

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. INC. 89-141

RICHARD W. CHIN
P.O. Box 1666
Daphne, AL 36526,

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Taxpayer.

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FINAL ORDER

The Revenue Department assessed income tax against Richard W. Chin (Taxpayer) for the years 1983, 1984, 1985 and 1986. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on August 14, 1990. Frederick G. Helmsing, Esq. and John J. Crowley, Jr., Esq. appeared for the Taxpayer. Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence and arguments presented by both parties.

FINDINGS OF FACT

The primary issue in dispute is whether the Taxpayer was domiciled in Alabama during 1983 and 1984 and therefore liable for Alabama income tax in those years pursuant to Code of Ala. 1975, §40-18-2. A second related issue concerns the taxability of proceeds received by the Taxpayer from the installment sale of stock in an Alabama corporation (Chin Industries). Two other issues initially disputed by the parties have been settled. Those issues involve whether the Taxpayer is entitled to his distributive share of losses in two Subchapter S corporations in 1985 and 1986

(the Department concedes that he is), and the correct year in which certain personal expenses paid by Chin Diversified, Inc. should be included as income (\$27,950.72 in 1983 and \$4,416.19 in 1985).

The relevant facts concerning domicile are as follows: The Taxpayer joined his family's laundry and dry cleaning business, Chin Industries, Inc., in Mobile in 1972. The Taxpayer worked at Chin Industries and lived with his wife in Mobile from 1972 until the couple divorced in 1980.

The Taxpayer purchased a house and moved across Mobile Bay to Daphne, Alabama in late 1980. The Taxpayer obtained custody of his two young daughters after his divorce, but the children lived with the Taxpayer's parents in Mobile.

The Taxpayer negotiated for the sale of Chin Industries during 1981 and 1982. The Taxpayer is an avid boater and he intended to retire after the sale of the business and cruise on his 44 foot sailboat for extended periods in the Gulf of Mexico.

In anticipation of the sale of Chin Industries, the Taxpayer moved out of his Daphne house in July, 1982 and rented a condominium just across the Alabama border in Perdido Key, Florida.

The Taxpayer stored his household furniture at the condominium. The Taxpayer docked his sailboat at a Florida marina near Perdido Key and after July, 1982 lived primarily on his boat but also occasionally stayed at the rented condominium. The lease on the condominium expired in May, 1983 and was not renewed.

The Taxpayer consulted an attorney and executed a "Declaration

of Domicile and Citizenship" on July 21, 1982 indicating his intent to leave Alabama and make Florida his permanent residence and domicile. The Taxpayer also applied for a Florida driver's license, registered to vote in Florida, rented a safety deposit box at a Florida bank, removed the homestead exemption on his Daphne residence, removed his name from the Baldwin County voting rolls, executed a last will and testament in Florida, and wrote numerous letters to various clubs, banks, and other organizations in Alabama either changing his membership status to non-resident or giving notice of his change of address from Alabama to Florida. The Taxpayer listed the rented Florida condominium as his new permanent address on all of the above documents.

The sale of Chin Industries closed in December, 1982. Thereafter, the Taxpayer was not actively involved in any business in Alabama but continued to do business with a bank and various stock brokerage firms in Mobile. The Taxpayer continued to live on his boat but also regularly travelled to Mobile to visit his children or to consult with his accountant. The Taxpayer's accountant served as his business manager and after July, 1982 the accountant received all of the Taxpayer's mail and handled all of the Taxpayer's day-to-day personal and investment business.

The Taxpayer purchased a house and moved his children to Montrose in Baldwin County in July, 1983 because he felt the children were becoming too much of a burden on his elderly parents.

The Taxpayer hired a full-time nanny to live with the children in

Montrose and he continued to live and sail on his boat. The Montrose house was approximately 45 to 50 minutes from Perdido Key and the Taxpayer visited his children in Montrose almost every week.

The Taxpayer wanted to eventually settle down with his children and toward that end searched for a permanent residence in Florida as he sailed during 1983 and 1984. However, the Taxpayer failed to find a satisfactory location in Florida and eventually moved in with his children at the Montrose house in early 1985 because he wanted to help them with their school work and social development. The Taxpayer also moved his sailboat back to Alabama at that time.

