

WADE HALL
105D TUSCALOOSA AVENUE SW
BIRMINGHAM, AL 35211,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 05-419

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Wade Hall (“Taxpayer”) for 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 8, 2005. The Taxpayer attended the hearing. Assistant Counsel Glen Powers represented the Department.

The Department received IRS information indicating that the Taxpayer had failed to report wages of \$3,460 from LFI Ft. Pierce, Inc. and non-employee compensation of \$25,000 from Shoney’s, Inc. in 1998. It accordingly assessed the Taxpayer for tax on the unreported income, plus penalties and interest.

The Taxpayer testified that he worked as a cook at a Captain D’s restaurant in the late 1990’s. Captain D’s is owned by Shoney’s, Inc. The Taxpayer was injured while working at Captain D’s. He was fired, and consequently sued Shoney’s for wrongful termination.

The parties settled the case in February 1998 for \$25,000. Of that amount, the Taxpayer received \$11,488.55. His attorney received the balance. The Taxpayer argues that he should not be taxed on the settlement proceeds.

Code of Ala. 1975, §40-18-14(3)(e) provides an exclusion from income for proceeds received in certain types of lawsuits. The Alabama statute is modeled after 26 U.S.C.

§104. Consequently, federal case law and authority should be followed in construing the Alabama law. *Best v. State, Dept. of Revenue*, 417 So.2d 197 (Ala. Civ. App. 1981).

During the year in issue, lawsuit settlements were non-taxable only if the lawsuit was the result of physical injuries. Although the Taxpayer was physically injured on the job, his lawsuit was for employment discrimination. Consequently, the settlement proceeds were taxable. However, only the net amount of the settlement should have been taxed. The amount paid to the Taxpayer's attorney as legal fees were not includable in gross income. *Griffin v. Commissioner*, 81 T.C.M. (CCH) 972 (2001); *Davis v. Commissioner*, 210 F.3d 1346 (11th Cir. 2000); *Cotnam v. Comm'r*, 263 F.2d 119 (5th Cir. 1955).

The Department is directed to recompute the Taxpayer's liability by including only the net settlement proceeds of \$11,488 in gross income (plus the unreported wages of \$3,460). A Final Order will then be entered for the adjusted amount due.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days from the date of this Order pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered June 20, 2005.

BILL THOMPSON
Chief Administrative Law Judge