

HOYT R. & SANDRA J. GEORGE '
134 Hwy. 290
Red Bay, AL 35582,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 98-542

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1997 income tax against Hoyt R. & Sandra J. George (ATaxpayers@). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on March 4, 1999 in Birmingham, Alabama. Hoyt R. George (individually ATaxpayer@) appeared at the hearing. Assistant Counsel Jeff Patterson represented the Department.

The issue in this case is whether severance pay received by the Taxpayer in 1997 is exempt from Alabama income tax pursuant to Code of Ala. 1975, ' 40-18-19.1.

Occidental Chemical Corporation eliminated the Taxpayers job in April 1996 due to administrative downsizing. Occidental Chemical paid the Taxpayer severance pay through April 1997. The amount received in 1997 was \$13,934.79. The Taxpayers considered the pay to be exempt from Alabama income tax pursuant to ' 40-18-19.1, and thus failed to report it on their 1997 Alabama income tax return. The Department included the severance pay as income, and based

thereon entered the final assessment in issue. The Taxpayers appealed.

Section 40-18-19.1 provides in pertinent part as follows:

A(a) Effective for the 1997 state income tax year and each year thereafter, an amount up to twenty five thousand dollars (\$25,000) received as severance, unemployment compensation or termination pay, or as income from a supplemental income plan, or both, by an employee who, as a result of administrative downsizing, is terminated, laid off, fired, or displaced from his or her employment, shall be exempt from any state, county, or municipal income tax.@

The Department construes the words *is terminated@* in the statute to indicate that the exemption applies only to employees terminated in 1997 and later years. The Department thus argues that the Taxpayer's severance pay received in 1997 is not exempt because he was terminated in 1996. I must agree.

Tax exemptions must be narrowly construed for the government and against the taxpayer. An exemption statute should not be interpreted to include items not clearly within the scope of the language used. Ex parte Kimberly-Clark Corp., 503 So.2d 304 (Ala. 1987).

The exemption in question is *effective for the 1997 state income tax year@*. It exempts the severance pay of an employee that *is terminated@* due to administrative downsizing. That language indicates that the Legislature intended the exemption to apply only to the severance pay of an employee that is terminated in 1997 or later years. The statute does not include language that the exemption should apply to an employee that was terminated before 1997. Given the rule of statutory construction that a vague exemption statute must be

construed for the Department, I find that the Taxpayer's severance pay received after his termination in 1996 is not exempt.

The final assessment is affirmed. Judgment is entered against the Taxpayers for \$495.31, 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 March 22, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Jeff Patterson, Esq.
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