

RON KERVIN  
P.O. BOX 2058  
ALEX CITY, AL 35011,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 11-875

### FINAL ORDER

The Revenue Department assessed Ron Kervin (“Taxpayer”) for 2000 through 2005 income tax. 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 January 17, 2012. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Lionel Williams represented the Department

The Taxpayer failed to file Alabama income tax returns for the subject years. The Department received IRS W-2 information indicating that the Taxpayer had an Alabama address and was required to file Alabama returns for those years. It consequently prepared blanket returns for the years and assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information.

The Taxpayer is apparently a native of Alexander City, Alabama. He concedes that he maintained a homestead in Alexander City during the subject years. He paid property tax on and claimed a homestead exemption relating to the property.

The Taxpayer has also filed several bankruptcy petitions in the federal courts of Alabama. In an August 2004 petition, the Taxpayer certified that he had resided in Alabama for at least the preceding six months. The Taxpayer also concedes in his appeal letter – “Let the record reflect that I did not abandon the state of Alabama.”

The Taxpayer argues that he is not liable for Alabama income tax for the years in issue because he resided and earned income in the construction industry in Florida, Texas, and other states outside of Alabama in those years. The Taxpayer may have resided and worked outside of Alabama in the subject years, but he would still be liable for Alabama income tax in those years, less a credit for taxes paid to another state, if he was still domiciled in Alabama in those years.

Alabama income tax is levied on individuals residing in Alabama, Code of Ala. 1975, §40-18-2(1), and also on individuals residing and earning income outside of Alabama that are still domiciled in Alabama. Code of Ala. 1975, §40-18-2(7). A persons' domicile is his true, fixed home to which he intends to return when absent. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). In order to change domiciles from Alabama, a taxpayer must abandon Alabama, and also establish a new domicile elsewhere with the intent to remain permanently, or at least indefinitely. The burden is on a taxpayer asserting a change of domicile to prove that a change of domicile has occurred. The presumption is in favor of the original or former domicile, as against a newly acquired one. See generally, *Cobb v. State, Inc.* 96-272 (Admin. Law Div. 2/24/97).

The burden was on the Taxpayer in this case to prove that he abandoned Alabama in 2000, and also that he established a permanent residence outside of Alabama at that time. He failed to do so. The Taxpayer continued to use an Alabama address in the subject years, and there is no indication he established a new domicile outside of Alabama in those years with the intent to remain permanently. The Taxpayer has thus failed to carry the burden of showing that he was not domiciled in Alabama in the subject years.

The final assessments are affirmed. Judgment is entered against the Taxpayer for 2000 tax, penalties, and interest of \$8,628.35; 2001 tax, penalties, and interest of \$6,886.52; 2002 tax, penalties, and interest of \$5,684.53; 2003 tax, penalties, and interest of \$3,480.76; 2004 tax, penalties, and interest of \$6,571.24; and 2005 tax, penalties, and interest of \$6,592.46. Additional interest is also due from the date the final assessments were entered, October 26, 2011.

The Taxpayer would be entitled to a credit for taxes paid to other states during the subject years if he can prove that he paid income tax to another state or states in those years. The penalties may also be waived if the Taxpayer can present reasonable cause why they should be waived. The Taxpayer may apply for a rehearing within 15 days and submit evidence showing that he paid taxes to other states in the subject years. He may also present reasonable cause why the penalties should be waived. Appropriate action will then be taken.

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

Entered January 19, 2012.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.  
Ron Kervin  
Tony Griggs