

GEORGE SANKS, JR.
5301 Cranston Drive
Columbus, GA 31907,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-524

FINAL ORDER

The Revenue Department assessed 1996 Alabama income tax against George Sanks, Jr. (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 November 28, 2000. The Taxpayer attended the hearing. Assistant Counsel Gwen Garner represented the Department.

ISSUE

The primary issue in this case is whether the Taxpayer was domiciled in Alabama in 1996, and thus subject to Alabama income tax pursuant to Code of Ala. 1975, ' 40-18-2(7). If the Taxpayer was subject to Alabama tax in 1996, a second issue is whether the penalty assessed by the Department should be waived for reasonable cause.

FACTS

The Taxpayer was born and raised in Alabama. His mother still resides in Alabama at H #2 Caney Street, Seale, Alabama 36875.

The Taxpayer joined the military in 1968. He served in the military throughout the world until he retired in 1989. He filed Alabama income tax returns during the 21 years he was in the military.

After leaving the military, the Taxpayer began working as a long-haul truck driver for a company based in Atlanta, Georgia. He worked for that company for three months, during which time he stayed in a boarding house in Atlanta when not on the road. The Taxpayer later worked for another trucking company based in Mississippi. He is presently employed by a trucking company based in Georgia.

The Taxpayer testified that after leaving the military in 1989, he never lived in a permanent location. Rather, while on the road, he slept in his truck or at a motel. When not on the road, he stayed with his mother in Alabama. Beginning in 1996, he also stayed with his girlfriend in Columbus, Georgia. He married the girlfriend in 1998, and they both now reside in Columbus. The Taxpayer maintained his Alabama driver's license after he left the military, and also registered his private vehicles in Alabama.

The Department received IRS information showing that the Taxpayer listed an Alabama address (his mother's) on his 1996 federal return. The Department determined that the Taxpayer had not filed a 1996 Alabama return, and inquired with the Taxpayer as to why. The Taxpayer claims he never received an inquiry from the Department. In any case, the Department subsequently assessed the Taxpayer based on the information on his federal return.

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's domicile of origin was Alabama. Alabama thus remained his domicile until he both abandoned Alabama and established a new domicile elsewhere. That never occurred. After leaving the military in 1989, the Taxpayer never established a permanent domicile outside of Alabama until he married in 1998. Consequently, he remained domiciled in Alabama in 1996, the year in issue. He is thus liable for Alabama income tax in that year.

The Department also assessed a penalty against the Taxpayer. That penalty is waived for reasonable cause because the Taxpayer in good faith believed he was not required to file an Alabama income tax return in 1996. See, Code of Ala. 1975, ' 40-2A-11(h).

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for 1996 tax and interest of \$1,306.01. Additional interest is also due from the date of entry of the final assessment, July 18, 2000.

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

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Entered November 29, 2000.