

BARRY P. HAMPTON  
3520 PELZER AVENUE  
MONTGOMERY, AL 36109-2810,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 05-621

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

The Revenue Department assessed Barry P. Hampton (“Taxpayer”) for 1998, 1999, 2000, and 2001 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 September 27, 2005. The Taxpayer represented himself at the hearing.<sup>1</sup> Assistant counsel Mark Griffin represented the Department.

The Taxpayer failed to file Alabama income tax returns for 1998 through 2001. The Department received IRS information indicating that the Taxpayer resided in Alabama and received non-employee compensation and interest income in each of those years. Specifically, the information showed that the Taxpayer resided in Montgomery, Alabama and received total income of \$26,957, \$28,264, \$14,444, and \$11,434 in 1998, 1999, 2000, and 2001, respectively. The Department allowed the Taxpayer the standard deduction and personal exemption in each year, and thereafter assessed him for the tax due, plus applicable penalties and interest.

At some point in the assessment process, the Taxpayer had a meeting with someone in the Department’s Income Tax Division in Montgomery. At the meeting, the Taxpayer requested a copy of the documents in his administrative file. The Taxpayer

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<sup>1</sup> John Dunn and Wayne Bullard also attended with the Taxpayer.

claimed at the September 27 hearing that he could not identify who he talked with, but that the individual stated that he needed to confer with the Department's Legal Division before giving any documents to the Taxpayer. The Taxpayer thereafter left the meeting without providing any documents or other information indicating that the Department's adjustments were incorrect. Consequently, the Department entered the final assessments in issue.

If a taxpayer fails to file a return, the Department is authorized to calculate the taxpayer's liability "based on the most accurate and complete information reasonably obtainable by the department." Code of Ala. 1975, §40-2A-7(b)(1)a.

The Taxpayer in this case failed to file Alabama income tax returns for the subject years. The Department received IRS information indicating that the Taxpayer resided in Alabama and received income from Regions Bank, the Navy Federal Credit Union, and Life Plus in those years. The income amounts were sufficient to subject the Taxpayer to Alabama income tax and require him to file returns in those years. See, Code of Ala. 1975, §§40-18-2 and 40-18-27. The Department consequently determined the Taxpayer's liability in each year based on the IRS information.

The Taxpayer has never denied that he resided in Alabama in the subject years, or that he received the income in issue on which the final assessments are based. Rather, he argues that the IRS information cannot be used because the Department does not have an affidavit from the payors verifying that the income amounts are correct. He claims that any W-2 or 1099 forms obtained from the IRS are "hearsay. They are not signed under penalty of perjury; are not competent fact witnesses and violate 26 U.S.C. §§6061 and 6065." See, Taxpayer's Affidavit of Disputed Form 1099-

R at 3. The Taxpayer also asserts in the above affidavit that he disputes “that I am an Alabama Taxpayer and is (sic) subject to any administrative law or section, Code of Ala. 1975 as it relates to Taxpayers and not to non-taxpayers.” Finally, the Taxpayer claims that “[t]here has been no evidence of taxable income or income by a competent fact witness.”

The Taxpayer also stated in a June 11, 2005 letter to the Administrative Law Division that “[t]he Alabama law that you are referring has not been determined at this time by any court of competent jurisdiction that makes me liable to or subject to its jurisdiction.” “. . . I am not subject to the code and you are attempting to use the code that a person has subjected him or herself to. I have not.” “. . . you have no judicial authority and I am not bound by Code of Ala. 1975.”

The Taxpayer obviously distrusts and has great animosity towards government in general, and the Revenue Department in particular, as illustrated by the contents and tone of his notice of appeal, his June 11 letter to the Administrative Law Division, and the hostility shown at the September 27 hearing. He also hired his own court reporter for the September 27 hearing because, as he stated in his June 11 letter, “I have seen too many ‘official records’ tampered with and I have no assurances that it will not happen in my case.”

The Taxpayer, of course, has the right to his own ideas and opinions. He is also entitled to hold the Department and its employees in contempt, if he so desires. The Taxpayer is wrong, however, that he is not subject to Alabama law, and specifically the Alabama Revenue Code, Title 40, Code 1975.

