

STEPHEN J. STAMBA  
1059 LONG LEAF LAKE DRIVE  
BESSEMER, AL 35022-4344,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 07-117

### **FINAL ORDER**

The Revenue Department assessed Stephen J. Stamba (“Taxpayer”) for 2001, 2002, 2003, and 2004 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 May 25, 2007. Wayne Wheeler represented the Taxpayer. Assistant Counsel David Avery represented the Department.

### **FACTS**

The Taxpayer filed his 2001, 2002, and 2003 Alabama income tax returns on February 25, 2005, and his 2004 return on April 8, 2005. He failed to pay the tax due with the returns. He filed for Chapter 7 bankruptcy protection on April 20, 2005.

The Department filed a claim (claim No. 2) in the bankruptcy action on June 5, 2005 concerning the Taxpayer’s 1999 and 2000 Alabama liabilities in the amount of \$5,851.18. The Department amended the above claim (claim No. 7) on February 6, 2006 to increase the claimed amount to \$10,151.89. Amended claim No. 7 was allowed by the Bankruptcy Court by Order dated March 17, 2006.

Before the Department’s amended claim was filed and approved as indicated above, the Taxpayer filed an Adversary Proceeding (“AP”) with the Bankruptcy Court. The purpose for the AP was to determine the amount and dischargeability of the Taxpayer’s

Alabama income tax liabilities for 1999 through 2004. The Bankruptcy Court issued an Order in the AP on December 7, 2005, holding that the Taxpayer's liabilities for "1999 and 2000 are hereby determined dischargeable," and that the Taxpayer's liabilities for "2001, 2002, 2003, and 2004 are determined to be non-dischargeable in the amount of \$17,102.06 (as of September 26, 2005)."<sup>1</sup>

In mid to late 2006, the Bankruptcy Trustee paid claim No. 7, i.e., the Department's amended claim filed on February 6, 2006, in the full amount claimed, \$10,151.89.

On December 5, 2006, the Department entered the final assessments in issue for the years 2001 through 2004. The final assessments totaled \$12,063.74, and were based on the tax due as reported by the Taxpayer on his returns for the subject years.

### **ANALYSIS**

First, the Taxpayer's 2001 through 2004 liabilities were not discharged in the bankruptcy proceeding because the returns for those years were filed within two year from when the Taxpayer filed for bankruptcy protection. See, 11 U.S.C. §523(a)(1)(B)(ii).

The Taxpayer argues that his Alabama liabilities for 1999 through 2004 were paid in full when the Bankruptcy Trustee remitted the \$10,151.89 to the Department. He thus contends that because the 2001 through 2004 liabilities were paid, the Department could not later assess him for those years. I disagree.

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<sup>1</sup> The amount due for 2001 through 2004 as determined by the Bankruptcy Court was based on a Department audit of the Taxpayer's 2001 through 2004 Alabama returns in mid-2005. The Department determined that the Taxpayer was not entitled to the federal tax paid deductions claimed on the returns. It increased the Taxpayer's liabilities accordingly. As indicated, the Bankruptcy Court found that the amount due per the Department audit was correct.

The Department's initial claim (claim No. 2) for taxes filed with the Bankruptcy Court involved only 1999 and 2000. The Department later amended that claim (claim No. 7), and increased the amount claimed for 1999 and 2000 to \$10,151.89. The Bankruptcy Court determined in the AP that the Taxpayer's "tax liability for years 1999 and 2000 are hereby determined dischargeable." December 7, 2005 Order. Despite the above finding, the Bankruptcy Trustee subsequently paid amended claim No. 7 in the full amount claimed, \$10,151.89. The Trustee apparently allowed the claim for the 1999 and 2000 tax years for the reasons explained in the Department's Answer.

Subsequently, the Bankruptcy Trustee objected to the Department's claim regarding 1999 and 2000 which had been filed as a priority claim (See, 11 U.S.C. §507(a)(8)) challenging its priority status. The Department responded that the objection was well taken in that it was not entitled to a priority status but that it was due to be allowed as a secured claim because the Department had filed a lien on the property that was sold in the bankruptcy to fund the plan and that the claim was not correct in its amount either. The Department amended its claim for 1999 and 2000 to approximately \$10,000 and filed it as secured rather than priority. Luckily, the IRS had never recorded a lien against the Taxpayer and by amending its claim to secured status; the State was first in line among the non-administrative claim creditors to get paid. The Trustee agreed to the Department's amended claim and the claim for 1999 and 2000 was paid in bankruptcy.

Department's Answer at 3.

As shown above, the \$10,151.89 paid in the bankruptcy proceeding related to and satisfied only the Taxpayer's 1999 and 2000 Alabama liabilities. The 2001 through 2004 liabilities remain due, and as discussed, were not discharged in the bankruptcy proceeding. The Bankruptcy Court's Order in the AP stated as much, and finally determined the Taxpayer's total liability for those years to be \$17,102.06. That finding constituted a final determination of the Taxpayer's liabilities for the subject years. Consequently, the final assessments in issue are adjusted to \$5,461.32, \$4,685.78, \$4,633.55, and \$2,321.41

concerning 2001, 2002, 2003, and 2004, respectively, for a total due of \$17,102.06.<sup>2</sup> Judgment is entered accordingly. Additional interest is also due from the date the final assessments were entered, September 26, 2005.

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

Entered September 18, 2007.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.  
M. Wayne Wheeler, Esq.  
Kim Peterson

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<sup>2</sup> Alabama law allows that on appeal, the Administrative Law Division may adjust a final assessment to reflect the correct amount due. Code of Ala. 1975, §40-2A-7(b)(5)d.1.