

REVA NASH WARD  
P.O. Box 344  
Stockton, AL 36579,

§ STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
§ ADMINISTRATIVE LAW DIVISION

Taxpayer,

§ DOCKET NO. INC. 02-573

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

The Revenue Department assessed 1998 and 1999 income tax against Reva Nash Ward ("Taxpayer"). 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 January 10, 2003 in Mobile, Alabama. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether amounts received by the Taxpayer from her ex-husband in 1998 and 1999 constituted alimony payments. If so, the Taxpayer is liable for Alabama income tax on those amounts.

The Taxpayer was divorced in 1996. Her divorce decree reads in pertinent part as follows:

The Defendant shall pay to Plaintiff [Petitioner] as periodic alimony the sum of \$2,150.00 per month commencing February 1996, and ending February 1997, at which time the periodic alimony shall increase to \$3,000.00 per month through January 2001. Defendant shall further pay to Plaintiff as alimony in gross, the amount of \$100,000.00, without interest, commencing in February 2001, at the rate of \$1,000.00 per month. Defendant shall further execute a promissory note in the amount of \$100,000.00 in favor of the Plaintiff.

The Taxpayer filed 1998 and 1999 Alabama income tax returns. She failed, however, to report as income the amounts received pursuant to her divorce decree. The

Department treated the payments as taxable alimony, and assessed the Taxpayer accordingly. The Taxpayer appealed.

Alimony received pursuant to a divorce decree constitutes income to the receiving spouse, and can be deducted by the payor spouse. Code of Ala. 1975, §§40-18-14(1) and 40-18-15(a)(17). Alabama law on the subject adopts by reference the federal alimony provisions at 26 U.S.C. §§71 and 215. Payments qualify as taxable alimony under §71(b)(1) if the following four requirements are satisfied:

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation agreement,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payment after the death of the payee spouse.

The above four requirements are satisfied in this case. Further, the divorce decree clearly specified the amounts received by the Taxpayer in 1998 and 1999 to be “periodic alimony.” Consequently, the amounts constituted taxable alimony.

The final assessments are affirmed. Judgment is entered against the Taxpayer for 1998 tax and interest of \$2,148.48, and 1999 tax and interest of \$1,725.97. Additional interest is also due from the date of the final assessments, July 16, 2002.

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

Entered January 14, 2003.

BILL THOMPSON  
Chief Administrative Law Judge