LAWRENCE W. MONK P.O. Box 996 Dothan, AL 36302,	'	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	'	DOCKET NO. INC. 99-468
v.	'	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	'	

FINAL ORDER

The Revenue Department assessed 1998 income tax against Lawrence W. Monk (ATaxpayer@). 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 12, 2000. The Taxpayer represented himself. Assistant Counsel Margaret McNeill represented the Department.

The issues in this case are:

(1) Was the Taxpayer subject to Alabama income tax in 1998;

(2) If so, did the Taxpayer receive income subject to tax in 1998;

(3) If the Taxpayer was subject to Alabama tax and received income in 1998, was he required to file an Alabama income tax return for that year;

(4) If the answers to (1), (2), and (3) above are yes, did the Department properly compute the Taxpayer=s liability for the year using the best information available; and

(5) Was a five percent penalty correctly assessed by the Department?

The Taxpayer lived in Alabama and worked for the U. S. Government in Alabama in 1998. He filed a 1998 Alabama income tax return on which he reported income of zero. The return also showed Alabama tax withheld of $1,718 and net tax due of $333, which

resulted in a claimed refund of $1,310.[1] The Taxpayer=s W-2 statement submitted with the return showed Alabama wages of $57,998, and Alabama tax withheld of $1,718.

The Department rejected the Taxpayer=s return and recomputed the Taxpayer=s liability using the information on his W-2 statement. The Department included his W-2 wages as income, and allowed a deduction for federal taxes paid, the standard deduction, and a personal exemption. The final assessment in issue is based on the above adjustments.

ISSUE I - WAS THE TAXPAYER SUBJECT TO ALABAMA INCOME TAX IN 1998?

All individuals residing in Alabama are subject to Alabama income tax. Code of Ala. 1975, '40-18-2(1). The Taxpayer resided in Alabama in 1998, and was thus subject to Alabama income tax in that year.

ISSUE II - DID THE TAXPAYER RECEIVE INCOME SUBJECT TO ALABAMA TAX IN 1998?

Alabama income tax is levied on the taxable income of all individuals residing in Alabama. ATaxable income@ is defined as gross income, as defined in Code of Ala. 1975, '40-18-14, less the deductions allowed to individuals by the Alabama Revenue Code, Chapter 18 of Title 40. See, Code of Ala. 1975, '40-18-15.1. AGross income@ is defined at '40-18-14 as Agains, profits and income derived from salaries, wages, or compensation

[1]The Taxpayer arbitrarily selected a net tax due amount of $333 because he felt he should pay something to the State. He also checked off $25 donations to the Child Abuse Fund, the Alabama Veteran=s Program, and the Foster Care Trust Fund.

for personal services of whatever kind, or in whatever form paid,...@

The wages earned by the Taxpayer in 1998, as reflected on his W-2 statement, constituted gross income as defined by Alabama law. That gross income, less the deductions allowed the Taxpayer pursuant to Alabama law, constituted taxable income subject to Alabama income tax.[2]

ISSUE III - WAS THE TAXPAYER REQUIRED TO FILE AN ALABAMA INCOME TAX RETURN IN 1998?

All individual taxpayers with adjusted gross income of over $1,875 are required to file an Alabama income tax return. Code of Ala. 1975, '40-18-27. AAdjusted gross income@ is defined at Code of Ala. 1975, '40-18-14.2 as gross income less various deductions. As indicated, the Taxpayer=s 1998 gross income was $57,998. There is no evidence that the Taxpayer had sufficient deductions allowable under Alabama law that would reduce that amount below the threshold filing amount of $1,875. Consequently, the Taxpayer was required to file a 1998 Alabama income tax return.

ISSUE IV - DID THE DEPARTMENT PROPERLY COMPUTE THE TAXPAYER=S LIABILITY FOR 1998?

If the Department determines that a taxpayer=s return is incorrect, as it did in this case, the Department is authorized to compute the taxpayer=s liability using the best

[2]The Taxpayer=s argument that wages are not income has been repeatedly rejected by the federal courts. See, Coleman v. C.I.R., 791 F.2d 68 (1986) (AThe code imposes a tax on all income. Wages are income, . . .@) 791 F.2d at 70. See also, U.S. v. Thomas, 788 F.2d 1250 (1986), and Granzow v. C.I.R., 739 F.2d 265 (1984).

information available. Code of Ala. 1975, '40-2A-7(b)(1)a. A final assessment based on the best information available is *prima facie* correct, and on appeal the burden is on the taxpayer to prove the final assessment is incorrect. Code of Ala. 1975, '40-2A-7(b)(5)c.

The Department rejected the Taxpayer=s 1998 return because it reported income of zero, even though the attached W-2 statement showed wages of $57,998. Having determined that the return was incorrect, the Department properly computed the Taxpayer=s 1998 liability using the best information available, the W-2 statement. The Taxpayer has failed to provide any evidence that the tax due as computed by the Department is wrong.

ISSUE V - THE PENALTY ASSESSED BY THE DEPARTMENT

The Department assessed the Taxpayer for a $30 penalty, or five percent of the tax due. At the January 12 hearing, the Department identified the penalty as the failure to timely pay penalty levied at Code of Ala. 1975, '40-2A-11(b). The Taxpayer correctly argued, however, that the failure to timely pay penalty does not apply because he did not fail to pay the Atax shown as due on a return.@ The Taxpayer=s return showed an overpayment, not tax due.

