

STATE OF ALABAMA §
DEPARTMENT OF REVENUE, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v. §

DOCKET NO. INC. 90-270

GLENN M. & HELEN H. SMITHERMAN §
605 Montgomery Road
Centreville, AL 35042, §

Taxpayers. §

FINAL ORDER

The Revenue Department assessed income tax against Glenn M. & Helen H. Smitherman for the years 1987, 1988 and 1989. The Smithermans appealed to the Administrative Law Division and a hearing was conducted on March 11, 1992. Glenn M. Smitherman (Taxpayer) appeared at the hearing. Don Siegelman and Bobby Timmons also appeared on behalf of the Alabama Sheriff's Association. Chief counsel Ron Bowden represented the Department.

FINDINGS OF FACT

The Taxpayer retired as a state trooper and began drawing State retirement pay in 1972. The Taxpayer was elected Sheriff of Bibb County in 1974 and served as sheriff until he retired in 1987.

The Taxpayer continued to draw his state trooper retirement while serving as Bibb County Sheriff.

The Taxpayer was appointed as supernumerary sheriff of Bibb county in 1987. At that time the Taxpayer was required to choose either to continue drawing his state trooper retirement, which is tax exempt, or to receive his supernumerary sheriff's pay. The

Taxpayer elected to accept the supernumerary pay and dropped his State retirement.

The Taxpayer failed to report the supernumerary pay as taxable income on his Alabama income tax returns during the subject years.

The Taxpayer testified at the administrative hearing that he thought the supernumerary pay was tax exempt.

The Department audited the Taxpayer and included the supernumerary pay as taxable income. The Department argues that the supernumerary pay doesn't qualify as exempt retirement income under Code of Ala. 1975, §40-18-19(a)(2) because the pay is not issued or controlled by the Alabama Employees' Retirement System.

CONCLUSIONS OF LAW

The Taxpayer's supernumerary pay clearly constitutes gross income under Code of Ala. 1975, §40-18-14. Thus, to be nontaxable the income must be specifically exempted from taxable income under Alabama law. It is not.

All State retirement pay under the control of and paid by the Alabama Employees' Retirement System is exempt from Alabama income tax pursuant to Code of Ala. 1975, §40-18-19(a)(2). The compensation received by a supernumerary sheriff is not paid by the Retirement System and therefore is not exempt.

Mr. Bobby Timmons, Executive Director fo the Alabama Sheriff's Association, testified that the intent of the legislation creating the position of supernumerary sheriff, Code of Ala. 1975, §36-22-60, et seq., was to exempt their pay from State taxation. However,

regardless of the intent of the legislation, the plain language of the Code must be followed and the pay is not exempt under Alabama law. Additional legislation is necessary if the pay is to be exempt from Alabama income tax.

The above considered, the Taxpayer's supernumerary sheriffs pay was properly included in taxable income in the subject years.

The assessments in issue are correct and should be made final as entered, with applicable interest.

Entered on March 17, 1992.

BILL THOMPSON
Chief Administrative Law Judge