GINNA L. HAM 15221 KINGS DRIVE ATHENS, AL 35611-5671,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 06-345
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Ginna L. Ham ("Taxpayer") for 2002 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 August 17, 2006. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Gwendolyn Garner represented the Department.

The Taxpayer failed to file a 2002 Alabama income tax return. The Department received IRS information indicating that the Taxpayer resided in Alabama in 2002 and received income sufficient to require her to file an Alabama return for that year.[1] It consequently computed the Taxpayer's 2002 Alabama liability based on the IRS information and assessed her for the tax due, plus applicable penalties and interest.

The Taxpayer had also previously failed to file a 2000 Alabama return. The Department subsequently assessed the Taxpayer for 2000 Alabama income tax based on IRS information. The Taxpayer appealed to the Administrative Law Division, which docketed the case as Inc. 04-896. As in this case, the Taxpayer did not dispute in the prior appeal that she resided in Alabama and earned income in the subject year. Rather, she

[1] Specifically, the Taxpayer received non-employee compensation of $47,950, wages of $2,366, K-1 income of $9,208, and interest income of $711.

argued that Alabama's income tax violated the 13th Amendment's protection against involuntary servitude, and that the State could not tax the income received for her labor, among other contentions. The Administrative Law Division rejected the Taxpayer's arguments, and also imposed the 25 percent frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f). The Final Order in Inc. 04-896 reads in pertinent part as follows:

> The Taxpayer failed to file a 2000 Alabama income tax return. The Department received IRS information indicating that the Taxpayer resided in Alabama and received income in 2000 sufficient to require her to file an Alabama income tax return for that year. The Department assessed the Taxpayer based on the IRS information.
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> The Taxpayer does not dispute that she earned the income in question or that she resided in Alabama in 2000. Rather, she questions whether the State of Alabama can impose a direct income tax on citizens of Alabama without violating the 13th Amendment's protection against involuntary servitude. She also argues that the State cannot tax the income resulting from her labor because "the labor of a human being is not a commodity or article of commerce." She also questions (1) whether the Administrative Law Division can address constitutional issues; (2) in what forum can she "get remedy if this administrative process can only entertain issues regarding the alleged tax due and not issues of liability"; and (3) how can the Administrative Law Division "remain impartial having a nexus and vested interest in the decisions rendered for purposes of protecting the Order." Taxpayer's Appeal at 3, 4.
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> Alabama income tax is levied on every individual residing in Alabama. Code of Ala. 1975, §40-18-2(1). Alabama's income tax has been found to be constitutional. *Weil v. State*, 186 So. 467 (Ala. 1939).
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> Every Alabama resident that has adjusted gross income of over $1,875 in a tax year is required to file an Alabama income tax return. Code of Ala. 1975, §40-18-27(a). If an individual obligated to file an Alabama return fails to do so, the Department is authorized to calculate the individual's liability and assess the tax due based on the most accurate and complete information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a.
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> In this case, the Department received IRS information indicating that the Taxpayer resided in Alabama and received over $50,000 in non-employee compensation and interest income in 2000. She failed, however, to file a return for that year. Consequently, the Department was authorized pursuant

to §40-2A-7(b)(1)a. to calculate the Taxpayer's correct liability and assess her for the tax due, plus applicable penalties and interest. The final assessment entered by the Department is *prima facie* correct, and the burden was on the Taxpayer to prove that the final assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c.

As indicated, the Taxpayer does not dispute that she earned the income in question or that she resided in Alabama in 2000. Rather, she makes various assertions that the Department has characterized as "frivolous." I agree.

First, the Alabama income tax has nothing to do with slavery or involuntary servitude. The State is not forcing the Taxpayer to work. As a citizen of Alabama, she enjoys the benefits and services provided by the State, and is required by law to comply with Alabama's income tax statutes. Like all other citizens of Alabama, she must pay her fair share. As stated by Justice Holmes – "Taxes are what we pay for civilized society, . . ." *Compania De Tabacos v. Collector*, 275 U.S. 87 (1927).

