

DARMAN C. PLACE
U.S. NAVAL WAR COLLEGE
686 CUSHING ROAD
NEWPORT, RI 02841,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-602

SEVENTH PRELIMINARY ORDER

This appeal involves final assessments of 1999 and 2000 Alabama income tax entered against the above Taxpayer. The Taxpayer joined the U.S. Army in 1986. He officially changed his domicile to Florida in 1996. The Army stationed the Taxpayer in Alabama in 1999 and 2000. He is currently stationed outside of Alabama.

The Department presumably received IRS information showing that the Taxpayer resided in Alabama in 1999 and 2000. It assessed him accordingly. The Taxpayer appealed.

On appeal, the Taxpayer filed 1999 and 2000 non-resident Alabama returns, which showed that his military pay was not sourced in Alabama. The Department responded that its position was that the Taxpayer was a resident of Alabama in the subject years, and thus liable for Alabama tax in those years.

The Servicemembers Civil Relief Act (F/K/A the Soldiers' and Sailors' Civil Relief Act), 50 U.S.C. §501, et seq., provides that military personnel "shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the . . . income of the servicemember by reason of being absent or present in any tax jurisdiction of the U.S. solely in compliance with military orders." 50 U.S.C. §511.

The above federal statute was intended to prevent Alabama (or any other state) from taxing a military member that is present in the state solely because he or she is stationed in the state. A service member is not protected by the Act, however, if the member affirmatively elects by his or her actions to establish Alabama as their domicile. See generally, *Carr v. Department of Revenue, State of Oregon*, Oregon Tax Court, 2005 Ore. Tax Lexis 223; see also, Department Reg. 810-3-2-.01(1)(c). The issue in this case is thus whether the Taxpayer established Alabama as his permanent domicile while residing here on active duty in 1999 and 2000.

The Taxpayer claims in his notice of appeal that he changed his official residence to Florida in 1996. He concedes that he was stationed in Alabama in 1999 and 2000, but that he never intended to change his domicile to Alabama. Rather, he executed a last will and testament in 1998 in which he listed Florida as his state of residence and domicile.

The Taxpayer also concedes that he obtained an Alabama drivers license and registered to vote in Alabama. He explained, as follows:

I did change my drivers license to an Alabama drivers license while I was living here during the years in question; I did the same thing when I was stationed in Hawaii, Tennessee, North Carolina, and Germany. When I applied for the Alabama drivers license, they registered me to vote, I asked the DMV official if this would be an issue because of my home of record being in Florida along with my legal state of residency, she informed me it would not and that as long as I only voted in one state there would not be any legal issues. The same thing happened in Tennessee when I change my drivers license to a Tennessee license; they concurrently registered me to vote. Upon moving to Germany I re-registered to vote in Broward County, Florida. At no time was I aware of any issues, nor was my intent ever to reestablish the State of Alabama as my legal residency.

The above facts as asserted by the Taxpayer, if correct, would indicate that the Taxpayer did not establish a domicile in Alabama when stationed on duty in the State in

1999 and 2000. In that case, the Taxpayer would not owe Alabama tax in those years pursuant to the Servicemembers Civil Relief Act.

The Department should notify the Administrative Law Division by May 22, 2009 if it considers the Taxpayer to have been domiciled in Alabama in the subject years. If so, it should explain why. The case will then be set for hearing, or other appropriate action will be taken.

Entered April 29, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
Major Darman C. Place
Tony Griggs