

ROBERT MCMAHON  
1856 Cambric Lane  
Leeds, AL 35094-8800,

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. INC. 98-278

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed income tax against Robert McMahon (ATaxpayer@) for 1989 through 1992. 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 September 22, 1998. The Taxpayer represented himself. Assistant Counsel Antoinette Jones represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama in 1989 through 1992, and thus subject to Alabama income tax in those years pursuant to Code of Ala. 1975, § 40-18-2(7).

The Taxpayer was born in Alabama in 1952. He lived in Alabama until 1982, when he was hired by Avis Rent-A-Car and transferred to Columbus, Georgia. He married in 1984 while living in Columbus. Avis transferred the Taxpayer to Raleigh, North Carolina in 1985, and later to Wilmington, North Carolina. He lived in Wilmington until the Fall of 1990, when Avis transferred him to Atlanta, Georgia. The Taxpayer left Avis, and moved back to Alabama in the Spring of 1992 to be near his parents.

The Taxpayer sold his house in Alabama when he moved in 1982. The Taxpayer also changed his voter and driver's license registration when he moved from Alabama. Except for his parents living in Alabama, the Taxpayer had no ties to Alabama from 1982 until he moved back in 1992.

The Taxpayer failed to file federal income tax returns for the years in issue. The IRS prepared returns for the Taxpayer based on the best available information, the Taxpayer's W-2 forms. The IRS audit was conducted after the Taxpayer moved back to Alabama in 1992. Consequently, the federal returns showed the Taxpayer's address as Leeds, Alabama.

The IRS shared its audit information with the Department. The Department investigated and determined that the Taxpayer also had not filed Alabama returns for the subject years. The Department accordingly assessed the Taxpayer for Alabama tax using the IRS information. The Taxpayer appealed.

The Taxpayer argues he was not domiciled in Alabama during the subject years, and thus was not liable for Alabama income tax in those years. I agree, except concerning 1992.

Alabama income tax is levied on every person domiciled in Alabama. Section 40-18-2(7). A person's domicile is his true, fixed home to which he intends to return when absent. To change domiciles from Alabama, a person must abandon Alabama as his domicile and establish a new residence elsewhere with the intent to remain permanently, or at least indefinitely. See generally, Whetstone v. State, 434 So.2d 796 (1983); Jacobs v. Ryals, 401 So.2d 776 (1981).

The Taxpayer abandoned Alabama when he moved to Columbus, Georgia in 1982. The Taxpayer was aware that Avis could transfer him at any time, which it did several times over the next 10 years. But while the Taxpayer did not reside at each location permanently, his stay was for an indefinite period. There is also no evidence that he intended to return to Alabama at any time from 1982 until he actually returned in 1992.

Consequently, the Taxpayer was not domiciled in Alabama during 1989, 1990, and 1991, and thus was not

liable for Alabama income tax in those years. The final assessments for those years are voided.

The Taxpayer moved back to Alabama in the Spring of 1992. He re-established Alabama as his domicile at that time, and thus was subject to Alabama income tax in that year. The issue is whether the Department correctly calculated the Taxpayer's 1992 liability.

The Taxpayer filed what he characterized as a zero return for 1989 through 1992 at the September 22 hearing. A copy of the Taxpayer's 1992 zero return, with attachments submitted by the Taxpayer, is attached to and made a part of this Final Order.

The Taxpayer argues that a zero return must be recognized as a valid return, citing U. S. v. Long, 618 F.2d 74 (9th Cir. 1980), and U. S. v. Kimball, 896 F.2d 1218 (9th Cir. 1990). However, those cases involved a criminal prosecution for failure to file a return under 26 U.S.C. § 7203, not a civil assessment action.

In any case, the majority view is that a zero return does not constitute a return. Rather, there must also be an honest and reasonable intent to supply the information required by the Tax Code. U. S. v. Moore, 627 F.2d 830, 835 (1980). Tax forms that do not contain information upon which tax liability may be computed are not returns within the meaning of the Internal Revenue Code. Edwards v. C.I.R., 680 F.2d 1268 (1982).

Even if the 1992 zero return is treated as a return, if the Department determines that the tax reported on the return is incorrect, it is authorized to compute the Taxpayer's liability using the best information available. Code of Ala. 1975, § 40-2A-7(b)(1)a. The zero amounts reported on the return are clearly incorrect given the IRS information showing the Taxpayer had W-2 income in 1992. The Department thus correctly recomputed the Taxpayer's liability using the best information available.

The burden was on the Taxpayer to prove that the Department's calculations are incorrect. Code of Ala. 1975, § 40-2A-7(b)(5)c. The Taxpayer failed to do so. The 1992 final assessment is accordingly affirmed.

Judgment is entered against the Taxpayer for 1992 tax, penalty, and interest of \$1,251.72, plus additional

applicable interest.

The Taxpayer and his wife have lived in Alabama since 1992, but have not filed Alabama returns. The Department should investigate and determine if the Taxpayer and his wife are liable for Alabama income tax since 1992.

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

Entered November 23, 1998.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

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