

MELVIN R. HUTSON  
1307 N. Main Street  
Greenville, SC 29609-4716,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 05-505

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **OPINION AND PRELIMINARY ORDER**

The Revenue Department assessed Melvin R. Hutson ("Taxpayer") for 1995 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 October 26, 2005. The Taxpayer attended the hearing. Assistant Counsel Glen Powers represented the Department.

The Taxpayer is an attorney that was admitted to the Alabama Bar in 1971. He has been licensed to practice law in Alabama since that time.

In 1988, the Taxpayer was a partner in a South Carolina law firm, Thompson & Hutson. In that year, the Taxpayer filed a class action lawsuit in federal court in Alabama against an Alabama-based financial institution. The class included individuals from several Southeastern states, although a majority were from Alabama. The case settled in 1995, and the Taxpayer's law firm received a substantial legal fee from the case in that year.

The partnership filed a 1995 Form 65 Alabama partnership return. The return reported \$411,517 as partnership income apportioned to Alabama in the year. The partnership also issued a Schedule K showing that the Taxpayer's 20 percent distributive share of the Alabama income was \$82,303. The majority partner in the

partnership filed a 1995 Alabama nonresident return and reported and paid tax on his 60 percent portion of the income, or \$246,910. The Taxpayer failed to do so.

In March 2004, the Department contacted the Taxpayer and requested that he file a 1995 return based on his receipt of the Alabama-sourced income in that year. The Taxpayer failed to respond. The Department consequently computed the Taxpayer's liability and billed him for the tax due. The Taxpayer responded that he had reported and paid tax on the income to South Carolina. The Department subsequently assessed the Taxpayer for the tax due, plus penalties and interest.

The Taxpayer argues that the final assessment is untimely because it was entered ten years after the income was earned. He also claims that he was not subject to Alabama income tax in 1995.

To begin, Alabama law allows the Department to enter an assessment at any time if no return is filed as required. Code of Ala. 1975, §40-2A-7(b)(2)a. Consequently, the Department is not barred from assessing the Taxpayer because he failed to file a 1995 Alabama return. The matter will, however, be submitted to the Department's Taxpayer Advocate to determine if all or a portion of the accrued interest should be abated because the Department unduly delayed in assessing the tax. Code of Ala. 1975, §40-2A-4(b)(1)c.

The Taxpayer was also subject to Alabama tax on the income earned in Alabama in 1995. Code of Ala. 1975, §40-18-2(6) levies an income tax on every nonresident individual receiving income from property owned or business transacted in Alabama. The Taxpayer transacted business in Alabama when he filed a class action lawsuit in

Alabama and represented numerous Alabama residents in the lawsuit. The fee his partnership received in 1995 as a result of that business transacted in Alabama clearly constituted Alabama-sourced income subject to Alabama income tax. The Taxpayer also had sufficient contacts with Alabama so as to be subject to Alabama's taxing jurisdiction.

Finally, the Taxpayer claims that he reported and paid tax on the income in South Carolina in 1995. However, South Carolina, like Alabama, allows a credit for tax paid by a resident on income earned in another state. See, Code of South Carolina 1976, §12-6-3400 and Code of Ala. 1975, §40-18-21. If the Taxpayer had timely filed a 1995 Alabama return and paid the tax due, as his law partner did, he would have been allowed a credit on his 1995 South Carolina return for the Alabama tax paid. He failed to do so.

A copy of this Order has been submitted to the Department's Taxpayer Advocate for a determination as to whether a portion of the accrued interest should be abated due to undue delay by the Department in assessing the Taxpayer. An appropriate Final Order will be entered after the Taxpayer Advocate responds.

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

Entered March 2, 2006.

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BILL THOMPSON  
Chief Administrative Law Judge