

PHILIP M. CASTLEBERRY
2740 SNOW ROGERS ROAD
GARDENDALE, AL 35071-2165,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

§

§

§

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 09-1233

FINAL ORDER

The Revenue Department assessed Philip M. Castleberry ("Taxpayer") for 2005 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 April 28, 2010. The Taxpayer attended the hearing. Assistant Counsel John Breckenridge represented the Department.

The Taxpayer failed to file a 2005 Alabama income tax return. The Department received IRS information showing that the Taxpayer received wages of over \$64,000 and gambling income of almost \$16,000 in 2005. He also claimed an Alabama address on his 2005 federal return. The Department entered the 2005 final assessment in issue based on that information.

The Taxpayer explained at the April 28 hearing that he was born in Alabama but grew up in California. He moved back to Alabama in the early 1990's, but has never owned a home in Alabama. Rather, he testified that he has always worked in various states as a heavy equipment operator. He generally worked on a project in a state for six months to a year, and was then assigned to another job or project in the same or another state. He was employed by an Alabama-based employer in 2005.

He lived and worked in Florida in early 2005. He was transferred to a job in Greenwood, Mississippi in April 2005, where he stayed until February 2006. He

subsequently retired due to ill health. He moved in with his brother in Gardendale, Alabama in 2008.

The Taxpayer explained that he always used his step-mother's address in Alabama as his permanent address because he needed a permanent address for insurance purposes and to get a credit card. The Alabama employer that he worked for in the subject year did not withhold Alabama tax from his wages because he worked outside of Alabama in the year. Those wages were deposited by his step-mother into an Alabama bank account in the Taxpayer's name. The Taxpayer conceded that he has never filed a state return and reported and paid income tax in a state in which he worked, even if the state had an income tax.

An individual is liable for Alabama income tax if the individual earns income from Alabama sources or is domiciled in Alabama. See generally, Code of Ala. 1975, §40-18-2. If an individual is domiciled in Alabama, the individual is liable for Alabama tax on income earned both inside and outside of Alabama. The individual is, however, also allowed a credit against the Alabama tax due for any income tax paid on the income to any other state. Code of Ala. 1975, §40-18-21.

The Taxpayer in this case earned income in Mississippi in 2005. Consequently he is not liable for Alabama income tax on the foreign-sourced income unless he was domiciled in Alabama in that year.

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, even if

they reside and work 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 lived in California until he moved back to Alabama in the early 1990's. He thereafter temporarily lived and worked in various states for relatively short periods, including in Florida and Mississippi in 2005. The issue is where was the Taxpayer domiciled in that year.

Every person must have one and only one domicile. By default, the only state that qualified as the Taxpayer's domicile in 2005 was Alabama. He did not intend to reside permanently or indefinitely in Florida, Mississippi, or any other state in that year, and his only permanent ties were with Alabama. He used his step-mother's address as his permanent address for federal income tax, credit card, insurance, and other purposes. He had relatives in Alabama, and he had an Alabama bank account into which his wages were deposited. Consequently, because he was domiciled in Alabama in 2005, he is liable for Alabama income tax in that year.

The tax and interest as assessed by the Department is affirmed. The penalties are, however, waived for reasonable cause under the circumstances. Judgment is entered against the Taxpayer for \$3,338.45. Additional interest is also due from the date the final

assessment was entered, January 15, 2010. The Department's Collection Services Division should contact the Taxpayer in due course concerning payment arrangements.

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

Entered May 3, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
Philip M. Castleberry
Barry Estes