

RICHARD D. DOWLING
9301 PEMBROOK LOOP
FAIRHOPE, AL 36532,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 14-537

FINAL ORDER

The Revenue Department assessed Richard D. Dowling (“Taxpayer”) for 2011 and 2012 Alabama income tax. It also denied a 2013 income tax refund requested by the Taxpayer. The Taxpayer appealed to the Administrative Law Division, now the Alabama Tax Tribunal, pursuant to Code of Ala. 1975, §§40-2A-7(b)(5)a and 40-2A-7(c)(2)a. A hearing was conducted on November 25, 2014. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Revenue Department.

The issue in this case is whether the Taxpayer should be allowed to deduct alimony paid to his ex-wife in the subject years.

The Taxpayer divorced in Massachusetts in 1997. As part of the divorce settlement, the Taxpayer agreed in writing to pay his ex-wife \$2,000 a month in alimony until she either died or remarried.

The Taxpayer deducted \$24,000 as alimony on his Alabama income tax returns for the subject years. The Department questioned the deductions and requested that the Taxpayer submit proof that he was required by his divorce decree to pay alimony, and also that he in fact paid his ex-wife \$2,000 in monthly alimony during those years.

The Taxpayer subsequently provided the Department with a copy of his 1997 divorce decree, copies of his federal returns on which he claimed the deduction, copies of

his bank statements showing that \$2,000 per month was automatically transferred from his account to his ex-wife's account, and a notarized letter from his son verifying that the Taxpayer had made the monthly alimony payments. Unfortunately, the divorce decree provided by the Taxpayer did not include the handwritten agreement between the Taxpayer and his ex-wife concerning the monthly \$2,000 alimony payments. The Department consequently disallowed the deductions and entered the 2011 and 2012 final assessments in issue. It also applied the \$583 refund claimed by the Taxpayer on his 2013 Alabama return to his 2011 liability of \$646, leaving a 2011 balance due of \$117.78.¹ The Taxpayer appealed.

In addition to the above information/documents previously submitted by the Taxpayer to the Department, the Taxpayer later also submitted a sworn, notarized affidavit from his ex-wife dated April 22, 2014 in which the ex-wife confirms that the Taxpayer has paid her \$2,000 a month in alimony since January 2007 pursuant to a court order, and that she has always reported the amount as income on her federal and state returns. At the November 25 hearing, the Taxpayer also provided a copy of his ex-wife's 2013 Massachusetts return showing that she reported alimony income of \$24,000 in that year.

¹ The Department applied the 2013 refund of \$583 toward the Taxpayer's 2011 liability on June 17, 2014. It subsequently entered the 2011 final assessment in issue on August 1, 2014 for the balance due for that year. The application in June 2014 of the 2013 refund to the amount due for 2011 was improper because the Department can only apply a refund due in one tax period to "any outstanding final tax liabilities" owed by the taxpayer for another tax period. Code of Ala. 1975, §40-2A-7(c)(4). A tax liability does not become final until a final assessment is entered and the 30 day appeal period has expired. The Taxpayer's 2011 liability was thus not a final tax liability when the Department applied the 2013 refund to the 2011 liability in June 2014.

The evidence submitted by the Taxpayer is sufficient to verify that the Taxpayer paid his ex-wife \$24,000 in alimony pursuant to a court order in each of the three years in issue. The 2011 and 2012 final assessments are accordingly voided. The Department is also directed to refund to the Taxpayer the amount of the claimed 2013 refund that was applied to the Taxpayer's 2011 liability, plus applicable interest. Judgment is entered accordingly.

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

Entered December 4, 2014.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Duncan R. Crow, Esq.
Richard D. Dowling