

MARY J. DUSAK  
6095 COUNTY ROAD 47  
FAYETTE, AL 35555-5967,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 05-932

### FINAL ORDER

The Revenue Department assessed Mary J. Dusak (“Taxpayer”) for 1999 and 2000 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 November 16, 2005. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Glen Powers represented the Department.

The Taxpayer failed to file Alabama income tax returns for the subject years. The Department received IRS information indicating that the Taxpayer resided in Alabama in 1999 and 2000 and had income sufficient to require her to file returns for those years. The Department allowed the Taxpayer the standard deduction and personal exemption, and assessed her for the tax due, plus penalties and interest. The Taxpayer appealed.

The Taxpayer does not dispute that she lived in Alabama or earned income in the subject years. Rather, she inquired in her appeal as follows: (1) “What statute/law written by Congress of the US/Constitution makes me liable to pay an income tax?”(2) “How can I file a tax return without waiving my 5th amendment rights?”

The tax in question is Alabama income tax, not federal tax. Consequently, the Taxpayer’s inquiry concerning Congress’ authority to levy an income tax is irrelevant. In any case, the Alabama Constitution authorizes the Alabama Legislature to levy and collect

an income tax. See, Alabama Constitution of 1901, Art. IX, §211.01. The Legislature accordingly levied an income tax on every individual or natural person residing or domiciled in Alabama. Code of Ala. 1975, §40-18-2. The Taxpayer resided in Alabama in 1999 and 2000. Consequently, she was subject to Alabama income tax in those years.

Concerning the Taxpayer's inquiry about her 5th Amendment rights, the federal courts have consistently held that requiring a taxpayer to file and sign an income tax return does not infringe on the taxpayer's constitutional rights. See generally, *Ricket v. U.S.*, 773 F.2d 1214 (1985).

A final assessment on appeal is *prima facie* correct, and the burden is on the taxpayer to prove the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The Department assessed the Taxpayer based on the best information available, the IRS information. The Taxpayer has presented no evidence or valid arguments establishing that the Alabama income tax assessed by the Department is incorrect.

The Department also requested that the Taxpayer be assessed for the frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f). The request is granted. The Taxpayer's arguments are meritless, and similar arguments have been repeatedly rejected as such by the federal courts. See generally, *Edwards v. C.I.R.*, 680 F.2d 1268 (1982); *Denison v. C.I.R.*, 751 F.2d 241 (1984); *Moore v. C.I.R.*, 722 F.2d 193 (1984). If the Taxpayer had filed her 1999 and 2000 returns, as she was clearly required to do by law, instead of presenting her frivolous objections and arguments, the State, and its taxpayers, would have been spared the unnecessary costs incurred in computing the Taxpayer's liabilities, notifying the Taxpayer of the amounts due, and then docketing and administratively handling the Taxpayer's appeal.

The final assessments, plus the frivolous appeal penalties, are affirmed. Judgment is entered against the Taxpayer for 1999 tax, penalties, and interest of \$1,848.52, and 2000 tax, penalties, and interest of \$1,732.01. Additional interest is also due from the date the final assessments were entered, July 13, 2005.

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

Entered November 28, 2005.

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BILL THOMPSON  
Chief Administrative Law Judge