Every individual residing or domiciled in Alabama is subject to the Alabama income tax levied at Code of Ala. 1975, §40-18-2. The IRS information obtained by the Department indicated that the Taxpayer lived in Alabama in the subject years. The Taxpayer has never disputed that he resides in Alabama, and the return address on his notice of appeal and the other correspondence filed with the Administrative Law Division gives a Montgomery, Alabama return address for the Taxpayer. The Taxpayer also has not disputed that he received the income in issue. Consequently, because the Taxpayer resided in Alabama and received income sufficient to require him to file Alabama returns in the subject years, he was (and is) subject to Alabama law, and more specifically, to the Alabama income tax levied at §40-18-2.

I also disagree that the IRS information is not a sufficient basis upon which the Department may assess the Taxpayer. Because the Taxpayer failed to file returns, §40-2A-7(b)(1a) authorized the Department to use the IRS information, as the best information available, to assess the Taxpayer for the tax due. There is no requirement that the IRS information must be verified by affidavit or otherwise. Rather, it constituted *prima facie* evidence that the Taxpayer was subject to and liable for Alabama income tax. The burden then shifted to the Taxpayer to contest or dispute the final assessments with evidence showing that the IRS information is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. provides that “[o]n appeal . . . to the Administrative Law Division, the final assessment shall be *prima facie* correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.” As indicated, the Taxpayer has failed to present any evidence disputing the accuracy of the IRS information or the resulting final assessments.

The Taxpayer cited the federal Freedom of Information Act at the September 27 hearing in support of his claim that he was entitled to copies of the documents in his administrative file. That Act applies, however, only to agencies of the federal government, not State agencies, 5 U.S.C. §552(f)(1), although I know of no reason why the Taxpayer could not be provided copies of the documents in his Department file, unless privileged or otherwise confidential by statute.

In any case, the fact that the Taxpayer was not given the documents in his file does not affect the accuracy or validity of the final assessments. The Taxpayer was fully apprised that the assessments were based on IRS information showing that he resided in Alabama and received income from specific sources in the subject years. As indicated, he has presented no evidence disputing those facts, and the fact that he has not been provided the actual documents containing the IRS information is irrelevant. Also, the Taxpayer apparently had copies of the 1099-MISC forms provided by the IRS. He stated in the above referenced affidavit, at paragraph (16), that “any copy of Form 1099-MISC you have in your possession (of which I have had your office make copies of in a recent visit) has no currently valid control number, . . .” Consequently, the Taxpayer’s claim that he is unable to defend himself because he has not seen the information relied on by the Department is rejected.

The Taxpayer is an intelligent individual. He apparently believes, however, that despite the many public benefits provided to him by the State of Alabama, he is not required to help pay for those benefits with his income tax dollars. He does not contest that he lived in Alabama and received the income attributed to him by the Department. Rather, he attempts to avoid liability by claiming that the IRS information is not verified,

and also that he is not subject to the jurisdiction or laws of the State of Alabama. Those claims are patently frivolous, as is the Taxpayer's appeal. Consequently, as requested by the Department, the 25 percent frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f) is applicable.<sup>2</sup>

The final assessments are affirmed. Judgment is entered against the Taxpayer for 1998 tax, frivolous appeal and other penalties, and interest of \$2,545.75; 1999 tax, frivolous appeal and other penalties, and interest of \$2,571.05; 2000 tax, frivolous appeal and other penalties, and interest of \$1,033.34; and 2001 tax, frivolous appeal and other penalties, and interest of \$715. Additional interest is also due on the final assessments from the date of entry of the final assessments, May 11, 2005, and on the frivolous appeal penalties from the date of this Final Order.

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

Entered October 5, 2005.

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BILL THOMPSON  
Chief Administrative Law Judge

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<sup>2</sup> For other cases in which the frivolous appeal penalty was also applied, see *Easter v. State of Alabama, Inc.* 04-438 (Admin. Law Div. 9/24/04); *Cook v. State of Alabama, Inc.* 00-330 (Admin. Law Div. 9/11/00).