

**ALABAMA TAX TRIBUNAL**

DARRYL BENDER,	§	
Taxpayer,	§	DOCKET NO. INC. 19-188-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

This appeal involves final assessments of individual income tax for tax years 2009 through 2016. The case came before the Tax Tribunal for a trial on November 16, 2022. Ralph Clements represented the Revenue Department. The Taxpayer did not appear. The Taxpayer’s law partner, Adedapo T. Agboola, who has a similar case on appeal before the Tax Tribunal, appeared; however, Mr. Agboola did not have a power-of-attorney form signed by the Taxpayer which would have authorized Mr. Agboola to represent the Taxpayer before the Tax Tribunal.

The Taxpayer’s Notice of Appeal in this case was filed on January 28, 2019. At the Taxpayer’s request, this case was remanded to the Revenue Department to allow the parties the opportunity to resolve some or all of the issues in the appeal. (The Taxpayer acknowledged in his Notice of Appeal that he had not filed individual income tax returns for years 2009 through 2016.) The remand period was extended five times at the request of the Revenue Department. The case was ultimately set for a trial after the Revenue Department informed the Tax Tribunal that it had been unable to make contact with the Taxpayer’s representative. The case was originally

set for trial on September 20, 2022. However, upon the unopposed request for a continuance filed by the Taxpayer, the Tax Tribunal continued the trial until November 17, 2022. In the request for a continuance, the Taxpayer stated that the Revenue Department had requested that the Taxpayer provide it with documents showing payments that the Taxpayer contended would reduce the Taxpayer's tax liability. The Taxpayer stated that a continuance would allow the opportunity to resolve the issue without a trial.

At the commencement of the trial on November 17, 2022, Mr. Agboola and the Revenue Department informed the Tax Tribunal that the Taxpayer had not provided the requested documents to the Revenue Department until the day before the trial and, thus, the Revenue Department had been unable to review the documents to determine the amount, if any, that the Taxpayer's tax liability should be reduced. Another continuance was requested, but the Tax Tribunal denied the request because of the non-appearance of the Taxpayer and because of the very lengthy amount of time that the Tax Tribunal already had allowed the parties to seek a resolution of the appeal.

“On appeal to ... the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.” Ala. Code 1975, § 40-2A-7(b)(5)c.3. Here, the Tax Tribunal's original Order Setting Case for Trial stated: “At the trial, witnesses will testify under oath and the proceeding will be recorded by a court reporter. The parties are directed to present appropriate and sufficient evidence and argument at the trial to provide

the Tax Tribunal judge with information needed to make a final decision.” As noted, however, the Taxpayer failed to attend the trial or to provide documents to the Revenue Department in sufficient time for the Revenue Department to recalculate the Taxpayer’s tax liability by the time of the trial.

Therefore, the final assessments of individual income tax are affirmed. Judgment is entered against the Taxpayer and in favor of the Revenue Department in the following amounts: for 2009, \$19,261.68; for 2010, \$41,246.70; for 2011, \$10,576.48; for 2012, \$11,779.67; for 2013, \$17,352.81; for 2014, \$35,789.85; for 2015, \$76,209.17; for 2016, \$164,420.69; plus additional interest that continues to accrue from the date of entry of the final assessments until the liabilities are paid in full.

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

Entered November 21, 2022.

*/s/ Jeff Patterson*

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JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:ac

cc: Darryl Bender, Esq.  
Randall M. Hancock, CPA  
Ralph M. Clements, III, Esq.