

DARMAN C. PLACE
U.S. NAVAL WAR COLLEGE
686 CUSHING ROAD
NEWPORT, RI 02841,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-602

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Darman C. Place (“Taxpayer”) for 1999 and 2000 Alabama income tax. 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 October 29, 2009. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

ISSUE

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

FACTS

The Taxpayer was born in Tennessee in the late 1960’s. He moved to Alabama with his family in 1980 or 1981. He graduated from high school in Alabama, and joined the military in 1986.

The Taxpayer was stationed outside of Alabama from 1986 until 1998. In 1996, while stationed in Hawaii, the Taxpayer executed a DD Form 2058, which is a State of Legal Residence Certificate. The Taxpayer showed his place of legal residence/domicile

on the form to be Broward County, Florida. His mailing address on the form was Eglin Air Force Base, which is on the Florida panhandle.

The Taxpayer explained at the October 29 hearing that he completed the Form 2058 to show a Florida address because he and his wife intend to move to Florida when he retires from the military. He otherwise owned no property and had no other ties to Florida at that time. He did, however, indicate Florida as his state of residence on a will executed in 1998. He also registered to vote in Florida in 2002 or 2003, while stationed in Germany.

The Taxpayer was assigned to Fort Benning, Georgia in 1998 so that he could complete his college degree at Auburn University in Auburn, Alabama. The Taxpayer and his wife could not find a suitable place to rent, so they purchased a house in Smith Station, Alabama, which is midway between Fort Benning and Auburn. The Taxpayer and his family lived in Alabama until the Taxpayer graduated in 2000, at which time they left Alabama. The couple subsequently sold the property in Alabama, and thereafter have had no ties to the State.

ANALYSIS

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 USCA 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 serviceperson 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 serviceperson as long as other factors exist, in addition to physical presence in the state, which leads to the conclusion that a serviceperson 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 1986. 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.

It can be argued that the Taxpayer had abandoned Alabama as his domicile before the years in issue because he lived outside of Alabama from 1986 until 1998. He did live in Alabama in 1999 and 2000, but that stay was only temporary. But while the Taxpayer may have abandoned Alabama as his domicile, 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 Florida when he completed the Form 2058 in 1996. 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 Administrative Law Division 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 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. While the Taxpayer expressed an intent to make Florida his home in the future, he has not yet moved to and established a new domicile in Florida. He was thus still domiciled in Alabama in the subject years.

The Department assessed the Taxpayer based on IRS information. It presumably allowed him the standard deduction. The Taxpayer testified at the October 29 hearing that he claimed itemized deductions on his 1999 and 2000 federal returns. Consequently, he should also be allowed to itemize on his Alabama returns for those years.

The Taxpayer is directed to file 1999 and 2000 Alabama returns, and also provide copies of his federal returns for those years. The returns will be submitted to the Department for review and response. Appropriate action will be taken after the Department responds.

Entered November 16, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
Major Darman C. Place
Tony Griggs