The Taxpayer's claim that the State cannot tax the compensation resulting from her labor is also frivolous. Alabama law defines "gross income" for purposes of the Alabama income tax as all "gains . . . and income derived from salaries, wages, or compensation for personal services of whatever kind . . ." Code of Ala. 1975, §40-18-14(1). Non-employee compensation and interest income clearly fall within that definition. The taxpayers made a similar argument in *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68 (7th Cir. 1986). The federal court rejected the taxpayers' arguments, as follows:

> These are tired arguments. The code imposes a tax on all income. See 26 U.S.C. §61. Wages are income, and the tax on wages is constitutional. See among hundreds of other cases, *United States v. Thomas*, 788 F.2d 1250,1253 (7th Cir. 1986); *Lovell v. United States*, 755 F.2d 517 (7th Cir. 1984); *Granzow v. CIR*, 739 F.2d 265, 267 (7th Cir. 1984); *United States v. Koliboski*, 372 F.2d 1328, 1329 & n.1 (7th Cir. 1984). See also *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 12, 24-25, 36 S.Ct. 236, 239, 244-45, 60 L.Ed.2d 493 (1916).

Coleman, 791 F.2d at 70.

Concerning the Taxpayer's query as to whether the Administrative Law Division can address constitutional issues, it may apply constitutional principles, but it cannot declare a statute unconstitutional. But that query is irrelevant to whether the Taxpayer is statutorily liable for the Alabama income tax in issue. The Taxpayer's constitutional rights have not been violated, nor

is the Department prohibited by the U.S. or Alabama Constitutions from taxing the Taxpayer.

The Taxpayer next inquires where she can "get remedy" if the Administrative Law Division "can only entertain issues regarding the alleged tax due and not issues of liability." I do not fully understand the Taxpayer's question because the amount of tax due is the same as her liability. In any case, the Administrative Law Division is authorized to determine a taxpayer's liability on appeal. See, Code of Ala. 1975, §40-2A-7(b)(5)d.1. If the Taxpayer disputes her liability as established by the Administrative Law Division, her "remedy" is to appeal to the appropriate circuit court pursuant to Code of Ala. 1975, §40-2A-9(g).

Finally, concerning the Taxpayer's claim relating to the Administrative Law Division's impartiality, she is incorrect that the Administrative Law Division has a "nexus and vested interest" in the case. As with the over 8,500 cases previously decided by the Administrative Law Division since 1983, this case has been impartially decided based on the relevant facts and Alabama law. As indicated, if the Taxpayer disagrees with this Final Order, she may appeal to the appropriate circuit court.

The Department has also requested that the Administrative Law Division assess a frivolous appeal penalty against the Taxpayer. Code of Ala. 1975, §40-2A-11(f) levies a frivolous appeal penalty of $250 or 25 percent of the tax in question, whichever is greater.

The federal courts have held that "a frivolous appeal is an appeal in which the result is obvious or the arguments of error are wholly without merit." *Buck v. U.S.*, 967 F.2d 1060, 1062, citing *Montgomery v. U.S.*, 933 F.2d 348, 350 (5th Cir. 1991) (quoting *Coghlan v. Starkey*, 852 F.2d 806, 811 (5th Cir. 1988).

The taxpayer in *Coleman*, *supra*, presented arguments similar in nature to the arguments presented by the Taxpayer in this case. The court upheld the frivolous appeal penalty assessed in that case with the following language:

> The purpose of 26 U.S.C. §§6673 and 6702 (the federal frivolous return and appeal penalties) is to compel taxpayers to think and to conform their conduct to settled principles before they file returns and litigate. A petition to the Tax Court, or a tax return, is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law.

