

RICHARD L. & ROSITA REYNOLDS  
5133 Fair Oak Drive  
Mobile, AL 36619,

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 99-136

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed 1996 income tax against Richard L. and Rosita Reynolds (together 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 June 25, 1999 in Mobile, Alabama. Richard Reynolds (individually ATaxpayer@) appeared for the Taxpayers. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether the Taxpayers owe Alabama income tax on tax-deferred income earned by the Taxpayer when he lived in Alaska, but received after he moved to Alabama.

The Taxpayers resided and worked in Alaska before 1996. The Taxpayer worked for the State of Alaska, and put tax-deferred wages into an annuity fund. The tax deferral was irrelevant for Alaska tax purposes because Alaska does not have an income tax.

The Taxpayers' wife moved to Alabama in 1995. The Taxpayer moved in August 1996. They have resided in Alabama since that time.

The Taxpayer applied to withdraw his annuity when he left Alaska. The insurance company that administered the annuity paid the Taxpayer \$17,916 in October 1996. The Taxpayers failed to report the annuity income on their 1996 Alabama return.

The Department audited the Taxpayers and included the \$17,916 as income. The Department also made several other minor adjustments not contested by the Taxpayers.

The Taxpayer claims the annuity income cannot be taxed by Alabama because the income was earned in Alaska. Unfortunately, the Taxpayer is incorrect.

Alabama's income tax is levied on individuals residing in Alabama. Code of Ala. 1975, ' 40-18-2(1). The Taxpayer was residing in Alabama when he received the annuity income in October 1996. Importantly, the Taxpayer is a cash basis taxpayer. A cash basis taxpayer must recognize income when it is received. Consequently, because the Taxpayer received the annuity income while he was residing in and subject to Alabama income tax, he is liable for Alabama income tax on the income.<sup>1</sup>

The final assessment includes a penalty of \$221.65. A penalty may be waived for reasonable cause. Code of Ala. 1975, ' 40-2A-11(h). Under the

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<sup>1</sup>If the situation was reversed, and the Taxpayer had earned the deferred income while in Alabama, but received it after he moved from Alabama, Alabama income tax would not be owed.

circumstances, the penalty assessed by the Department should be waived.

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayers for 1996 tax and interest of \$817.46. Additional interest is also owed on the tax due from December 10, 1998.

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

Entered September 27, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT: ks

cc: Duncan R. Crow, Esq.  
Richard & Rosita Reynolds  
Kim Herman (324-32-9112)