However, the five percent negligence penalty levied at Code of Ala. 1975, '40-2A-11(c) does apply. The five percent negligence penalty applies to any underpayment due to negligence. ANegligence@ includes the failure to make a reasonable attempt to comply with the Alabama Revenue Code, Title 40, Code 1975. By reporting his income to be zero, the Taxpayer failed to reasonably comply with the Revenue Code in this case.

In addition, the Department could have assessed the $250 frivolous return penalty

levied at Code of Ala. 1975, '40-2A-11(e), but elected not to. A frivolous return penalty was assessed in a prior appeal before the Administrative Law Division that involved a

similar situation, William D. and Melody F. Harris v. State of Alabama, Docket INC. 97-316 (Admin. Law Div. 10/29/97). Harris involved a married couple that lived and worked in Alabama and had Alabama income tax withheld from their wages. The couple filed Alabama returns in 1995 and 1996. Both returns reported zero income. Those returns were deemed to be frivolous, as follows:

> AThe Department is authorized to compute a taxpayer's liability using the best information obtainable. Code of Ala. 1975, '40-2A-7(b)(1)a. The Department thus properly computed the Taxpayers' 1995 and 1996 liabilities using the best information available, Mr. Harris' W-2 statements. The tax due, as computed by the Department, is affirmed.
>
> ACode of Ala. 1975, '40-2A-11(e) levies a $250.00 penalty if a taxpayer files a frivolous return. "Frivolous return" is defined for Alabama purposes the same as for federal purposes at 26 U.S.C. '6702. In such cases, federal authority on the subject must govern. State v. Morris, 227 So.2d 123 (1969).
>
> AThe Taxpayers are not frivolous individuals. However, their 1995 and 1996 Alabama returns constitute frivolous returns under established case law.
>
> AThe federal courts have repeatedly held that taxpayers who contend that wages are not income, and thus fail to report the wages on a return, have filed a frivolous return. The Fifth Circuit held in Anderson v. U.S., 754 F.2d 1270 (1985), as follows:
>
> > ›Section 6702(a) permits the IRS to impose a $500 civil penalty on any individual who files 'what purports to be' a tax return when such return (1) contains information on its face which indicates that the taxpayer's self- assessment is substantially incorrect, and (2) is based on a frivolous position. While the Anderson's Form W-2 and Forms 1099-INT indicated taxable income in excess of $42,000, the Andersons included none of this income on their 1040. This

> self-assessment was obviously incorrect. Moreover, the Andersons' reported justifications for omitting their wage and interest income from their Form 1040 were patently frivolous. We have repeatedly rejected Mr. Anderson's contention that Congress is not empowered by the Constitution to levy a tax on wage and salary income. See, Davis v. United States, 742 F.2d 171, 172 (5th Cir. 1984). Anderson, 754 F.2d, at 1271.=
>
> AThe reporting of zero income in both years, even though Mr. Harris earned income as reflected on his W-2s, clearly constituted the filing of a frivolous return. The frivolous return penalties were thus properly assessed by the Department. See also, Bear v. U.S., 630 F.Supp. 92 (1986), and Coleman v. C.I.R., 791 F.2d 68 (7th Cir.1986).@

Finally, the Taxpayer objects to the Department=s attorney referring to him as a tax protestor. The term Atax protestor@ is not defined by Alabama law, Department regulation, or otherwise for Alabama tax purposes. It is, however, defined by the IRS Manual, Audit '4293.11 as Aany individual who advocates and/or uses a >tax protest scheme.=@ A Atax protest scheme@ is a Ascheme without basis in law or fact for the ostensible purpose of expressing dissatisfaction with the substance, form, or administration of the tax laws by either interfering with such administration or attempting to illegally avoid or reduce tax liabilities.@

The federal courts have previously described a taxpayer that argues that wages are not income as a Atax protestor.@ See, Smith v. C.I.R., 62 T.C.M. 1429 (1991); Page v. C.I.R., 51 T.C.M. 402 (1986). However, because the IRS sometimes applied the terms Atax protestor@ and Aillegal tax protestor@ inappropriately, Congress has since 1998 prohibited IRS officers and employees from designating any taxpayer Aas illegal tax protestors (or any

similar designation).@ P.L. 105-206, Section 3707. Rather, it may refer to appropriate individuals as Anonfilers.@ 14 Mertens Law of Fed. Income Tax:n, 55-146. Alabama has no such guidance, but it would be good public policy to follow Congress: lead on the subject.

In any case, the use of the term in this case was certainly not meant as offensive or derogatory toward the Taxpayer. I assure the Taxpayer that I decided his appeal impartially and in accordance with Alabama law.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 1998 Alabama income tax, penalty, and interest of $657.62. Additional interest is also due from the date of entry of the final assessment, September 3, 1999.

The Taxpayer indicated at the January 12 hearing that if he is found liable for tax, he would like an opportunity to file an amended return. If that is the case, the Taxpayer must apply for a rehearing within 15 days from this Final Order. An appropriate Order allowing the Taxpayer time to file an amended return will then be entered. Any amended return will be subject to audit, if deemed necessary by the Department. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, '40-2A-9(g).

Entered January 20, 2000.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks
cc: Margaret Johnson McNeill, Esq.
Lawrence W. Monk
Kim Herman (265-40-9533)