

MICHAEL F. & GLORIA RUSSELL	§	STATE OF ALABAMA
2201 Canter Drive		DEPARTMENT OF REVENUE
Phenix City, AL 36867,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 01-612
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### **OPINION AND PRELIMINARY ORDER**

The Revenue Department assessed 1990 income tax against Michael F. and Gloria Russell (together "Taxpayers"), and 1991 through 1995 income tax against Michael F. Russell (individually "Taxpayer"). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 8, 2002. James Cox represented the Taxpayers. Assistant Counsel Mark Griffin represented the Department.

### **ISSUES**

The primary issue in this case is whether the Taxpayer was domiciled in Alabama during the subject years, and thus liable for Alabama income tax pursuant to Code of Ala. 1975, §40-18-2. If the Taxpayer was not domiciled in Alabama in those years, a second issue is whether Gloria Russell is liable for Alabama income tax for 1990.

### **FACTS**

The Taxpayers were married when they moved from Georgia to Phenix City, Alabama in 1978. The Taxpayer was in the military at that time. He left the military in 1985, and began working as a civilian contractor at Fort Rucker.

The Taxpayers experienced marital problems and separated in early 1989. The Taxpayer began looking for work away from Alabama, and took a job as a flight

instructor in Wisconsin in April 1989. He moved to Wisconsin at that time. The Taxpayer's wife filed for divorce in Alabama, and sent divorce papers to the Taxpayer in Wisconsin to sign. However, he failed or refused to sign the papers. His wife did not pursue the matter.

The Taxpayer's employer transferred him to Dallas, Texas in May 1990. The Taxpayer opened a checking account, obtained a drivers license, and built a house in Texas at that time. (He has never registered to vote anywhere.) He testified that when he moved to Texas, he intended to live and work in Texas for the foreseeable future. He tried to talk his wife into moving to Texas with their two sons, but she refused.

In February 1991, the Taxpayer was offered a lucrative job as a flight instructor in Egypt. He took the job, rented his house in Dallas, and moved to Egypt. He knew at the time that he would move back to the U.S. sometime in the future, probably to Texas. He worked six weeks on and two weeks off while in Egypt. During his two weeks off, he generally visited his brother in California, his sister in Arkansas, or his mother in Illinois. He also occasionally visited his two sons that lived with his wife in Alabama. He always stayed in a motel while visiting Alabama.

In mid-1992, the Taxpayer's wife expressed an interest in starting a construction business. The Taxpayer agreed to finance the business, both to help his wife financially and to build a business that perhaps his sons could take over. The Taxpayer occasionally helped out and wrote checks for business-related purposes while visiting in Alabama. However, he never received any reimbursement or other income from the construction business during the subject years.

The Taxpayer's wife finally agreed to reconcile in late 1995. The Taxpayer consequently quit his job in Egypt and moved back to Alabama in January 1996. The Taxpayers have lived together and paid Alabama taxes since that time.

The Taxpayer filed part-year resident Wisconsin returns in 1989 and 1990. He did not file 1990 or 1991 Texas returns because Texas does not have an income tax. He also did not file Alabama returns from 1990 through 1995. The Taxpayer's wife failed to file a 1990 Alabama return, but filed Alabama returns in 1991 through 1995. The Taxpayers filed joint federal returns in 1989 through 1995 showing Alabama as their address. The Taxpayer explained that for convenience, he and his wife used the preprinted address sticker provided by the IRS on each return, and that it made sense to use the Alabama address instead of his mailing address in Egypt.

The Department determined that the Taxpayer was domiciled in Alabama in 1990 through 1995. It accordingly assessed the Taxpayer and his wife jointly for 1990 because the wife had not filed a return in that year. It assessed the Taxpayer individually for 1991 through 1995.

### **ANALYSIS**

All individuals domiciled in Alabama are subject to Alabama income tax. Section 40-18-2(7). A person's domicile is his true, fixed home to which he intends to return when absent. A change of domicile from Alabama occurs only if (1) the person abandons Alabama with the intent not to return, and (2) establishes a new permanent domicile elsewhere with the intent to remain permanently, or at least indefinitely. The presumption is that a change of domicile has not occurred, and the burden is on the person claiming a change of domicile to prove that a change has occurred. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983); *James E. Willis v. State of Alabama, Inc.* 99-394 (Admin. Law Div. 12/3/99).

The Taxpayer argues that while he did not intend to remain permanently in Wisconsin, he did intend to live permanently, or at least indefinitely, in Texas when he moved there in 1990. He thus contends that he changed his domicile from Alabama to Texas at that time. I agree.

There was little hope that the Taxpayer and his wife would reconcile in 1990. Consequently, the Taxpayer never expected or intended to return to Alabama to live when he moved to Texas in 1990. He thus effectively abandoned Alabama as his domicile at that time. He also established Texas as his new domicile. He opened a bank account in Texas, obtained a Texas drivers license, and built a house in Texas. He also tried to talk his wife into moving to Texas with their two sons, which shows an intent to remain in Texas. Further, the Taxpayer kept the house in Texas when he moved to Egypt, with the idea that once he left his job in Egypt, he would return to Texas to live and work. Consequently, the Taxpayer was domiciled in Texas, not Alabama, during the years in issue.

The Department should investigate and determine if Gloria Russell is individually liable for 1990 Alabama income tax, and if so, in what amount. A Final Order will then be entered voiding the 1991 through 1995 final assessments against the Taxpayer, and appropriately adjusting the 1990 final assessment.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 1, 2002.