

**ALABAMA TAX TRIBUNAL**

CHARLES A. & TINA M. BATES, §  
Taxpayers, § DOCKET NO. INC. 18-312-CE  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

**ORDER CANCELLING JUNE 18, 2018 HEARING  
AND  
FOURTH PRELIMINARY ORDER DIRECTING PARTIES TO RESPOND**

This appeal involves final assessments of 2014, 2015, and 2016 income tax entered against Charles A. & Tina M. Bates (“Taxpayers”). The Taxpayers appealed the final assessments to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. The Department filed its Answer, and moved to have the appeal of the 2014 assessment dismissed as untimely. A hearing was set for June 18, 2018. The Taxpayers notified the Tax Tribunal that they could not attend a hearing, and requested that the case be decided on the record. The June 18, 2018 hearing is accordingly cancelled.

The Department’s Motion to Dismiss the Taxpayers’ appeal of the 2014 assessment is hereby granted. A taxpayer must appeal a final assessment within 30 days from when it was mailed to or personally served on the taxpayer. Ala. Code § 40-2A-7(b)(5)a. The 30 day appeal period must be strictly followed. *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala. Civ. App. 1990). If the appeal is not timely filed, "the appeal shall be dismissed for lack of jurisdiction." Ala. Code § 40-2A-7(b)(5)c.

The Department entered the 2014 final assessment on July 1, 2015. Because the assessment was under \$500, it was sent by first class U.S. mail. Unless the Taxpayers

prove otherwise, it is presumed that the assessment was mailed to the Taxpayers on the date that it was entered. The Taxpayers' appeal letter to the Tax Tribunal is postmarked March 15, 2018, and was received by the Tax Tribunal on March 16, 2018.

The 30 day appeal period began in this case when the Department mailed the final assessment. As indicated, the Taxpayers' appeal letter was postmarked March 15, 2018, and was received by the Tax Tribunal on March 16, 2018. The Taxpayers have failed to produce evidence to prove that the 2014 final assessment was not mailed the day it was entered, i.e., by showing that the envelope containing the final assessment was postmarked on another date, etc. Therefore, the Taxpayers' appeal is due to be dismissed because the appeal was not timely filed within the required 30 days, nor can it be treated as timely mailed within 30 days as allowed by Ala. Code § 40-1-45. Pursuant to § 40-1-46, to be treated as timely mailed, the appeal must be postmarked within the required 30 days.

The Taxpayers timely appealed the 2015 and 2016 final assessments.

The Taxpayers claimed deductions on their 2015 and 2016 returns for payments made to Mr. Bates' former spouse pursuant to a divorce decree. The record indicates that the payments were from Mr. Bates' military pension. The Department determined that the payments were a division of a pension that was a joint asset of Mr. Bates and his former spouse, and therefore were payments related to a property settlement and not alimony. Because the Department determined that the payments were not alimony, and thus not deductible as such pursuant to Code of Ala. 1975, §40-18-14.2(a)(10) and §40-18-15(a)(17), the Department disallowed the deductions and billed the Taxpayers for the additional tax due.

Code of Ala. 1975, §40-18-20 exempts retirement benefits paid to retired military personnel from Alabama income tax. In *Baker v. State of Alabama*, Dkt. No. Inc. 00-754 (March 9, 2001), the Administrative Law Division, this court's predecessor, held that a portion of military retirement pay that was paid directly from the federal government to a former spouse of the beneficiary pursuant to a divorce judgement was not taxable income to the recipient. The court held that the mere fact that the pay was diverted from the ex-husband to the ex-wife did not change the exempt status of the income. Following the reasoning set forth in *Baker*, the Administrative Law Division held that payments representing a portion of the ex-husband's military retirement paid by him directly to his ex-wife pursuant to a divorce decree were not considered taxable alimony payments when received by his ex-wife because the payments were made from non-taxable military retirement funds. *Peterson v. State of Alabama*, Dkt. No. 2001-401 (September 17, 2001). Finding no substantive difference in the way the retirement income was diverted from one former spouse to the other, the court held that the payments should be treated as if they had been made directly from the federal government to the ex-wife, i.e., that the payments should be treated as a transfer of non-taxable income.

In *Sheridan v. State of Alabama*, Dkt. No. 2017-193 (July 18, 2017), the Tax Tribunal held that payments like the payments at issue in this appeal should be treated as a transfer of non-taxable income pursuant to the court's rationale in *Baker* and *Peterson*. Consequently, the Court held that the taxpayers in that case were not entitled to a deduction for transferring a portion of non-taxable income from the taxpayers to Mr. Sheridan's former spouse.

The parties are directed to respond regarding their positions after considering the Tax Tribunal's decision in *Sheridan*. The parties are directed to respond by **July 13, 2018**. Appropriate action will then be taken. The Tribunal's mailing address is 2 North Jackson Street, Suite 301, Montgomery, AL 36104.

Entered June 18, 2018.

*/s/ C. O. Edwards*

CHRISTY O. EDWARDS

Associate Tax Tribunal Judge

cc: Charles & Tina Bates (w/enc.)  
Margaret Johnson McNeill, Esq. (w/enc.)