

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 90-297

DOROTHY B. MCCLESKEY  
1309 High Point Terrace  
Birmingham, AL 35235,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed income tax against Dorothy B. McCleskey (Taxpayer) for the year 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on December 11, 1990. Jerry M. Brannan appeared for the Taxpayer. Assistant counsel Dan Schmaeling represented the Department. This Final order is based on the evidence and arguments presented by both parties.

FINDINGS OF FACT

The Taxpayer was divorced in June, 1988. The divorce decree required the Taxpayer's ex-husband to pay "alimony in gross" of \$12,150.00 to the Taxpayer within 30 days from the date of the decree. The Taxpayer also received the marital residence and the ex-husband was required to either pay off the house or make the monthly mortgage payments as they came due. The ex-husband elected to pay the monthly mortgage payments which totaled \$826.62 during 1988. The decree also provided that "the right of either party to receive alimony is hereby reserved by the court for determination at a later date".

The Department contends that both the \$12,150.00 lump sum payment and also the mortgage payments of \$826.62 constitute alimony and as such are taxable to the Taxpayer (subject to the \$10,000.00 lump sum maximum set out in Department Reg. 810-3-14-.01(10)(b)4).

The Taxpayer argues that the payments were alimony in gross or a property settlement and therefore not taxable to the Taxpayer.

#### CONCLUSIONS OF LAW

Alimony is taxable to the recipient in Alabama to the same extent as provided in 26 U.S.C.A. §71. See Code of Ala. 1975, §40-18-14(1). Payments constitute taxable alimony under the above sections if (1) payment is received under a divorce decree; (2) the decree does not designate the payment to be excludable from income by the recipient and nondeductible by the payer; (3) the parties must not be members of the same household when the payments are made; and (4) there is no liability to make such payments after the death of the payee spouse.

In this case, the payments were fixed as to amount and time of payment and therefore constituted alimony in gross which is vested and does not lapse upon the death of either party. See, Kenchel v. Kenchel, 440 So.2d 567; McEntire v. McEntire, 345 So.2d 316. The payments thus did not satisfy (4) above and thus are not taxable as alimony to the Taxpayer/wife in this case.

The above considered the assessment should be reduced and made

final showing no additional tax due.

Entered on December 28, 1990.

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BILL THOMPSON  
Chief Administrative Law Judge