The Taxpayer lived with his children in Montrose and filed Alabama resident returns from 1985 through 1988. The Taxpayer also filed a 1984 resident Alabama return on April 17, 1985. The 1984 return listed the accountant's Mobile post office box as the Taxpayer's permanent address and also indicated that the Taxpayer had been a full time resident of Alabama during 1984.

CONCLUSIONS OF LAW

A person's domicile is his permanent home to which he intends to return when absent. State ex rel. Rabren v. Baxter, 239 So.2d 206. A person's domicile is not changed by absence alone. Rather, the old domicile must be abandoned and a new permanent residence must be established elsewhere with the intent to remain at the new location permanently. Absence from an old domicile without

establishment of a new permanent residence elsewhere is not sufficient to cause a change of domicile. Rabren v. Mudd, 234 So.2d 549; Whetstone v. State, 434 So.2d 796. The presumption is in favor of the old domicile and the burden is on the person asserting a change of domicile to prove that a change has in fact occurred. Whetstone v. State, supra.

In this case the Taxpayer intended to live on his boat for a while and then settle permanently with his two daughters at some point in the future, preferably in Florida. However, the Taxpayer failed to find a satisfactory permanent home in Florida as he sailed during 1983 and 1984 and eventually moved back to Alabama in early 1985. The Taxpayer thus failed to establish a permanent home in Florida during 1983 and 1984 and therefore remained domiciled in Alabama during those years.

The Taxpayer relies on his actions in mid-1982 (Declaration of Domicile, change of drivers license, etc.) as proof that he moved permanently to Florida at that time. However, at best the actions show an intent to settle permanently in Florida in the future. Another view is that the actions were self-serving attempts to create evidence of a change of domicile so as to avoid Alabama tax on the proceeds from the pending sale of Chin Industries.

The Taxpayer listed the rented Florida condominium as his new permanent residence on the various documents executed in 1982 even though he clearly did not intend to live permanently at the condominium and the lease on the unit expired in May, 1983 and was

not renewed. The change of address letters giving the condominium as the Taxpayer's new mailing address are also suspect because after July, 1982 the Taxpayer's accountant in Mobile received all of the Taxpayer's mail and handled all of his day-to-day business.

The other actions, i.e., change of drivers license and voter registration to Florida, execution of will in Florida, etc., had little if any practical effect on the Taxpayer and the Taxpayer could have lived and sailed on his boat as he intended without taking any of the actions that he now relies on as showing a change of domicile.

The Taxpayer cites Rabren v. Mudd, supra, in support of his case. The Taxpayer's actions are almost identical to the facts in Mudd. However, unlike the taxpayer in Mudd, the Taxpayer in this case failed to establish a permanent home in Florida to which he intended to return when absent. The similarity of the circumstantial evidence in this case and Mudd only indicates that the Taxpayer knew about and tried to copy the taxpayer's successful actions in Mudd.

The Taxpayer also retained close ties with Alabama during 1983 and 1984. He visited Alabama almost every week, either to see his children or on business. The Taxpayer also filed a 1984 Alabama resident return showing himself as a full year resident and giving Mobile as his permanent address. The Taxpayer now argues that the return was erroneously filed, but it is convincing evidence that both the Taxpayer and his accountant considered the Taxpayer to

have been a full time resident of Alabama during 1984.

The above considered, a discussion of the taxability of the installment sales proceeds received from the sale of Chin Industries is not necessary. All income received by a person domiciled in Alabama is subject to Alabama income tax.

However, the Taxpayer does correctly argue that the 1984 preliminary assessment in issue was not timely entered within three years as required by Code of Ala. 1975, 540-18-45. The preliminary assessment for 1984 was entered on November 29, 1988. As established by the Department, the Taxpayer filed his 1984 Alabama return on April 17, 1985, or more than three years prior to entry of the preliminary assessment for that year. Accordingly, the 1984 preliminary assessment was not timely entered and should be reduced and made final showing no tax due.

The Department is directed to adjust the assessments as set out herein or as otherwise previously agreed by the parties. The assessments should thereafter be made final, with appropriate interest

Entered on May 15th, 1991.

BILL THOMPSON
Chief Administrative Law Judge