

MICHAEL B. BRAY
4957 MCDONALD ROAD
THEODORE, AL 36582,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

§

§

§

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 08-840

FINAL ORDER

The Revenue Department assessed Michael B. Bray ("Taxpayer") for 2005 and 2006 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 December 22, 2009. The Taxpayer and his attorney, Michael McNair, attended the hearing. Assistant Counsel Duncan Crow represented the Department.

This is a domicile case. The issue is whether the Taxpayer was domiciled in Alabama in 2006, and thus subject to Alabama income tax in that year. Code of Ala. 1975, §40-18-2.

The Taxpayer filed a 2005 Alabama return on which he claimed a \$10,000 alimony deduction. The Department requested records verifying the alimony payments. The Taxpayer failed to provide the records. The Department consequently disallowed the deduction and entered the 2005 final assessment in issue.

The Taxpayer submitted records concerning his 2005 alimony payments before the December 22 hearing. The Department consequently reduced the Taxpayer's 2005 liability to \$275.50. The Taxpayer does not dispute that amount.

The Taxpayer filed a 2006 Alabama return on which he reported a \$10,000 alimony

deduction and other deductions, but no income. The Department allowed a \$6,000 alimony deduction, but also included income of \$299,078 earned by the Taxpayer in 2006. It assessed the Taxpayer accordingly. The Taxpayer appealed, claiming that he was not domiciled in Alabama in 2006.

The Taxpayer was domiciled in Alabama before 2006. He works as an engineering consultant, and consequently worked in various countries before 2006 as a consultant.

The Taxpayer was divorced in 2004 or early 2005. His ex-wife was awarded the couple's house in Alabama.

The Taxpayer was working in Hong Kong in May 2005 when he met his current wife, who is a citizen of Thailand. The couple were married in Thailand in September 2005. The couple also opened a joint bank account in Thailand, and the Taxpayer obtain a Thai hospital (healthcare) card. The Taxpayer's wife, Yendee Meesri, contracted for the couple to purchase a house in Thailand in April 2006. The transaction was closed in July 2006.¹

The Taxpayer testified at the December 22 hearing that when he got married in September 2005, he intended to live in Thailand permanently with his new wife. The Taxpayer's daughter confirmed at the December 22 hearing that her father told her and the rest of his family that he intended to live permanently in Thailand.

The Taxpayer returned to Alabama in September 2007 because his father was extremely ill. His father slowly recovered, and the Taxpayer testified that as soon as this case is finally resolved, he intends to return to Thailand to live permanently.

Alabama income tax is levied on every person domiciled in Alabama. Code of Ala.

¹ Only the wife could contract for and own a house in Thailand because that country does not allow a non-citizen, i.e., the Taxpayer, to own property in Thailand.

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, 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 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 Taxpayer's actions in 2005 and 2006 show that he had abandoned Alabama as his domicile and intended to live permanently in Thailand. He and his wife purchased a house in Thailand. They also opened a joint banking account in Thailand, and the Taxpayer obtained a Thai healthcare card. Importantly, the Taxpayer announced to his family in 2005 of his intent to live permanently in Thailand. The fact that the Taxpayer returned to Alabama in mid-2007 to tend to his ailing father did not show the Taxpayer's intent to return permanently to Alabama.

The 2005 final assessment, as adjusted, is affirmed. Judgment is entered against the Taxpayer for \$275.50, plus applicable interest. The 2006 final assessment is voided.

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

Entered December 28, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Michael S. McNair, Esq.
Kim Peterson