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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 06-422

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER ON TAXPAYER'S APPLICATION FOR REHEARING

This appeal involves final assessments of 1997, 1998, 1999, 2000 and 2001 income tax. A Final Order was entered on October 21, 2008 reducing the final assessments. The Administrative Law Division mailed the Final Order to the Taxpayer, but failed to mail a copy to the Taxpayer's representative. The Taxpayer has filed an application for rehearing. The application must be denied.

This is a records case. The Taxpayer failed to file Alabama returns for the subject years. A hearing was conducted on March 29, 2007. A Preliminary Order was entered after the hearing directing the Taxpayer to file Alabama returns for the subject years. The Taxpayer requested several extensions, and eventually filed the returns in late 2007. The Department responded that it could not accept the returns as filed because they were not signed. The Taxpayer also failed to substantiate the large Schedule C deductions claimed on the returns.

The Taxpayer was directed to submit signed returns for the subject years and records substantiating the deductions claimed on the Schedule Cs. The Taxpayer submitted the signed returns, but requested additional time to obtain the records. A Ninth Preliminary Order was entered directing the Taxpayer to submit the records by June 13,

2008. The Order further stated that if the records were not received by the above date, the Department should disallow the deductions and compute the Taxpayer's liabilities accordingly. The Taxpayer responded in a June 13, 2008 letter that his "records were destroyed in a fire or destroyed years ago."

The Department was directed to recompute the Taxpayer's liabilities. The Department responded that the 1997, 1998, 1999, 2000, and 2001 final assessments should be reduced to \$1,365.42, \$12,193.77, \$1,034.49, \$523.73, and \$1,965.25, respectively. A Final Order was entered on October 21, 2008 for those amounts. The Taxpayer timely applied for a rehearing.

The Taxpayer argues that the final assessments were untimely because they were entered in 2006. He also claims that he was not subject to Alabama income tax in the years in issue. He stated as follows in his application for rehearing:

The response filed by the Taxpayer is simply that the statute of limitations has passed on the returns in question when this case was raised in 2006. The court need (sic) to examine history and procedures of the Department with the applicable law. The Taxpayer has been unable to get the copies of the deductions from the IRS and has tried. The Taxpayer was not an Alabama resident during the applicable tax years. The Taxpayer has no duty to maintain his records beyond the three years asked by the IRS.

To begin, Alabama law allows the Department to assess tax at any time if no return is filed as required. Code of Ala. 1975, §40-2A-7(b)(2)a. Consequently, the Department was not barred from assessing the Taxpayer because he failed to file Alabama returns for the subject years until late 2007.

The Taxpayer claims that he earned income in Alabama and Georgia for the years in issue. Alabama allows a credit for tax paid by an Alabama resident on income earned in

another state. See, Code of Ala. 1975, §40-18-21. The Taxpayer was directed to submit copies of his Georgia returns for the subject years. He failed to do so. Consequently, a credit could not be allowed for tax paid to that State.

As indicated above, this is a records case. The Taxpayer was directed throughout the appeal process to submit records substantiating the large Schedule C deductions claimed on the returns. He failed to submit any records, and has conceded that he no longer has any supporting documentation for the years in issue. The Taxpayer's representative stated in his rehearing application that the Taxpayer was only required to maintain his records for three years based on an IRS recommendation.

The IRS suggests that a taxpayer keep a copy of his or her tax return, worksheets, and records of all items appearing on the return until the statute of limitations runs for that return. That statute of limitations is usually three years from the date the return was due or filed. But because the Taxpayer in this case failed to file returns for the subject years, the statute of limitations was open and the Taxpayer should have maintained records for those years.

The burden was on the Taxpayer to provide records verifying all claimed deductions. Without adequate records, all unverified deductions must be disallowed. *McDonald v. CIR*, 114 F.3d 1194 (1997).

A Preliminary Order on Rehearing was entered directing the Taxpayer to submit copies of his Georgia returns and any records for the subject years to the Administrative Law Division by December 19, 2008. The Order further stated that if the returns and records were not received by the above date, the October 21, 2008 Final Order would be

affirmed. The Taxpayer has failed to submit the returns and records or otherwise contact the Administrative Law Division.

The October 21, 2008 Final Order is affirmed. Judgment is entered accordingly.

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

Entered January 2, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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