

DENNIS T. & ANGELA M. JACKSON §
3811 HEATHERBROOK PLACE
DOTHAN, AL 36303, §

Taxpayers, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 15-1302

FINAL ORDER

This appeal involves a final assessment of 2011 Alabama income tax. A hearing was conducted on February 23, 2016. Dennis Jackson attended the hearing. Assistant Counsel Billy Young represented the Department.

The Department entered the final assessment is issue based on IRS information showing that the Taxpayers filed a 2011 federal return showing an Alabama address, and also that they received income in 2011 sufficient to require them to file an Alabama return for that year.

The Taxpayer testified at the February 23 hearing that he joined the military in 1992, and that his legal residence from that year until he retired from the military in 2013 was Alaska. He presented documents at the hearing, which, according to the Taxpayer, verified his claim. The Taxpayer was not able to provide a copy of his DD 2058.

The Department attorney indicated that the Department would review the documents and the Taxpayer's testimony at the hearing, and thereafter notify the Tribunal of its position in the case. A copy of the Department's response is enclosed with the Taxpayers' copy of this Order.

The Department indicates that the Taxpayer submitted a Certificate of Release or Discharge from Active Duty at the February 23, 2016 hearing. The form shows that the

Taxpayer entered active duty from Fort Rucker, Alabama, that his home of record was Newton, Alabama, and that his mailing address after separation was Dothan, Alabama.

Alabama income tax is levied on every person domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A person's domicile is their true, fixed home to which they intend to return when absent. Consequently, individuals can still be domiciled in Alabama, and thus liable for Alabama income tax, even if they reside outside of Alabama in a given year.

Alabama's courts have also held that once Alabama is established as a person's domicile, that domicile is presumed to exist until a new one is acquired. And to change an existing domicile, the person must both abandon the former domicile, and also establish a new domicile elsewhere. "In order to displace the former, original domicile by acquisition of a new domicile, actual residence and intent to remain at the new domicile must both occur." *Whetstone v. State, Dept. of Revenue*, 434 So.2d 796 (Ala. Civ. App. 1983).

The issue of domicile is also affected by the Servicemembers' Civil Relief Act, PL 108-189, formerly the Soldiers' and Sailors' Relief Act, 50 USCA §501, et seq. That federal law provides in substance that the original domicile of a person in the military does not change solely because the person is assigned to duty in a particular state. For example, if a soldier's state of domicile is Georgia, and the soldier is assigned to duty in Alabama, Alabama does not automatically become the soldier's state of domicile.

The above Act does not, however, prevent or prohibit a soldier from affirmatively abandoning an original domicile and establishing a new domicile in another state. The Oregon Tax Court explained in *Carr v. Dept. of Revenue*, 205 Ore. Tax Lexis 223, as follows:

The Soldiers' and Sailors' Civil Relief Act was enacted to protect servicemembers from the unfortunate financial consequences of being posted to duty away from their homes. See 50 USC A[[Sections 501 et seq. The Soldiers' and Sailors' Civil Relief Act was renamed and revised in 2003 to the Servicemembers' Civil Relief Act, PL 108 – 189. The issue in this appeal is whether those laws, in either their original or revised forms, shield Plaintiffs from the responsibility of paying income taxes to the state of Oregon for the 2001, 2002, and 2003 tax years.

The portion of the statutes at issue here differs in its original and revised versions, but not dramatically. The Soldiers' and Sailors' Civil Relief Act at section 574 states "(f)or the purpose of taxation of any person, or of his personal property, income, or gross income, by any state * * * such person shall not be deemed to have lost a residence or domicile in any state * * * solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other state * * * while, and solely by reason of being, so absent." Section 511 of the Servicemembers' Civil Relief Act reads that a servicemember "shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the * * * income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." It has not been lost on the courts, when construing those statutes, that each version uses the word "solely," and that solely means "exclusively." See *U.S. v. Minnesota*, 97 F. Supp. 2d 973 (D. Minn. 2000). No servicemember shall be deemed to have acquired a new domicile in the state of his or her posting "solely" because they are there under orders. However, a state may tax a servicemember as long as other factors exist, in addition to physical presence in the state, which leads to the conclusion that a servicemember has affirmatively chosen the state of posting as home.

Carr, 2005 Ore. Tax Lexis at 223.

The Taxpayer was domiciled in Alabama when he joined the military in 1988. As discussed, for the Taxpayer to have changed his domicile from Alabama, he must have (1) abandoned Alabama with the intent not to return, and (2) established a new domicile elsewhere, with the intent to remain permanently, or at least indefinitely.

The Taxpayer may have abandoned Alabama as his domicile, but he never established a new, permanent domicile outside of Alabama, as required to change his

domicile from Alabama.

The Taxpayer argues that he changed his domicile to Alaska when he completed the Form 2058.¹ I disagree. In *Clifton v. State of Alabama, Inc.* 96-180 (Admin. Law Div. 8/22/1996), the taxpayer also argued that as a member of the military, he had changed domiciles from Alabama to Florida by completing a Form 2058. The Revenue Department's Administrative Law Division, now the Tax Tribunal, rejected the taxpayer's claim, as follows:

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

¹ As indicated above, the Taxpayer has failed to submit a copy of Form DD 2058.

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.

Clifton at 2 – 3.

The above rationale applies in this case.

The final assessment, less the negligence penalty, is affirmed. Judgment is entered against the Taxpayers for tax and interest of \$4,096.65. Additional interest is also due from the date the final assessment was entered, July 27, 2015.

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

Entered August 8, 2016.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Warren W. Young, Esq.
Dennis Jackson (w/enc.)