

BOBBY L. MORGAN  
9060 Three Notch Road  
Theodore, AL 36582,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-296

### FINAL ORDER

The Revenue Department assessed 1992 income tax against Bobby L. Morgan (ATaxpayer@). 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 April 10, 2000 in Mobile, Alabama. Thomas Boller represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

### ISSUE

The issue in this case is whether the Taxpayer was domiciled in Alabama in 1992, and thus subject to Alabama income tax in that year pursuant to Code of Ala. 1975, ' 40-18-2.

### FACTS

The Taxpayer was born and raised in Alabama. He began working for Wilbert Vault Company in 1986. Wilbert Vault is headquartered near Chicago, Illinois. The Taxpayer lived in Alabama after 1986, but traveled throughout the United States on business 48 or 49 weeks a year.

The Taxpayer divorced in October 1991. Pursuant to the divorce decree, the Taxpayer's ex-wife received the couple's new home on Three Notch Road in Mobile,

Alabama. The Taxpayer moved to Illinois in late 1991, and lived with various friends in the Chicago area. He continued working for Wilbert Vault, and continued traveling throughout the United States on business.

The Taxpayer had obtained a post office box in Mobile in 1986. He kept the post office box after his divorce. He traveled to Alabama several times in 1992 to check his mail, and also to visit friends.

The Taxpayer testified that when he left Alabama in late 1991, he never intended to return to Alabama to live. However, he and his ex-wife stayed in touch, and finally reconciled in early 1993. The Taxpayer moved back to Alabama and began living with his ex-wife in April 1993. The Taxpayer has continued to live in Alabama since that time.

The Taxpayer filed Alabama returns in the years before 1992, and also in 1993 and later years. The Taxpayer applied for an extension to file his 1992 Alabama return. However, he discussed the matter with his accountant and determined that he was not required to file a 1992 Alabama return. The Taxpayer's 1992 federal return showed the Three Notch Road address in Mobile as his residence because he had reconciled with his ex-wife before the return was filed in April 1993.

The Department received IRS information that the Taxpayer had an Alabama address in 1992, and that he had sufficient income to be required to file an Alabama return in that year. The Department consequently assessed the Taxpayer based on the information contained in his 1992 federal return. The Taxpayer appealed.

### ANALYSIS

All persons domiciled in Alabama are subject to Alabama income tax, even if the person did not reside in Alabama during the year. Section 40-18-2. A person's domicile is his true, fixed home to which he intends to return when absent. A change of domicile occurs only if (1) the person abandons Alabama with the intent not to return, and (2) establishes a new permanent domicile elsewhere with the intent to remain permanently, or at least indefinitely. The presumption is that a change of domicile has not occurred, and the burden is on the person claiming a change of domicile to prove that a change has occurred. Whetstone v. State, 434 So.2d 796 (1983); James E. Willis v. State of Alabama, Inc. 99-394 (Admin. Law Div. 12/3/99).

Other than testifying that he did not intend to return to Alabama when he left in 1991, there is no evidence the Taxpayer abandoned Alabama as his domicile at that time. But even assuming that the Taxpayer abandoned Alabama, he still failed to change his domicile from Alabama because he failed to establish a new domicile in Illinois or elsewhere.

Although the Taxpayer resided in Illinois in 1992, he took no action showing that he intended to live in Illinois permanently, or even indefinitely. He did not buy a house or rent an apartment in Illinois. He did not obtain an Illinois drivers license. He did not receive mail in Illinois. Finally, in response to a question as to whether he intended to buy a home in Illinois, the Taxpayer stated as follows - *Al was looking to buy property up there. Actually, the reason I didn't was more of me having to travel throughout the United States. So, I wasn't sure what state I wanted to really locate to.*@ (T. 27).

The above statement verifies that the Taxpayer had not yet decided to live permanently in Illinois or anywhere else in 1992. Because the Taxpayer failed to establish a new permanent domicile outside of Alabama in 1992, he remained domiciled in Alabama during that year. See again, Whetstone, 434 So.2d at 797.

The final assessment is affirmed. Judgment is entered against the Taxpayer for \$2,386.72, plus additional interest from the date of entry of the final assessment, March 25, 1999.

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

Entered May 16, 2000.

BILL THOMPSON  
Chief Administrative Law Judge