

BRIAN B. & SANDRA G. O'BRIEN § STATE OF ALABAMA
4555 Highland Crest Circle DEPARTMENT OF REVENUE
Hoover, Alabama 35226, § ADMINISTRATIVE LAW DIVISION
Taxpayers, § DOCKET NO. INC. 95-442
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department partially denied a refund of income tax requested by Brian B. and Sandra G. O'Brien (together "Taxpayers") for the year 1994. The Taxpayers appealed to the Administrative Law Division, and a hearing was conducted on February 13, 1996. Brian B. O'Brien (individually "Taxpayer") appeared at the hearing. Assistant Counsel Gwen Garner represented the Department.

The issue in this case is whether an early retirement incentive payment of \$40,350.00 received by the Taxpayer from his employer in 1994 was exempt from Alabama income tax.

The Taxpayer received \$40,350.00 in 1994 from BellSouth Telecommunications, Inc. pursuant to an early retirement package designated as a "Career Alternative Plan". As a condition to receiving the payment, the Taxpayer was required to execute an "Election and Release", which provided in pertinent part:

In consideration for the separation incentives that are being extended to me under the Plan, I further agree to the terms set forth below:

- (1) I hereby fully waive, discharge, and release any and all claims of whatever nature, known or unknown, I may have against BellSouth Telecommunications, Inc., its parents, subsidiaries, affiliated and related

companies, their respective owners, representatives, officers, directors, attorneys, agents, employees, successors and assigns (hereinafter collectively referred to as "BST") as a result of actions or omissions occurring through this date. Specifically included in this waiver and release are any and all claims of alleged employment discrimination, either as a result of my separation of employment from the Company or otherwise, under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621, et seq., Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. Section 2000e, et seq., and any and all claims under any other federal, state or local statutory or common law or regulation. I also agree not to institute a lawsuit against BST relating or arising out of any claim encompassed by this Release.

- (2) I acknowledge that the separation incentives that are being extended to me under the terms of the Plan represent valuable consideration in addition to other forms of compensation or benefits to which I presently am entitled.

The Taxpayers reported the \$40,350.00 as income, but then deducted the amount as being exempt. The Department disallowed the deduction, which reduced the refund claimed by the Taxpayers for the year. The Taxpayers subsequently appealed to the Administrative Law Division.

The Taxpayers claim that the payment from BellSouth is exempt from income tax as a payment in settlement of a claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq. I disagree with the Taxpayers' position for two reasons.

First, the Taxpayer has failed to provide any statutory authority showing that a payment in settlement of a claim under

Title VII of the 1964 Civil Rights Act is exempt from income tax.

I have reviewed the above federal statute, and can find no tax exemption provision set out therein.

Second, even if an amount received in settlement of a civil rights action was exempt from tax, the amount received by the Taxpayer still would not be exempt because it was not received in settlement of a claim. The Taxpayer simply waived any right to bring a claim in the future. The release of an actual claim and the waiver of a right to bring a claim in the future can be distinguished.

The above considered, the lump-sum payment was not exempt. Consequently, the Department properly included the income as taxable and reduced the Taxpayers' refund accordingly. No further action is required in this case.

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

Entered February 29, 1996.

BILL THOMPSON
Chief Administrative Law Judge