

MARTIN D. BROOKS
1943 LOOKOUT CIRCLE
GADSDEN, AL 35904,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 12-263

FINAL ORDER

The Revenue Department assessed Martin D. Brooks (“Taxpayer”) for 2007 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 January 31, 2013. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer failed to file a 2009 Alabama income tax return. The Department received IRS information indicating that the Taxpayer was required to file an Alabama return for that year. It consequently assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information.

The Taxpayer grew up in Gadsden, Alabama. He lived and worked in Birmingham until he lost his job in 2005. He moved back to temporarily live with his parents in Gadsden at that time.

The Taxpayer obtained a job as a salesman in 2006. The job required him to travel to various states selling his products in 2006 and 2007. He became romantically involved with a female from Orlando, Florida in the Fall of 2007, and moved to Orlando in October 2007. The relationship ended in April 2008, and the Taxpayer moved back to his parents’

home in Gadsden at that time. He currently lives with and cares for his ill mother in Gadsden.

The Taxpayer explained that when he worked as a traveling salesman in 2006 and 2007, he stayed in motels and hotels in the various locations he traveled to. He worked as an independent contractor, and thus no state income tax was withheld from his income. He also did not file state income tax returns in those years.

Alabama income tax is levied on individuals residing in Alabama, Code of Ala. 1975, §40-18-2(1), and also on individuals residing and earning income outside of Alabama that are still domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A persons' domicile is his true, fixed home to which he intends to return when absent. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). In order to change domiciles from Alabama, a taxpayer must abandon Alabama, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. The burden is on a taxpayer asserting a change of domicile to prove that a change of domicile has occurred. The presumption is in favor of the original or former domicile, as against a newly acquired one. See generally, *Cobb v. State, Inc.* 96-272 (Admin. Law Div. 2/24/97).

The Taxpayer in this case was originally domiciled in Alabama because he was born in Alabama and lived and worked in Alabama until 2006. He temporarily traveled to and stayed in various states pursuant to his job as a traveling salesman in 2006 and until October 2007. He clearly never established another permanent domicile outside of Alabama before October 2007. Consequently, he remained domiciled in Alabama through at least until October 2007.

The Taxpayer may have changed domiciles from Alabama when he moved to Florida in October 2007 because he testified that he never intended to return to Alabama. That is irrelevant in this case, however, because the Taxpayer testified that he did not work anywhere from October 2007 through the end of the year. Consequently, the Taxpayer earned the 2007 income in issue before October 2007 while he was still domiciled in Alabama. Alabama income tax is thus due on that income.

The tax and interest due as assessed by the Department is affirmed. The penalties are waived for reasonable cause under the circumstances. Judgment is entered against the Taxpayer for \$794.39. Additional interest is also due from the date the final assessment was entered, January 24, 2012.

The Department presumably computed the tax due by allowing the Taxpayer the standard deduction and a personal exemption. If the Taxpayer has records verifying his unreimbursed business expenses (or other deductible amounts) for 2007, he may apply for a rehearing within 15 days. He will then be allowed a reasonable time to prepare and file a return for the year. He will also be required to submit records verifying all deductions claimed on the return.

The Taxpayer may also appeal this Final Order to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 1, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Martin D. Brooks
Stoney Trammell