

OTIS J. BELL  
908 CARRIDALE STREET, SW  
DECATUR, AL 35601-5642,

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 14-1097

Taxpayer, §

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

**FINAL ORDER ON TAXPAYER'S  
APPLICATION FOR REHEARING**

The Revenue Department assessed Otis J. Bell ("Taxpayer") for 2013 Alabama income tax. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 4, 2016. CPA Stan Evans represented the Taxpayer. Assistant Counsel Jason Paulk represented the Department.

The Taxpayer electronically filed a 2013 Alabama income tax return, but failed to pay the reported tax due of \$1,128. The Revenue Department consequently assessed the Taxpayer for the reported tax due, plus penalties and interest.

The Tribunal entered a Final Order on October 21, 2015 affirming the final assessment, plus additional interest. The Taxpayer's representative timely applied for a rehearing.

The representative argues on rehearing that the Taxpayer's employer, Chevall Transportation Services Company, should have but failed to withhold Alabama income tax from the Taxpayer's wages in 2011. He contends that the employer's failure to do so "shifts the responsibility of withholding and remitting Alabama income tax to Chevall Transportation Services." Taxpayer's Application for Rehearing. I disagree.

Alabama levies an income tax on individuals at varying rates up to five percent based on taxable income earned by the individual. Code of Ala. §§40-18-2 and 40-18-5. Individuals liable for Alabama income tax are also required to file a return and report the tax due to the Department. Code of Ala. 1975, §40-18-27. Code of Ala. 1975, §40-18-40 also provides that “[t]he tax due as reported on such return shall constitute a prima facie liability for that amount.”

The Taxpayer in this case filed a 2013 Alabama return and reported tax due of \$1,128. The Taxpayer is thus liable for that amount under the above statutes.

The Taxpayer also was not relieved of liability for the above amount because the Taxpayer’s employer failed to withhold Alabama tax from the Taxpayer’s wages.

Code of Ala. 1975, §40-18-74 does provide that if an employer fails to withhold Alabama tax from an employee’s wages, the employer is also liable for and may be assessed for the tax that it failed to withhold, but that does not absolve the employee from liability.

Alabama’s withholding tax statutes are modeled after the federal withholding tax statutes. In such cases, federal authority can be relied on in construing Alabama law. *State, Dept. of Revenue v. Acker*, 636 So.2d 470 (Ala. Civ. App. 1974). Federal guidelines on employer and employee responsibilities for withholding are as follows:

Both employer and employee hold the responsibility for collecting and remitting withholding taxes to the Internal Revenue Service (IRS). For the most part, the employer withholds these taxes on behalf of their employees, but in cases where an employer does not do this, or where an employee is self-employed, it is the responsibility of the employee to pay these withholding taxes.

Employer’s Responsibility

Employer's must report income and employment taxes withheld from their employees on an Employer's Quarterly Federal Tax Return (Form 941) and deposit these taxes in full to an authorized bank or financial institution pursuant to Federal Tax Deposit Requirements. Employers are also responsible for filing a FUTA return annual, and depositing those taxes.

Employers who do not comply with the employment tax laws may be subject to criminal and civil sanctions for willfully failing to pay employment taxes.

#### Employees' Responsibility

Employees who do not have taxes withheld nor remit them personally, are still liable for these taxes and may not qualify for Social Security, Medicare, or unemployment benefits.

The Taxpayer's representative cites *State of Alabama v. Kaufman, Rothfeder & Blitz*, Docket Inc. 87-203 (Admin Law. Div. 1/18/1989) in support of its case. That case does not, however, support the Taxpayer's argument.

The issue in the above case was whether the Department had properly penalized the employer, Kaufman, Rothfeder & Blitz, because it had failed to withhold Alabama income tax from some of its employees. The Revenue Department's Administrative Law Division, now the Tax Tribunal, affirmed the penalty.

Importantly, the employer, Kaufman, Rothfeder & Blitz, was not assessed for the tax it had failed to withhold because the employees had themselves reported and paid the tax. "No tax was assessed (against the employer) because all tax due was paid individually by the various employees." *Kaufman, Rothfeder & Blitz*, at 2. The case thus confirms that even if an employer fails to withhold tax from an employee's wages, the employee is still liable for the tax.

The prima facie correct tax of \$1,128 as reported by the Taxpayer on his 2013 Alabama return is affirmed, plus applicable interest. The late payment penalty is waived

for cause under the circumstances. Code of Ala. 1975, §40-2A-11(h). Judgment is entered against the Taxpayer for tax and interest of \$1,148.21, plus additional interest from the date the final assessment was entered, November 19, 2014. The October 21, 2015 Final Order is voided.

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

Entered March 10, 2016.

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BILL THOMPSON  
Chief Tax Tribunal Judge

bt:dr

cc: Keith Maddox, Esq.  
Stan A. Evans, CPA