

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

vs.

DAVID P. BURT, SR.  
14245 Snider Road  
Cottondale, AL 35453,

Taxpayer.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 93-276

FINAL ORDER

This case involves a 1991 final assessment of income tax entered by the Department against David P. Burt, Sr. ("Taxpayer").

The issue in dispute is whether the Taxpayer is liable for Alabama tax on \$56,305.00 allegedly received by the Taxpayer from United Insulation Company in 1991.

A hearing was conducted on October 18, 1993, after which a Preliminary Order was entered allowing the Taxpayer an opportunity to present evidence proving that he did not receive the income in question. The Taxpayer responded by letter dated March 29, 1994 that he has none of the business records and otherwise cannot prove that he did not receive the income in dispute.

The assessment in issue is based on circumstantial evidence showing that the Taxpayer received the income in issue in 1991. The Taxpayer was a partner in the business during 1991 and the returns of the partnership and the other partner show that \$56,305.00 was paid to each partner during that year. The other partner's accounting firm also notified the Department that the

Taxpayer received some assets when the partnership dissolved in 1991, which may explain why the Taxpayer failed to receive any cash in 1991.

The final assessment entered by the Department is prima facie correct, and the burden is on the Taxpayer to prove that the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The evidence submitted by the Department is sufficient to affirm the prima facie correct assessment, and the Taxpayer has failed to establish that the assessment is wrong. Accordingly, the assessment must be upheld and judgment is entered against David P. Burt, Sr. for 1991 income tax in the amount of \$3,480.95, plus applicable interest.

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

Entered on May 9, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge