

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-113

ROGER D. MATTHEWS  
406 Kentucky Avenue  
Stevenson, AL 35772,

§

§

Taxpayer.

§

FINAL ORDER

The Taxpayer, Roger D. Matthews, applied for refunds of income tax for calendar years 1983 and 1984. The Department of Revenue denied the refunds and further entered deficiency assessments against the Taxpayer for both years. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on October 20, 1988.

FINDINGS OF FACT

The Taxpayer resided and worked in Louisiana during the subject years 1983 and 1984. However, the Taxpayer filed Alabama income tax returns for both years on the advice of a tax counselor. The 1983 return was filed and the tax paid on April 16, 1984. The 1984 return was filed and the tax paid on April 23, 1985. The reason for filing the Alabama returns was to allow the Taxpayer to claim various employee business expenses for travel, meals, etc. incurred in connection with his employment as an electrician in Louisiana.

The IRS audited the Taxpayer and determined that the Taxpayers' tax home was Louisiana during 1983 and 1984. Consequently, the IRS disallowed the employee business expenses and assessed a deficiency

against the Taxpayer for both years.

The Taxpayer agreed with the IRS audit adjustments and subsequently filed amended Alabama returns and refund applications for both years on June 19, 1987. The amended returns were based on the Taxpayer's assertion that he had erroneously filed Alabama returns for 1983 and 1984 and that no Alabama tax was due for those years.

The Department reviewed the amended returns and denied the requested refunds. The Department's position is that the Taxpayer was domiciled in Alabama during 1983 and 1984 and thus liable for Alabama income tax for those years. The Department contends that in any case the refund for 1983 should be denied because the petition was filed more than three years from payment of the tax.

The Department further reviewed the Taxpayer's original returns for 1983 and 1984 and denied the employee business expenses claimed thereon. As a result, preliminary assessments were entered for both years on February 18, 1988.

The Taxpayer was married and resided and worked in Alabama during the years prior to 1980. The Taxpayer was divorced in 1980 and subsequently moved to Louisiana in 1982. The Taxpayer testified at the Administrative Hearing that he moved to Louisiana to "get a new start" after his divorce.

The Taxpayer lived and worked in Louisiana from 1982 until 1986. However, the Taxpayer's ex-wife and three small children remained

in Alabama during that period. The Taxpayer thus returned to Alabama periodically to visit the children, who returned to live with him in Louisiana every summer.

The Taxpayer also maintained an Alabama driver's license, was registered to vote, and registered his vehicles in Alabama during the subject years. The Taxpayer testified that he renewed his Alabama driver's license and registered his vehicles in Alabama via mail for the sake of convenience. The Taxpayer further testified that he did not vote from 1982 through 1986 and thus had no cause to change his voter registration.

The Taxpayer moved back to Alabama in March, 1986 specifically to care for his sick parents. The Taxpayer presently resides and works in Alabama.

#### CONCLUSIONS OF LAW

Code of Alabama 1975, §40-18-2 levies an income tax on all persons residing in Alabama. Every person domiciled within Alabama is presumed to be residing in the State for purposes of the income tax.

"Domicile" is a person's true, fixed home to which he intends to return when absent. State ex rel. Rabren v. Baxter, 239 So.2d 206.

To effectuate a change of domicile, the Taxpayer must abandon the old domicile and establish a new one elsewhere. The Taxpayer's intent to leave the old and remain at the new is of controlling importance. Whetstone v. State, 434 So.2d

796. Jacobs v. Ryals, 401 So.2d 776.

In the present case, the Taxpayer clearly intended to abandon Alabama as his permanent residence upon moving to Louisiana in 1982. His remaining ties with Alabama, other than family, were inconsequential. Further, by residing and working continuously in Louisiana for four years, the Taxpayer clearly expressed his intention to make Louisiana his permanent home. The Taxpayer returned to Alabama only for short periods to visit his children.

Accordingly, the Taxpayer was domiciled in Louisiana during 1983 and 1984, and thus is not liable for Alabama income tax for those years.

However, Code of Alabama 1975,, §40-18-43 requires that any refund of income tax must be applied for within three years from payment of the tax. The Taxpayer's 1983 return was filed and the tax paid on April 16, 1984. The amended return and petition for refund for 1983 was not filed with the Department until June 19, 1987, more than three years after payment of the tax. Consequently, the petition for that year was untimely filed and must be denied.

The 1984 return was filed and the tax paid on April 23, 1985. The amended return and refund petition for that year was also filed on June 19, 1987, within the three year statute of limitations. Consequently, the refund for 1984 should be granted.

The Taxpayer agrees that the employee business expenses are not

deductible. But because the Taxpayer was not domiciled in Alabama during 1983 and 1984, the assessments entered for those years based on the disallowed business expenses should be reduced and made final showing no additional tax due.

In any case, Code of Alabama 1975, §40-18-45 requires that any income tax must be assessed within three years after the return is filed. Both preliminary assessments were entered on February 18, 1988. The return for 1983 was filed on April 16, 1984. Thus, the 1983 assessment was untimely entered more than three years after the original 1983 return was filed.

The portion of this order relating to refunds is subject to judicial review under the provisions of Code of Alabama 1975, §41-22-20. The final assessments entered by the Department may be appealed by either party as allowed under Code of Alabama 1975, §40-2-22.

Entered this the 29th day of March, 1989.