* * *

> The inquiry is objective. If a person should have known that his position is groundless, a court may and should impose sanctions. See *Thornton v. Wahl*, 787 F.2d 1151, 1154 (7th Cir. 1986).
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> The purpose of §§6673 and 6702, like the purpose of Rules 11 and 38 and of §1927, is to induce litigants to conform their *behavior* to the governing rules regardless of their subjective beliefs. Groundless litigation diverts the time and energies of judges from more serious claims; it imposes needless costs on other litigants. Once the legal system has resolved a claim, judges and lawyers must move on to other things. They cannot endlessly rehear stale arguments. Both appellants say that the penalties stifle their right to petition for redress of grievances. But there is no constitutional right to bring frivolous suits, see *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743, 103 S.Ct. 2161, 2170, 76 L.Ed.2d 277 (1983). People who wish to express displeasure with taxes must chose other forums, and there are many available. Taxes are onerous, no doubt, and the size of the tax burden gives people reason to hope that they can escape payment. Self-interest calls forth obtuseness. An obtuse belief – even if sincerely held – is no refuge, no warrant for imposing delay on the legal system and costs on one's adversaries. The more costly obtuseness becomes, the less there will be.
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> The contentions in this case are objectively frivolous. They have been raised and rejected so often that this circuit now handles almost all similar cases by unpublished orders. The Tax Court and the IRS were entitled to impose sanctions. We, too, regularly impose sanctions in these cases.

Coleman, 791 F.2d at 71, 72.

The frivolous appeal penalty is also applicable in this case. The Taxpayer's arguments are facially meritless. A 25 percent frivolous appeal penalty of $908.43 is accordingly added to the amount due.

The final assessment is affirmed. Judgment is entered against the Taxpayer for the amount of the final assessment of $3,633.71, plus the frivolous appeal penalty of $908.43, for a total due of $4,542.14. Additional interest is also due on the final assessment from the date of entry of the final assessment, September 20, 2004, and on the frivolous appeal penalty from the date of this

Final Order.

Ham v. State of Alabama, Inc. 04-896 (Admin. Law Div. 1/31/05) at 1 – 6.

The Taxpayer has raised some of the same issues in this case that were addressed in the appeal of the 2000 final assessment, and several more. The issues/claims raised by the Taxpayer in this case are addressed below.

The Taxpayer first argues that she "did not consent to the taking of her personal labor property in the form of a head tax imposed under the guise of a statutory state individual income tax." Alabama law does not require, however, that an individual must consent before being subject to or liable for Alabama income tax. Rather, if the individual resides or is domiciled in Alabama or receives income from property owned or business transacted in Alabama, the individual is by law subject to and liable for Alabama income tax. Code of Ala. 1975, §40-18-2. The individual's consent to be taxed is not required.

The Taxpayer next claims that Alabama has adopted the Internal Revenue Code ("IRC"). She then asserts that because the U.S. Congress has repealed that part of the IRC that authorized the collection of state income taxes, the Department is without authority to assess her.

To begin, while Alabama has adopted by reference specific sections of the IRC, it has not adopted the entire IRC. In any case, the IRC does not address or otherwise govern Alabama's authority and ability to impose and collect an income tax. The imposition of an Alabama income tax is authorized by Amendment 25 to the Alabama Constitution of 1901, and the actual levy is found at §40-18-2. The subsequent collection of Alabama income tax is authorized and governed by Chapter 29 of Title 40, Code of Ala. 1975, not the IRC, as erroneously argued by the Taxpayer.

The Taxpayer also asserts that the Department does not have "a 'State agreement' authorizing the withholding of Federal employee compensation." The Department is, of course, not authorized to withhold federal tax, if that is what the Taxpayer is referring to. Alabama law does require, however, that employers must withhold Alabama income tax from an employee's wages, see Code of Ala. 1975, §40-18-70, et seq., although there is no evidence in this case that Alabama tax was withheld from the Taxpayer's wages in the subject year. In any case, the fact that the Department has no agreement allowing it to withhold "Federal employee compensation" has no relevance to this case.

The Taxpayer next argues that the Department has improperly imposed a bill of attainder because it assessed the Taxpayer "against Belligerent Claimant's (Taxpayer's) property rights without benefit of a judicial trial." Bills of attainder, which are legislative acts that punish specific individuals or groups without allowing the right to appeal, are prohibited by the U.S. Constitution, Art. 1, §9, Cl. 3 and Art. 1, §10, Cl. 1. However, the Taxpayer's claim that the Department has imposed a bill of attainder against her is meritless.

