

STEVEN C. & DEVONA R. GAMBLE §
1322 HIGHWAY 49 EAST §
CHARLOTTE, TN 37036, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 07-585

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER ON TAXPAYERS' APPLICATION FOR REHEARING

The Revenue Department assessed Steven C. and Devona R. Gamble (together "Taxpayers") for 2005 income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A Final Order was entered on October 16, 2007 affirming the final assessment because the Taxpayers failed to comply with a Preliminary Order. Steven Gamble (individually "Taxpayer") timely applied for a rehearing, in which he claimed he resided in Tennessee in 2005. A hearing was conducted on February 8, 2008. The Taxpayer attended the hearing. Assistant Counsel Glen Powers represented the Department.

The Taxpayers initially filed a joint 2005 Alabama income tax return. The Department audited the return, and during the audit the Taxpayers filed an amended 2005 married, filing separate return in Devona Gamble's name only. The Department rejected the amended return because, according to the Department, since the Taxpayers initially filed a joint return, they can only file a joint amended return, see Reg. 810-3-27-.01(1)(b)3. It consequently assessed the Taxpayers jointly for the 2005 tax due.

Dept. Reg. 810-3-27-.01(1)(b)3. provides that the election to file a joint Alabama return is irrevocable after the due date of the return. The same regulation also provides,

however, that to file a joint return both taxpayers must have resided in Alabama in the tax year. See, Reg. 810-3-27-.01(1)(b)1.(ii). This case thus turns on whether the Taxpayer had changed domiciles from Alabama to Tennessee before 2005.

The Taxpayer is a trained nurse. He and his wife and children lived in Hoover, Alabama until 2004. He testified that he took a job in March 2004 with a company based in Nashville, Tennessee. The company required him to move to Nashville as a prerequisite for the job. He consequently moved to Nashville in March 2004, where he lived with relatives and friends. He opened a bank account in Nashville, and also registered to vote in Tennessee.

The Taxpayer's wife and children continued to live in Hoover, Alabama because the oldest child was scheduled to graduate from high school in 2005. The Taxpayers subsequently sold their house in Alabama in 2005. The wife and children thereafter moved to Nashville.

All individuals domiciled in Alabama are subject to Alabama income tax, even if they reside outside of Alabama during the year. Code of Ala. 1975, §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).

The undisputed evidence is that the Taxpayer moved to Tennessee in 2004 with the intent to abandon Alabama and remain in Tennessee permanently. He consequently changed domiciles to Tennessee at that time. He thus is not liable for Alabama income tax on the income he earned in Tennessee in 2005. The amended 2005 return filed by the Taxpayer’s wife should be accepted because the Taxpayer was a non-resident of Alabama in 2005, and thus could not file a joint Alabama return with his wife in that year.

The 2005 final assessment and the October 16, 2007 Final Order are voided.

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

Entered February 13, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
Steven C. Gamble
Kim Peterson