

PAUL D. & TONYA M. BRAND
4194 HIGHWAY 159
FAYETTE, AL 3555-5027,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 05-465

FINAL ORDER

This appeal involves a final assessment of 2003 Alabama income tax entered against the above Taxpayers. The Taxpayers filed an amended 2003 Alabama income tax return. The Department asked for clarification as to why a corrected W-2 from Fayette Cotton Mills submitted with the return showed exempt income of \$3,527.04. The Taxpayers responded that the income was exempt severance pay. A copy of the Department's response to that claim is enclosed with the Taxpayers' copy of this Order. The Department indicates that the severance pay exemption cannot be allowed because the Taxpayers' employer, Fayette Cotton Mills, was not approved for exempt severance pay.

The Department's position is based on Reg. 810-3-14-.11(9). That regulation requires that employers must apply to the Department for approval of the exemption. However, the statute that grants the exemption, Code of Ala. 1975, §40-18-19.1, does not contain such a requirement.

The Department is authorized by §40-18-19.1(c) to promulgate regulations for the purpose of administering the exemption, but a Department regulation cannot narrow or limit the scope of the statute it relates to. *Ex parte Uniroyal Tire Co.*, 779 So.2d 227 (Ala. 2000). As indicated, §40-18-19.1 does not require an employer to apply to the Department

before the exemption is applicable. The Department cannot impose that substantive requirement by regulation.

Section 40-18-19.1 exempts up to \$25,000 in severance pay received by employees that are terminated, laid-off, fired, or displaced due to administrative downsizing. An employee that otherwise qualifies for the exemption should not lose the exemption because his or her ex-employer failed to apply for approval of the exemption. Consequently, the Taxpayer in this case is entitled to the exemption, notwithstanding that his ex-employer failed to apply for approval of the exemption.¹

The final assessment in issue is dismissed. Judgment is entered accordingly.

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

Entered August 8, 2005.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Department may require employers to apply for approval for administrative purposes so that the Department can readily know whether an employer has paid out exempt severance pay. But as indicated, income that otherwise qualifies as exempt cannot be taxed because an employer failed to apply for approval.