

JOHN F. MEAGHER, III
18 Steeplechase
Auburn, AL 36830,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-315

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed 1993 income tax against John F. Meagher, III (ATaxpayer@). 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 20, 1999. The Taxpayer and CPA Hal Huguley appeared at the hearing. Assistant Counsel David Avery represented the Department.

The issue in this case is whether the Taxpayer was domiciled in Alabama in 1993. If so, he is liable for the tax in question.

The Taxpayer was born in Anniston, Alabama in the early 1960's. He moved with his family to Auburn, Alabama in 1969. He lived in Auburn and graduated from Auburn University in Civil Engineering in 1987.

After graduating, the Taxpayer worked for Harmon Engineering in Auburn until 1992, when he was hired by Hardaway Company. Hardaway is based in Columbus, Georgia, and performs work in the Southeastern United States.

Hardaway initially assigned the Taxpayer to the Miami, Florida area in 1992. Hardaway reassigned the Taxpayer to Atlanta, Georgia in June 1993, Freeport, Texas in February 1995, and Jamestown, South Carolina in February 1997. He lived in South Carolina until June 1998, when he was hired by Johnson Brothers Corporation. Johnson Brothers transferred the Taxpayer to Orlando, Florida, where he presently resides.

The Taxpayer purchased a mobile home in Auburn in 1988, where he lived until he moved to Florida in 1992. He still owns the mobile home, and stays there when he visits his parents or attends Auburn University football games. He also keeps an old Datsun 300ZX in Auburn. He never uses that vehicle because he has used a company vehicle since 1992. The Taxpayer also maintains a savings account in a bank in Auburn.

The Taxpayer prepared and filed Alabama income tax returns for 1993, 1994 and 1995. The returns mistakenly requested refunds of tax withheld by the State of Georgia. The Department erroneously issued the refunds to the Taxpayer.

The Taxpayer filed amended 1993, 1994, and 1995 Alabama returns in 1996. When the Department questioned the amended returns, the Taxpayer hired a CPA to handle the returns. The CPA discovered that the Taxpayer had erroneously received Alabama refunds in 1993, 1994, and 1995. The CPA consequently prepared more amended Alabama returns for the Taxpayer. The Taxpayer filed the amended returns and repaid the amounts that had been erroneously refunded by Alabama. The Taxpayer also filed Georgia returns for those years, and paid the Georgia tax due.

The threshold issue is whether the Taxpayer was domiciled in Alabama in 1993. A person's domicile is his true, fixed home to which he intends to return when absent. To change domiciles, a person must abandon the former domicile with the intent never to return, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. The burden is on the person asserting a change of domicile to prove that a change has in fact occurred. When the facts are conflicting, the presumption is strongly in favor of the original domicile as against a newly acquired one. Jacobs v. Ryals, 401 So.2d 776 (Ala. 1981); Whetstone v. State, 434 So.2d 796 (1983).

Arguably, the Taxpayer abandoned Alabama with the intent not to return when he moved to Florida

in 1992. However, he did not change domiciles from Alabama at that time because he never established a new domicile in Florida or elsewhere with the intent to remain permanently. The Taxpayer lived in Florida from September 1992 until June 1993, Georgia from June 1993 until February 1995, Texas from February 1995 until February 1997, and South Carolina from February 1997 until June 1998. Finally, he moved to Florida in June 1998, where he currently resides. The Taxpayer's short stays in Florida, Georgia, Texas and South Carolina were clearly temporary in nature. He failed to establish a domicile in any of those States with the intent to remain permanently. Consequently, he remained domiciled in Alabama in those years.

The Taxpayer can either pay the 1993 final assessment in issue, less a credit for 1993 tax paid to the State of Georgia, or file another amended 1993 return and claim his business-related expenses. The Taxpayer's CPA should notify the Administrative Law Division by November 5, 1999 as to which option he intends to follow. An appropriate Order will then be entered. If the Taxpayer intends to file an amended return, he should be prepared to provide records to the Department verifying all claimed expenses.

This case involves only 1993. However, the Department also has assessments pending against the Taxpayer for 1994 and subsequent years. The Taxpayer should be allowed the same options indicated above for those years. (The Taxpayer would not be entitled to a credit for taxes paid in Texas or Florida because those states do not have an income tax.)

The Taxpayer moved to Orlando, Florida in June 1998. He testified at the September 20 hearing that he may intend to remain in Orlando indefinitely. If that is the case, and the Taxpayer's intent to remain in Florida is substantiated by the surrounding facts, the Taxpayer would have established a change of domicile to Florida, and would no longer be liable for Alabama income tax.

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).

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Entered on October 13, 1999.