

ROLF VIERTEL & DOROTHEE	§	STATE OF ALABAMA
BUCKLEY-VIERTEL		DEPARTMENT OF REVENUE
11 GENERAL CANBY DRIVE	§	ADMINISTRATIVE LAW DIVISION
SPANISH FORT, AL 36527,		
	§	
Taxpayers,		DOCKET NO. INC. 06-1021
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

**FINAL ORDER**

The Revenue Department assessed Rolf and Dorothee Viertel (together “Taxpayers”) for a late penalty because they failed to file quarterly income tax returns and pay the estimated tax due concerning their 2005 Alabama liability. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 21, 2006. The Taxpayers attended the hearing. Assistant Counsel Duncan Crow represented the Department.

Rolf Viertel (individually “Taxpayer”) served for over 35 years in the German military before retiring as a Lieutenant Colonel. He and his wife moved to Alabama in late 2003. He had inquired before moving to the U.S. as to whether his German military pay was subject to federal tax. He was told, correctly, that the U.S. Government allowed a credit for income tax paid to Germany and other foreign countries. He was also told that military retirement pay was exempt from Alabama income tax. He also researched the issue, and found that Alabama’s Form 40 instruction booklet listed “military retirement” as exempt income.

The Taxpayers learned in late 2005 that military retirement from a foreign government, i.e., Germany, was not exempt from Alabama tax. Consequently, they

reported the Taxpayer's German military retirement income on their timely filed 2005 Alabama return. The Department subsequently assessed the Taxpayers for a penalty for failing to file quarterly returns and paying the estimated tax due during 2005. However, neither the final assessment nor any attached correspondence explained to the Taxpayers why the penalty was being assessed.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). Reasonable cause is clearly present in this case. The Taxpayers were told, and the Department's instruction booklet confirmed, that the Taxpayer's military retirement was exempt from Alabama tax. Consequently, the Taxpayers reasonably believed, until learning otherwise in late 2005, that the Taxpayer's German military retirement pay was not subject to Alabama tax. They are now aware that the income is taxable, and that they are required to file quarterly returns and pay the estimated tax due on the income.

The Department also failed to inform the Taxpayers in writing (or otherwise) concerning why the penalty was being assessed, as required by Code of Ala. 1975, §40-2A-4(a)(3). If the Department fails to comply with §40-2A-4(a)(3), Alabama law specifies that any related penalty shall be waived. Code of Ala. 1975, §40-2A-4(c).

The penalty in issue is waived for cause. The final assessment is voided.

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

Entered January 2, 2007.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
Rolf Viertel  
Kim Peterson