

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NOS. INC. 86-116
INC. 86-258

SAMUEL R., III & BARBARA K. BROOKS
1318 Polaris Drive
Mobile, AL 36609,

§

SAMUEL R. BROOKS, III
1318 Polaris Drive
Mobile, AL 36609,

§

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SAMUEL R., III & LINDA B. BROOKS
1318 Polaris Drive
Mobile, AL 36609,

§

Taxpayers. §

ORDER

This matter involves five preliminary assessments of income tax entered against Samuel R., III and Barbara K. Brooks, jointly, for 1979, Samuel R. Brooks, III, individually for 1980, 1981 and 1982, and Samuel R., III and Linda B. Brooks, jointly, for 1983.

A hearing was conducted in the matter on March 9, 1987 at the Revenue Department's Taxpayer Service Center in Mobile. Mr. Brooks was present and represented the Taxpayers. Assistant counsel Mark Griffin appeared on behalf of the Department. Based on the evidence presented by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The primary issue in this case is whether Samuel R. Brooks, III (Taxpayer) was domiciled in Alabama from 1979 through 1983 so as to be subject to Alabama income tax under the provisions of Code

of Ala. 1975, §40-18-2. The relevant facts adduced at the March 9, 1987 hearing are undisputed.

The Taxpayer entered the Coast Guard Academy in 1968. Upon his graduation in 1972, the Taxpayer was assigned to duty aboard the Coast Guard Cutter Courageous based out of Port Canaveral, Florida. In June, 1974, the Taxpayer was reassigned to Washington, DC.

In June, 1978, the Taxpayer was reassigned to duty in Mobile, at which time the Taxpayer, along with his wife, Barbara K. Brooks, and their two children, moved to Mobile. They purchased a house at 1318 Polaris Drive in Mobile in January or February, 1979. The Taxpayer was again reassigned to duty in New Orleans, Louisiana in February, 1979.

The Taxpayer was based in New Orleans from February, 1979 until June, 1982. During that period, the Taxpayer's wife and children resided in Mobile at their Polaris Drive home. The Taxpayer lived in New Orleans when on duty during the week, and returned to Mobile on the weekends. The Taxpayer also practiced law part time in both Mississippi and Alabama during 1980, 1981 and 1982, when not on duty with the Coast Guard.

In June, 1982, the Taxpayer was honorably discharged from the Coast Guard and returned to Mobile. In 1983, the Taxpayer divorced his first wife and married his present wife, Linda B. Brooks. The Taxpayer has worked and resided in Mobile continuously since 1982.

The Taxpayer did not file Alabama returns for the years in

question. The Revenue Department investigated and requested that the Taxpayer file the appropriate returns. When no response was forthcoming, the Taxpayer's federal returns were obtained from the Internal Revenue Service. The Department auditor requested that the Taxpayer produce documentation for the deductions (business expenses) claimed on said federal returns. No substantiating records were produced. Consequently, all expenses claimed on the returns were disallowed, and the assessments in issue were entered based on the income reported on the federal returns, with allowance only for the optional or standard deduction.

The 1979 assessment in issue was entered against the Taxpayer and Barbara K. Brooks, jointly, because the federal return did not contain separate W-2 forms from which the Taxpayer's income could be separately determined. Separate W-2 statements were available for 1980, 1981 and 1982, which allowed the examiner to assess the Taxpayer individually for those years. Liability for 1983 was assessed jointly against the Taxpayer and Linda B. Brooks, again because no separate W-2 statements were attached to the federal returns.

The Taxpayer argues primarily that he was not domiciled in Alabama during 1979, 1980, 1981 and 1982 so as to be liable for Alabama income tax for those years. The Taxpayer contends that he was not subject to Alabama income tax for the years in dispute as a result of the protection provided servicemen by the Soldier's and

Sailor's Civil Relief Act, 50 U.S.C.A. §501 et seq. The Taxpayer admits that he was domiciled in Alabama during 1983, and at the administrative hearing requested and was given four weeks within which to file a return for 1983. As of the date of this order, no such return has been filed.

The Taxpayer also challenges the Department's disallowance of the expense deductions claimed on the federal returns for 1979 through 1983. The Taxpayer was instructed at the administrative hearing to submit, along with the 1983 return, any verifying records relating to 1979 through 1983. As with the return, no such records have been produced. The Department contends that without verification, the deductions claimed by the Taxpayer should not be allowed.

The Taxpayer also contests the Department's disallowance of a credit for taxes withheld. The Department's policy, as enunciated by the Department's representative at the March 9, 1987 hearing, is to disallow any credit for taxes withheld unless the original A-2 (W-2) form is supplied. The W-2 forms provided by the IRS along with the federal returns were copies.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-2 in substance levies and income tax on every individual domiciled in Alabama. Domicile has been defined by the Alabama courts to be a persons's true, fixed home to which he intends to return when absent. State ex rel. Rabren v.

