

ALABAMA TAX TRIBUNAL

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

FINAL ORDER

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 was 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 may, however, pay the final assessment in full and then petition for a refund. If the refund is denied, the Taxpayers may appeal to the Tax Tribunal or to circuit court pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. or b., respectively.

Regarding tax years 2015 and 2016, the Taxpayers claimed deductions on their income tax returns for payments made to Mr. Bates' former spouse pursuant to a divorce decree. The undisputed evidence 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. For the following

reasons, the Tax Tribunal need not reach the issue of whether the payments are considered a property settlement or alimony to hold that the Taxpayers are not entitled to claim the deductions at issue.

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 those at issue in this appeal are treated for tax purposes 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 Tax Tribunal's decision in *Sheridan* is controlling. The payments for which the Taxpayers claim a deduction are payments of a portion of Mr. Bates' non-taxable military retirement, which are for tax purposes treated as a transfer of non-taxable income. Consequently, the Taxpayers are not entitled to a deduction for those payments.

The Taxpayers' appeal of the 2014 final assessment is dismissed.

The 2015 and 2016 final assessments are affirmed. Judgment is entered against the Taxpayers for tax, penalties, and interest of \$454.30 and \$374.99, respectively. Additional interest is also due from the date the final assessments were entered, March 6, 2018.

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

Entered August 8, 2018.

/s/ C. O. Edwards

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Charles & Tina Bates
Margaret Johnson McNeill, Esq.