

ROBERT M. & DEBORAH A. KNOP
103 Junaluska Avenue
Dothan, AL 36301,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 98-226

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1991 income tax against Robert M. and Deborah A. Knop (together **AKnops@**). The Knops appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on June 16, 1998. Robert M. Knop (individually **AKnop@**) and Art Northrup, Jr. represented the Knops. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether the Department correctly computed the Knops' 1991 Alabama income tax liability using the information on their 1991 federal return.

The Knops live in Dothan, Alabama. Knop is a financial planner. His wife is a nurse.

The Knops filed an extension to file their 1991 Alabama return, but never filed the return. The Department contacted the Knops on several occasions and requested information from which their 1991 Alabama liability, if any, could be computed. The Knops failed to respond. The Department subsequently obtained a copy of the Knops' 1991 federal return, which it used to compute their Alabama liability for the year. (The Department allowed the Knops a \$151 credit for withholding tax it estimated they had paid in 1991).

The Knops do not contest the Department's calculations. Rather, they raise four arguments in their appeal letter: (1) The **Aassessment@** is invalid because the **Atype of tax@** assessed by the Department does not apply to the Knops; (2) They are not a **Aperson@** or a **Ataxpayer@** as defined by Alabama and federal statutes;

(3) **A**Title 26 United States Code as cited in said Alabama Code does not exist as positive law in that Congress has never passed said Title~~@~~ and (4) **A**Congress made it clear that the ~~>~~Internal Revenue Code~~=~~ must be cited as the Internal Revenue Code of 1954, or ~~>~~I.R.C.~~=~~, said Code does not apply to your affiant as it and its implementing regulations, found in 27 C.F.R., apply only to revenue taxable activities in which your affiant has never been engaged.~~@~~

Concerning arguments (1) and (2), Alabama income tax is levied on every **A**individual~~@~~ residing in Alabama, and also on every **A**person~~@~~ domiciled in Alabama. Code of Ala. 1975, ' 40-18-2. The terms **A**individual~~@~~ and **A**person~~@~~ are synonymous. Code of Ala. 1975, ' 40-18-1(9). **A**individual~~@~~ is defined by the American Heritage Dictionary, 2nd College Ed., at page 656, as **A**of or relating to a single human being~~@~~. The same source, at page 925, defines **A**person~~@~~ as **A**a living human being...~~@~~. The Knops are human beings, and thus are individuals or persons for Alabama income tax purposes. Likewise, **A**taxpayer~~@~~ is defined at Code of Ala. 1975, ' 40-18-1(12) as **A**any person~~@~~ subject to the income tax imposed in Chapter 18 of Title 40, Code of Ala. 1975, which, as indicated, includes all individuals or persons (human beings) domiciled or residing in Alabama. Because the Knops are individuals or persons domiciled and residing in Alabama, they are taxpayers subject to Alabama income tax. Arguments (1) and (2) are rejected.

Concerning argument (3), while Alabama's income tax statutes are modeled generally after the federal income tax statutes, the Alabama statutes are not dependent on the federal statutes. The Alabama income tax is authorized by Amendment 25 to the Alabama Constitution of 1901, and the income tax statutes in Chapter 18 of Title 40 were duly enacted by the Alabama Legislature. Consequently, any claimed defect in the enactment of the federal statutes (which does not exist) would not affect the validity of Alabama's income tax statutes. Argument (3) is rejected.

Concerning argument (4), as discussed, the Alabama income tax is levied on the net income of any person or individual residing or domiciled in Alabama. Code of Ala. 1975, § 40-18-2. **Net income** is defined at Code of Ala. 1975, § 40-18-12 as gross income less the deductions in Code of Ala., 1975, § 40-18-15. **Gross income** includes **gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind,...** Code of Ala. 1975, § 40-18-14. The Knops admittedly received compensation for personal services in 1991. Knop testified at the June 16, 1998 hearing, as follows:

ADMINISTRATIVE LAW JUDGE: Did you receive compensation in 1991?

MR. KNOP: Yes, I did.

ADMINISTRATIVE LAW JUDGE: For what? What's your job?

MR. KNOP: For services rendered.

ADMINISTRATIVE LAW JUDGE: What do you do?

MR. KNOP: I do financial planning.

ADMINISTRATIVE LAW JUDGE: Okay. How about your wife?

MR. KNOP: She is a nurse.

ADMINISTRATIVE LAW JUDGE: Here in Alabama?

MR. KNOP: Yes.

ADMINISTRATIVE LAW JUDGE: Okay.

MR. KNOP: And she received compensation for her services.

Transcript at pp. 13-14.

The Knops thus received gross income from taxable personal services in 1991, which, less the deductions allowed in § 40-18-15, constituted taxable net income subject to Alabama income tax. Argument (4) is rejected.

Finally, the federal courts have addressed the same or similar arguments raised by the Knops in this case, and have consistently rejected those arguments as frivolous. Edwards v. C.I.R., 680 F.2d 1268 (1982); Moore v. C.I.R., 722 F.2d 193 (1984); Denison v. C.I.R., 751 F.2d 241 (1984).

Because the Knops failed to file a 1991 Alabama return, the Department was authorized to compute their liability for the year using the best information available. Code of Ala. 1975, § 40-2A-7(b)(1)a. The Department thus correctly used the Knops' 1991 federal return to compute and assess their 1991 Alabama liability. A final assessment based on the best information available is *prima facie* correct, and the burden is on a taxpayer to prove that the assessment is incorrect. Code of Ala. 1975, § 40-2A-7(b)(5)c. Because the Knops failed to present evidence or valid arguments establishing that the final assessment in issue is incorrect, the *prima facie* correct final assessment is affirmed. Judgment is entered against the Knops for 1991 income tax of \$1,326.01, 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 September 18, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Mark Griffin, Esq.
Robert M. and Deborah A. Knop
Kim Herman (416-60-0740)