

CECIL M. LIVINGSTON
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SHARPS CHAPEL, TN 37866-0279,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 06-349

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Cecil M. Livingston (“Taxpayer”) for 1999, 2000, 2001, and 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 September 20, 2006. The Taxpayer attended the hearing. Assistant Counsel Mark Griffin 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 and received income sufficient to require him to file Alabama returns for those years.¹ It consequently computed the Taxpayer’s Alabama liabilities based on the IRS information and assessed him for the tax due, plus applicable penalties and interest.

The Taxpayer was an independent salesman who sold clothing during the subject years. He does not dispute that he resided in Alabama and earned income in the subject years. Rather, he argues that the State cannot tax the income received for his labor. In other words, the Taxpayer contends that the value of his labor was equal to the income he received for that labor, and consequently, that he had no taxable profit or gain. He also

¹ Specifically, the Taxpayer resided in Anniston, Alabama and received non-employee compensation and interest income in 1999, 2000, 2001, and 2002 of \$123,971, \$186,955, \$181,047, and \$161,148, respectively.

argues that the final assessments should be voided because the Department failed to respond to various demands and inquiries contained in a Petitioner of Protest submitted with his appeal. He cites various provisions in the Uniform Commercial Code (“UCC”), Title 7, Code of Alabama 1975, in support of that position. He also makes various claims that he is exempt from or not subject to Alabama income tax. Finally, at the September 20 hearing, he argued, as best I can determine, that he is not liable for Alabama tax because the federal Office of Management and Budget (“OMB”) control number on the federal form 1040 relates only to income earned outside of the United States.

The above arguments are meritless. To begin, an individual’s labor does not have a tax basis. Consequently, all wages, sales commissions, 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 business expenses relating to the performance of labor or services that may be deductible, as the Taxpayer claims he did in this case, 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 Administrative Law Division rejected a similar argument in *Ham v. State of Alabama*, Inc. 04-896 (Admin. Law Div. 1/31/05) 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:

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.

Ham at 3.

The Taxpayer next contends that the Department was required to but failed to comply with various UCC provisions. However, the UCC relates to commercial transactions only, and does not apply to the procedures and actions of the Revenue Department. See generally, Code of Ala. 1975, §7-1-102. The Taxpayer's claim that the final assessments should be voided based on the various UCC provisions cited by the Taxpayer is rejected.

The Taxpayer also incorrectly claims that he is exempt from or not subject to Alabama tax. All persons that reside in Alabama are subject to Alabama income tax. Code of Ala. 1975, §40-18-2. As indicated, the Taxpayer does not dispute that he resided in Alabama in the subject years. All individuals that reside in Alabama are required to file an Alabama income tax return and report his or her income on the return. Code of Ala. 1975, §40-18-27(a). The Taxpayer again does not contest the IRS information showing he had substantial income that required him to file returns in the subject years. The Taxpayer has offered or cited no Alabama statute or Constitutional provision that exempts or otherwise removes him for liability for Alabama tax. The Taxpayer was thus subject to Alabama

income tax during the years in issue.

Finally, the Taxpayer's argument concerning the OMB control number on the federal form 1040 is incorrect, and in any case is irrelevant to the issue of whether the Taxpayer was subject to and liable for Alabama income tax in the years in issue.

The facts of this case are simple, and the Alabama law applicable to those facts is equally straightforward. The Taxpayer resided and earned income in Alabama in the subject years, and was thus subject to Alabama income tax. See, §40-18-2(1). He failed, however, to file Alabama returns for the subject years, as required by §40-18-27(a). The Department thus correctly assessed the Taxpayer 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 assessments based on the IRS information are *prima facie* correct, and the burden was on the Taxpayer to prove that they are incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. He has failed to do so.

The final assessments are affirmed. Judgment is entered against the Taxpayer for 1999 tax, penalty, and interest of \$10,654.12; 2000 tax, penalty, and interest of \$15,949.55; 2001 tax, penalty, and interest of \$14,792.48; and 2002 tax, penalty, and interest of \$12,658.55. Additional interest is also due from the date the final assessments were entered, March 27, 2006.

The Taxpayer indicated at the September 20 hearing that he incurred substantial business-related expenses in the subject years. The Taxpayer may claim the expenses by applying for a rehearing within 15 days and submitting Alabama returns and records supporting the expenses claimed on the returns. The returns and records will be submitted to the Department for review and response. Otherwise, this Final Order may be appealed

to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered September 22, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Mark Griffin, Esq.
Cecil M. Livingston
Tony Griggs