

RICHARD C. & MARTHA MALONE §
24256 Malone Estates §
Athens, AL 35613, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 04-330

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Richard C. and Martha Malone (“Taxpayers”) for 1999 Alabama income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on August 13, 2004. The Taxpayers notified the Administrative Law Division that they would not attend the hearing. Assistant Counsel J. R. Gaines represented the Department.

The Taxpayers failed to file a 1999 Alabama income tax return. The Department received IRS information indicating that the Taxpayers resided in Alabama in 1999 and had income sufficient to require them to file an Alabama return for that year. The Department accordingly assessed the Taxpayers for the tax due, plus penalties and interest. The Taxpayers appealed.

The Taxpayers make various objections to the final assessment in issue, including claims that they are not subject to Alabama’s taxing jurisdiction, that their names are fictitious names, that their wages are exchanged for their labor and thus are not taxable, that the final assessment is not based on proper evidence or facts, etc. The Taxpayers’ appeal also contains references to mail fraud, identity theft, “initialism,” “Idem Sonans” (“With respect to names, the phrase ‘idem sonans’ means the same sound”), and “Artificial Person,” to name only a few.

The Taxpayers filed a similar appeal with the Administrative Law Division concerning their 1998 Alabama income tax liability, *Malone v. State of Alabama, Inc.* 03-108 and 03-109 (Admin. Law Div. 3/27/00). The only factual difference between the 1998 appeal and this appeal is that the Taxpayers filed a 1998 Alabama return but failed to pay, whereas they failed to file a 1999 return. The Administrative Law Division affirmed the 1998 final assessment, as follows:

The issues in this case are (1) were the Taxpayers subject to Alabama income tax in 1998, and (2) did the Department correctly assess the Taxpayers for tax due in that year.

The Taxpayers filed a joint 1998 Alabama income tax return on April 14, 1999. The return reported wages received by Richard C. Malone from Steelcase in the amount of \$54,712, and wages received by Martha Malone from Rosalie Huber in the amount of \$14,931. The return reported tax due of \$337. The Taxpayers failed to pay that amount with the return. The Department subsequently assessed the Taxpayers for the reported tax due, plus applicable penalties and interest.

The Taxpayers' appeals are 40 pages long and contain numerous references to the Internal Revenue Service ("IRS"), various federal income tax statutes, and other references to federal regulations and cases. The Taxpayers broadly allege that they are not subject to federal income tax. Specific allegations include (1) the Taxpayers did not receive wages or other income subject to federal income tax, (2) the Taxpayers were not domiciled within the jurisdiction of the United States or any State therein, (3) the Taxpayers are not a "U. S. person", a "domestic partnership", a "domestic corporation", or "any estate or trust" within the meaning of the Internal Revenue Code ("IRC"), and (4) the Taxpayers' estate is a "foreign estate" and not a "domestic estate" within the meaning of the IRC. The Taxpayers make numerous other assertions to the end that they are not subject to or liable for federal income tax.

Alabama's income tax laws are modeled generally after the federal income tax statutes. However, a taxpayer's liability for Alabama income tax is not dependent on the taxpayer's liability for federal tax. Consequently, notwithstanding the Taxpayers' claims that they are not subject to or liable for federal income tax, which I do not agree with, the Taxpayers are liable for Alabama income tax for the following reasons.

The Alabama income tax is levied on every individual or natural

person residing or domiciled in Alabama. Code of Ala. 1975 §40-18-2. The Taxpayers reside in Athens, Alabama, which is within the boundaries of the State of Alabama as established in Article II, Section 37 of the Alabama Constitution of 1901. Consequently, the Taxpayers were subject to Alabama income tax in 1998.

Alabama income tax is levied on the net income of every individual residing in Alabama. Code of Ala. 1975, §40-18-2(b). "Net income" is defined as gross income less the deductions allowed at Code of Ala. 1975, §40-18-15. See, Code of Ala. 1975, §40-18-12.

"Gross income" is defined at Code of Ala. 1975, §40-18-14(1) as "...gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid,..." As indicated, the Taxpayers reported wages earned in Alabama on their 1998 Alabama return. Because wages are specifically included in the Alabama definition of "gross income", the wages received by the Taxpayers clearly constituted gross income as defined by Alabama law. That income, less the various deductions and exemptions allowed the Taxpayers, was clearly subject to Alabama income tax. See also, Lawrence W. Monk v. State of Alabama, INC. 99-468 (Admin. Law Div. 1/28/00).

A final assessment on appeal is *prima facie* correct, and the burden is on the taxpayer to prove the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The Department assessed the Taxpayers based on their signed 1998 return. The Taxpayers have presented no evidence or valid arguments establishing that the Alabama income tax assessed by the Department is incorrect. The final assessment is accordingly affirmed. Judgment is entered jointly and severally against the Taxpayers for \$381.39, plus applicable additional interest.

In this case, the Department's final assessment is based on IRS information. The Department is specifically authorized to assess a taxpayer based on the best information available. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department thus correctly assessed the Taxpayers for 1999 Alabama income tax because the IRS information, i.e. the best information available, established that the Taxpayers resided in Alabama in 1999 and had income sufficient to require them to file a return and pay tax in that year.

A final assessment based on the best available information is *prima facie* correct,

and the burden is on a taxpayer to prove that it is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The Taxpayers have failed to carry that burden in this case.

The final assessment is affirmed. Judgment is entered against the Taxpayers for 1999 tax, penalty, and interest of \$2,975.93. Additional interest is also due from the date of entry of the final assessment, March 11, 2004.¹

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 19, 2004.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Taxpayers' objections and arguments in this case are meritless and frivolous, as were their arguments concerning the 1998 final assessment. The Taxpayers have a right to appeal any future final assessment that may be entered against them by the Department. Any such appeal will be duly heard and fairly and impartially decided. If, however, the Taxpayers' present the same or similar meritless arguments in any future appeal, the frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f) will be applied. See, *Cook v. State of Alabama, Inc.* 00-330 (Admin. Law Div. 9/11/00).