama occurs only if the person abandons Alabama with the intent not to return, and establishes a new domicile outside of Alabama with the intent to remain permanently, or at least indefinitely. See generally, Whetstone v. State, 434 So.2d 796 (1983).

The Taxpayer moved from Alabama to Italy in 1986. When the Taxpayer left Alabama, he did not intend to return to Alabama to live. The fact that he visited his parents in Alabama once a year does not establish an intent to return to Alabama to live. He also established a new domicile in Italy by working and living there continuously for nine years. As late as 1995, he intended to marry an Italian woman and start his own business in Italy. The above facts indicate that the Taxpayer abandoned Alabama when he left in 1986, and established a new domicile in Italy with the intent to remain permanently, or at least indefinitely. The Taxpayer thus was not domiciled in Alabama in 1991.

The Revenue Department is directed to issue the Taxpayer a refund of \$8,386.38, plus applicable interest.

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

Entered June 1, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Keith Maddox, Esq.
John Neal Ingram, CPA
Kim Herman (424-88-9984)