

WALTER W. MUNCASTER	§	STATE OF ALABAMA
P.O. BOX 205		DEPARTMENT OF REVENUE
WETUMPKA, AL 36092-0004,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 05-1270
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed Walter W. Muncaster (“Taxpayer”) for 1997 and 1998 Alabama income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on June 13, 2006. The Taxpayer attended the hearing. Assistant Counsel Gwendolyn Garner represented the Department.

The Taxpayer failed to file Alabama income tax returns for 1997 and 1998. The Department received IRS information indicating that the Taxpayer resided in Alabama and had income sufficient to require him to file Alabama returns in those years. Specifically, the information indicated that the Taxpayer received interest and/or dividend income of \$38,840 and 1099-MISC income of \$136,867 in 1997, and also interest and/or dividend income of \$14,022 in 1998.¹ The Department allowed the Taxpayer the standard deduction and personal exemption, and thereafter assessed him for the tax due, plus applicable penalties and interest.

The Department notified the Taxpayer of its computations by letter dated March 24, 2005. The Taxpayer was allowed 20 days to respond. The Department also provided the

¹ The 1099-MISC income was received from Continental Eagle, Inc. (\$92,873), Knox Kershaw, Inc. (\$35,006), Thermal Components Division (\$800), Goodwyn, Mills, and Cawood (\$7,134), and Thermalax, Inc. (\$974).

Taxpayer with a copy of the Taxpayer Bill of Rights brochure that explained the appeals process to the Taxpayer. The Taxpayer failed to respond. The Department consequently entered preliminary assessments against the Taxpayer for the tax, penalties, and interest due.

The Taxpayer filed a petition for review concerning the preliminary assessments in July 2005. The petition indicated that “they (the preliminary assessments) are wrong.” In response to whether the Taxpayer wanted an informal conference, the Taxpayer marked both the “yes” and “no” boxes on the petition form. He also attached a Petition for Review Statement in which he complained that he had not been afforded his rights under the Taxpayer Bill of Rights. He also claimed that he should be allowed some deductible expenses.

The Department did not schedule an informal conference with the Taxpayer because the Taxpayer did not submit any records establishing that the Department’s computations were incorrect. Rather, it entered the final assessments in issue in November 2005. The Taxpayer timely appealed. The Taxpayer again complained in his appeal letter that he was not afforded his rights under the Taxpayer Bill of Rights, and also that he should be allowed some deductions in the subject years.

Every individual residing or domiciled in Alabama that has adjusted gross income of over \$1,875 in a year is required to file an Alabama income tax return “stating specifically the items of gross income, the deductions and credits allowed by this chapter, the place of residence, and post office address.” Code of Ala. 1975, §40-18-27(a). If an individual required to file a return fails to do so, the Department is authorized to calculate the individual’s correct liability based on the most accurate and complete information available.

The Department can thereafter enter a preliminary assessment for the tax due, plus any applicable penalties and interest. Code of Ala. 1975, §40-2A-7(b)(1).

The individual is allowed 30 days to contest a preliminary assessment by filing a petition for review. If the individual fails to do so, or if a petition is filed and the Department determines that the assessment should be upheld in whole or in part, the Department is authorized to enter a final assessment. Code of Ala. 1975, §40-2A-7(b)(4)b. The individual may then appeal the final assessment to either the Administrative Law Division or to circuit court. Code of Ala. 1975, §40-2A-7(b)(5).

As indicated, the Taxpayer asserts that he was not afforded his rights under the Taxpayer Bill of Rights. I disagree, with one exception that is discussed below.

Code of Ala. 1975, §40-2A-4(a)(2) requires that at or before the issuance of a preliminary assessment, the Department must provide the taxpayer with a written description of the basis for the preliminary assessment and how the taxpayer may request a review of the preliminary assessment. The Department complied with the above statute because it provided the Taxpayer with a copy of its audit report before the preliminary assessments were entered. The audit report adequately explained the basis for the adjustments. The Department also provided the Taxpayer with a copy of the Taxpayer Bill of Rights brochure which explained how the Taxpayer could petition for a review of the preliminary assessments, and thereafter appeal to the Administrative Law Division or to circuit court if final assessments were entered.

The Taxpayer filed a petition for review with the Department. The petition form included the following question – “Do you wish to schedule a conference during which you may present your position to the Department. (If you mark yes, you will be notified in

writing of a date and time for a conference.)” In response to the above question, the Taxpayer checked both the “yes” and “no” boxes. However, as indicated, because the Taxpayer failed to present any evidence disputing the Department’s calculations, the Department did not schedule a conference and instead entered the final assessments in issue.

The fact that the Taxpayer indicated both “yes” and “no” to the question of whether he wanted a conference is contradictory and confusing. However, the petition stated that if the “yes” box was marked, a conference would be scheduled. Consequently, the Department should have scheduled a conference with the Taxpayer. But the Taxpayer was not substantively harmed by the fact that the Department did not schedule a conference because he was otherwise allowed ample opportunity to present his objections to the assessments, first to the examiner that made the adjustments or the examiner’s manager, and then to the Administrative Law Division.² The Taxpayer was thus allowed due process.

The Taxpayer also asserted at the June 13 hearing that the Department had not computed his “correct” liability, as required by §40-2A-7(b)(1)a. He claimed that the Department’s assessments are not correct because he should be allowed to deduct the expenses incurred in earning the income in issue.

² The Department enclosed its audit report with its March 24, 2005 letter to the Taxpayer. The letter gave the Taxpayer 20 days to respond, and stated in part – “If at any time during this period you would like to discuss the results of the audit with me (Manager Clisby Thomas) or to provide additional information, please call Examiner John R. Davis or me at (334) 242-2677 to schedule an appointment.” The Taxpayer failed to contact the examiner or his manager or otherwise respond to the audit adjustments before the preliminary assessments were entered..

As indicated, if a taxpayer fails to file a return, as in this case, the Department is authorized to determine the taxpayer's correct tax due based on the best information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The best and only information the Department had concerning the Taxpayer's 1997 and 1998 liabilities was the IRS information. The Department thus correctly used that information to determine the Taxpayer's liabilities for those years after allowing him the standard deduction and the personal exemption to which he is entitled.

The Taxpayer claims that the Department's calculations are not correct because he should be allowed some expenses. However, the tax due as computed by the Department is the correct tax due per the information available to the Department. The Taxpayer may have incurred deductible expenses in the subject years, but it was incumbent on the Taxpayer to identify and claim those deductions. Section 40-18-27(a) required the Taxpayer to file returns for the subject years on which he should have reported his income and also all "deductions and credits allowed" by Alabama law. He failed to do so. The Department cannot allow deductions that the Taxpayer has not claimed and that the Department is not otherwise aware of.

The final assessments in issue are *prima facie* correct, and the burden was on the Taxpayer to show that they are incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The Taxpayer has never disputed that he resided in Alabama and received the income in question in the subject years. And other than claiming generally that he had deductible expenses, he has failed to present any evidence identifying the type and amount of any business-related or other deductions that he may be entitled to in lieu of the standard deduction.

The *prima facie* correct final assessments are affirmed. Judgment is entered against the Taxpayer for 1997 tax, penalty, and interest of \$15,756.86, and 1998 tax, penalty, and interest of \$893.27. Additional interest is also due from the date the final assessments were entered, November 4, 2005.

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

Entered July 24, 2006.

BILL THOMPSON
Chief Administrative Law Judge