First, the Department cannot impose a bill of attainder because it cannot enact legislation. Second, the Alabama income tax is not levied against only the Taxpayer or any other specific individual. Rather, it is levied against all individuals that reside in or are domiciled in Alabama, or derive income from property owned or business transacted in Alabama. The Taxpayer and all other individuals subject to Alabama income tax also have various avenues of judicial relief. The Taxpayer's appeal to the Administrative Law Division, a quasi-judicial Division of the Department, is itself an avenue of relief that affords the Taxpayer due process. The Taxpayer may hereafter appeal to the appropriate circuit court, and then to Alabama's appellate courts. Due process clearly had not been denied.

The Taxpayer also claims that the Department erred in computing her liability because it "failed to compute the Fair Market Value of Claimant's labor, assessing Claimant a liability as if Claimant's labor property has Zero value." In other words, the Taxpayer argues that the value of her labor was equal to the income she received for that labor, and consequently, that she had no taxable gain.

The above argument is also meritless. An individual's labor does not have a tax basis. Consequently, all wages and other income received by an individual in return for labor or personal services constitutes gross income. See, Code of Ala. 1975, §40-18-14(1) ("gross income" includes "compensation for personal services. . ."). The individual may have actual expenses relating to the performance of labor or services that may be deductible, but the individual must claim the expenses on a return and maintain records verifying the expenses. The Taxpayer failed to do so in this case.

The Taxpayer made a similar argument concerning the non-taxability of her income in her appeal of the 2000 final assessment. The Administrative Law Division rejected her argument as follows:

> The Taxpayer's claim that the State cannot tax the compensation resulting from her labor is also frivolous. Alabama law defines "gross income" for purposes of the Alabama income tax as all "gains . . . and income derived from salaries, wages, or compensation for personal services of whatever kind . . ." Code of Ala. 1975, §40-18-14(1). Non-employee compensation and interest income clearly fall within that definition. The taxpayers made a similar argument in *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68 (7th Cir. 1986). The federal court rejected the taxpayers' arguments, as follows:
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> *Granzow v. CIR*, 739 F.2d 265, 267 (7th Cir. 1984); *United States v. Koliboski*, 372 F.2d 1328, 1329 & n.1 (7th Cir. 1984). See also *Brushaber v. Union Pacific R.R.*, 240 U.S. 1, 12, 24-25, 36 S.Ct. 236, 239, 244-45, 60 L.Ed.2d 493 (1916).

Coleman, 791 F.2d at 70.

Ham v. State of Alabama, Inc. 04-896 at 3.

The facts of this case are simple, and the law applicable to those facts is equally straightforward. The Taxpayer resided and earned income in Alabama in 2002, and was thus subject to Alabama income tax. See, §40-18-2(1). She failed, however, to file an Alabama return for that year, as required by Code of Ala. 1975, §40-18-27(a). The Department thus assessed her based on the best information available, i.e., the IRS information, as authorized by Code of Ala. 1975, §40-2A-7(b)(1)a.

The final assessment based on the IRS information is *prima facie* correct, and the burden was on the Taxpayer to prove that it is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. She has failed to do so. Rather, she raised the various arguments addressed above. Those arguments are baseless and patently frivolous. As stated in *Coleman*, an appeal "is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for a change in the law." *Coleman*, 791 F.2d at 71. The Taxpayer's arguments are clearly contrary to established Alabama law, and the Taxpayer has not presented any reasonable arguments why the applicable laws should be changed. The Taxpayer may object to paying Alabama income tax, but Alabama law requires her to do so, the same as all other similarly situated taxpayers. The 25 percent frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f) is thus applicable.

The final assessment is affirmed. Judgment is entered against the Taxpayer for $4,196.38, plus the frivolous appeal penalty of $1,049.10, for a total due of $5,245.48. Additional interest is also due on the final assessment amount from the date the final assessment was entered, and on the frivolous appeal penalty 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 August 30, 2006.

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BILL THOMPSON
Chief Administrative Law Judge