

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

PRINCE HALL APARTMENTS, INC.
1713-4th Avenue North
Birmingham, AL 35203,

§

DOCKET NO. INC. 94-135

§

Taxpayer.

FINAL ORDER

The Revenue Department assessed withholding tax against Prince Hall Apartments, Inc. ("Taxpayer") for the quarter ending June, 1993. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on March 30, 1994. The Taxpayer's representative, Otis Stewart, Jr., was notified of the hearing by certified mail, but failed to appear. Assistant counsel Gwendolyn Garner represented the Department.

The Taxpayer's Alabama withholding tax return for the quarter ending June, 1993 showed tax withheld of \$644.71, a delinquent penalty of \$64.47, interest due of \$4.32, for a total liability of \$713.50. No money was submitted with the return.

The Department subsequently entered the final assessment in issue for the tax due as reported on the return, plus applicable penalty and interest. The Taxpayer timely appealed the final assessment to the Administrative Law Division.

A final assessment entered by the Department is prima facie correct, and the burden is on the taxpayer to prove that the final assessment is erroneous. Code of Ala. 1975, §40-2A-7(b)(5)c.

The Taxpayer in this case initially reported the tax in issue on its return for the withholding quarter in question. The Taxpayer now disclaims liability because the corporation failed to make a profit for the quarter in question. However, the fact that a corporation has a profit or a loss for any quarter is irrelevant in determining the corporation's withholding liability. The corporation withheld the taxes from its employees' wages and is responsible for remitting the trust fund taxes to the Department.

Code of Ala. 1975, §40-2A-11(f) levies a frivolous appeal penalty if a taxpayer appeals to the Administrative Law Division for the purpose of delay or to impede collection of the tax. That penalty is applicable in this case. The Taxpayer's representative signed the return in question and to now challenge the amount due because the corporation made no profit during the quarter in question is a frivolous objection.

The above considered, the assessment is upheld and judgment is entered against the Taxpayer for withholding tax for the quarter ending June, 1993 in the amount of \$792.20. A frivolous appeal penalty of \$250.00 is also assessed, for a total judgment of

\$1,042.20. Additional interest is due on the assessment from the date of entry of the final assessment, December 29, 1993.

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

Entered on April 7, 1994.

BILL THOMPSON
Chief Administrative Law Judge