Baxter, 239 So.2d 206. A person's domicile is presumed to continue until a new one is acquired, Whetstone v. State, 434 So.2d 796; Jacobs v. Ryals, 401 So.2d 776, and the burden is on the one asserting a change of domicile to establish that a change has in fact occurred.

In the present case, the Taxpayer and his family moved to Alabama in 1978. At all times during the years in dispute, the Taxpayer's family resided continuously in Alabama, with the Taxpayer returning to Mobile on weekends from his assignment in New Orleans. Further, the Taxpayer has resided in Alabama at all time subsequent to his discharge from the Coast Guard in 1982. Alabama was the Taxpayer's permanent residence, to which he intended to return when absent. Consequently, the above facts indicate that the Taxpayer was in fact domiciled in Alabama during 1979, 1980, 1981 and 1982 so as to be liable for Alabama income tax for those years.

The Taxpayer argues that the Soldier's and Sailor's Civil Relief Act should relieve him from liability for Alabama income tax for the years in dispute. Said Act, at 50 U.S.C.A, §574, establishes in substance that military personnel shall not be subject to state income tax in any state where their presence in the state is due solely to military assignment. The purpose of the above section is to free servicemen from the burden of state taxation where they are present only in compliance with military

orders. U.S. v. State of Kansas, 580 F.Supp. 512; U.S. v. Champagne County, Illinois, 525 F.2d 374; California v. Buzard, 86 S.Ct. 478, 382 U.S. 386.

However, the Relief Act presupposes that the serviceman has a permanent domicile or residence in a state other than the state to which is assigned. The Relief Act specifies that the serviceman is exempt from taxation only if he is in the state as a result of military assignment. Consequently, if the serviceman is otherwise domiciled in the state, as is the situation in the instant case, then the protective provisions of the Relief Act would not apply and the serviceman would be subject to state taxation.

Further, the Relief Act in itself would subject the Taxpayer to Alabama liability. That is, it would protect the Taxpayer from Louisiana taxation because he was present there only as required by his Coast Guard duties, and it would deem the Taxpayer to be a citizen of his state of domicile, Alabama. As stated by §574, "such person shall not be deemed to have lost a residence or domicile in any state, territory, . . . , solely by reason of being absent therefrom in compliance with military or naval orders, . . . " Thus, the Taxpayer's duty assignment in Louisiana would not relieve him of liability in Alabama. See Department Reg. 810-3-2-.01 for the treatment of military personnel for purposes of Alabama income tax.

The evidence further indicates that the Taxpayer did not file

Alabama returns for the disputed years, and also failed to provide any documentation from which the deductions claimed on his federal returns could be verified. A deduction from taxation is a matter of legislative grace and must be construed against the taxpayer and for the Department, State v. Sprinkle Net Shop, Inc., 351 So.2d 608, and the person claiming a deduction has the burden of establishing the right to take it by the production of adequate records. Southern Weaving Co. v. Query, 34 S.E.2d 51; Nutrina Mills v. Kansas State Commission, 91 P.2d 15. Further, a taxpayer cannot attack the reasonable estimates and calculations of the Department where insufficient records are provided and the Department attempts in good faith to calculate the tax due using the best information available. U.S. v. Firtel, 446 F.2d 1005; Gibson v. U.S., 360 F.2d 457; Factor v. Commissioner of Internal Revenue, 281 F.2d 100. Consequently, because the Taxpayer has failed to either file Alabama returns for the years in question, or present records by which the deductions claimed on his federal returns could be verified, the Department acted properly in disallowing said deductions and allowing only the option (standard) deduction.

The Taxpayer also takes issue with the fact that the Department did not allow a credit for state taxes withheld as indicated on several of the W-2 forms attached to the Taxpayer's federal returns. A credit was not allowed due to the Department's

policy of requiring an original W-2 form. The W-2 forms obtained in the instant case were copies.

Reg. 810-3-78-.01 governs the allowance of a credit for taxes withheld and states that "credit will be allowed only if a copy of his withholding statement, Form A-2, is attached to his return."

There is no reason not to accept a legible copy in lieu of the original, and the above regulation itself provides that credit will be allowed upon production of an A-2 copy. Thus, the Taxpayer should be allowed a credit for taxes withheld as indicated by the W-2 forms obtained by the Department.

The above considered, it is hereby determined that the assessments in issue are correct, except that a credit for taxes withheld should be allowed, and are due to be made final, as adjusted, with applicable interest as required by statute.

Done this 5th day of May, 1987.

BILL THOMPSON
Chief Administrative Law Judge