STEVEN W. & MARY A. McNEELEY 717 HAMMOND DRIVE WOODSTOCK, GA 30188,	§	STATE OF ALABAMA ALABAMA TAX TRIBUNAL
Taxpayers,	§	DOCKET NO. INC. 14-1094
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department partially denied the refund claimed on the Taxpayers' 2013 Alabama return. The Taxpayers appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. The case was set for hearing on June 9, 2015. The Taxpayers notified the Tribunal that they would not attend the hearing. The case will accordingly be decided on the undisputed facts in the record before the Tribunal.

Steven McNeeley (individually "Taxpayer") worked for General Dynamics Land Systems, Inc. in Alabama before 2013. In 2013, General Dynamics offered certain of its employees a Voluntary Separation Plan. Under the Plan, if a qualifying employee voluntarily resigned from his or her job with General Dynamics, the company agreed to pay the employee one week of base pay for every full year the employee had worked for General Dynamics, up to a maximum of 26 weeks of compensation.

The Taxpayer volunteered to resign from his job pursuant to the Plan. In return, he received compensation of $40,301.92 in 2013 pursuant to the Plan.

The Taxpayers reported the compensation on their 2013 Alabama return, but claimed that the compensation was exempt under Code of Ala. 1975, §40-18-19.1. The Department disallowed the exemption, which correspondingly reduced the refund claimed on the return. The Taxpayers appealed to the Tax Tribunal.

Section 40-18-19.1 provides an exemption from Alabama income tax for severance, unemployment compensation, etc., as follows:

> (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 Taxpayer argues in his notice of appeal that the Department improperly disallowed the exemption because the General Dynamic Plan was not previously submitted to and approved by the Department, as required by Department Reg. 810-3-19.1-.01(2)(a). He contends that the above requirement is not in the statute – "The law does not require such action on the part of the employer." Taxpayers' Appeal Letter at 3.

I agree that §40-18-19.1 does not require an employer to get prior approval for a downsizing plan from the Department. But the Department's denial of the exemption is not based on the preapproval requirement in Reg. 810-3-19.1-.01(2)(a). Rather, the Department denied the exemption because the Taxpayer voluntarily left his job with General Dynamics. According to the Department, the statute "does not permit exclusion from severance pay for voluntary severance based on Taxpayer choice." Department's Answer at 1, 2.

The Taxpayer argues that the statute makes no distinction between voluntary and involuntary termination. I disagree. While the statute does not use the word "involuntary," the language used shows that the Legislature intended for the exemption to apply only to involuntary terminations over which the employee had no control.

The §40-18-19.1 exemption applies if the employee is "terminated, laid-off, fired, or displaced" from his or her job. "Terminated," in the context of a job, means "[t]o discontinue the employment of; dismiss." See, *The American Heritage Dictionary*, 4th Ed., at 1422. Only an employer can discontinue the employment of or dismiss an employee. An employee can voluntarily quit or leave a job, but only an employer can terminate or dismiss an employee. The Taxpayer's voluntary decision to leave his job was thus not a termination.

Likewise, an employee can only be "laid-off" or "fired" by an employer. The Taxpayer also was not laid-off or fired.

The word "displaced" is somewhat vaguer than terminated, laid-off, or fired. Reg. 810-3-19.1-01(1)(b) defines 'displaced from employment" as the "[t]ermination of the employer/employee relationship due to an employee's job being abolished or relocated." There is no evidence that the Taxpayer's job with General Dynamics was abolished or relocated. Consequently, the Taxpayer also was not displaced when he voluntarily left his job at General Dynamics.

The copy of the Voluntary Separation Plan submitted by the Taxpayer indicates throughout that participation in the Plan was voluntary. It also refers to the date that the employee leaves service as the "retirement date." Based on the above analysis of the words "terminated, laid-off, fired, or displaced," an employee that voluntarily retires from his or her job is not entitled to the exemption.

The above is supported by the well-established rule of statutory construction that an exemption from taxation must be strictly construed against a taxpayer and for the government. *Bean Dredging Corp. v. State of Alabama*, 454 So.2d 1009 (Ala. 1984). And

while the Great Recession began in 2007 or 2008, and not in 1997, as stated by the Department in its Response, at 5, I agree with the Department that the Legislature's intent in enacting the exemption was to ease the economic burden on employees that are involuntarily terminated through no fault of their own.

The Department's partial denial of the Taxpayers' 2013 refund is affirmed.

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

Entered June 18, 2015.

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BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: David E. Avery, Esq.
Steven W. McNeeley