

JENNIE S. ADAMS  
120 Gazebo East Dr., Apt. F  
Montgomery, AL 36117-6124,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 98-129

### FINAL ORDER

The Revenue Department assessed income tax against Jennie S. Adams ("Taxpayer") for 1995 and 1996. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on April 8, 1998. The Taxpayer represented herself. Assistant Counsel David Avery represented the Department.

The issue in this case is whether the Taxpayer is liable for Alabama income tax on payments she received from her ex-husband pursuant to a 1982 divorce decree.

The Taxpayer received \$706 a month from the United States Department of Defense during the subject years. The payments constituted one-half of the Taxpayer's ex-husband's net (after federal taxes) retirement pay he was required to pay to the Taxpayer pursuant to a 1982 divorce decree. The decree designated the payments as alimony. The Taxpayer reported the payments as income on her 1995 and 1996 Alabama income tax returns. She failed, however, to pay the tax due with the returns. She later paid part of the amount due, and the Department

assessed her for the balance. The Taxpayer concedes that if the payments are taxable, the final assessments are correct. However, she claims she contacted someone in the Department's Income Tax Division, and was informed that the payments were not subject to Alabama income tax. The Taxpayer does not know who she talked to, or why he told her the income was not subject to Alabama income tax.

Federal military retirement payments are not subject to Alabama income tax. Code of Ala. 1975, ' 40-18-20. However, while the payments in issue originated as military retirement payments to the Taxpayer's ex-husband, they constituted alimony payments from the ex-husband to the Taxpayer. The fact that the Taxpayer received the payments directly from the military does not change the nature of the payments.

Alimony is taxable to the recipient ex-spouse in Alabama. Code of Ala. 1975, ' 40-18-14(1). Consequently, the Taxpayer properly reported the payments on her 1995 and 1996 Alabama income tax returns. The final assessments are affirmed. Judgment is entered against the Taxpayer for 1995 income tax of \$189.80, and 1996 income tax for \$403.91, plus applicable interest.

The Taxpayer is an invalid on a fixed income. She claims she can only pay the assessments in installments. The Taxpayer is directed to contact the Department's Collection Services Division at 334-242-1067 for that purpose.

This Final Order may be appealed to circuit court within 30 days pursuant to

Code of Ala. 1975, ' 40-2A-9(g).

Entered April 10, 1998.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

cc: David E. Avery, III, Esq.  
Jennie S. Adams  
Kim Herman (424-50-9077)  
Collection Services Div.