

PAUL G. & ROSE M. STOREY	§	STATE OF ALABAMA
5331 FOREST PARK DRIVE		DEPARTMENT OF REVENUE
MOBILE, AL 36618,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 07-465
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed Paul G. and Rose M. Storey (together “Taxpayers”) for 2005 Alabama income tax. 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 August 14, 2007. Paul Storey (individually “Taxpayer”) attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer’s mother-in-law, Rafaline Thomas, passed away in 2004 or 2005. The mother-in-law had previously named the Taxpayer’s wife as the beneficiary of her pension fund, the Twin Cities Pipe Trades Pension Supplement Fund. As beneficiary, the wife received a \$89,524.20 distribution from the pension fund in 2005.

The Taxpayer completed he and his wife’s joint 2005 Alabama return in 2006. The instructions for the return cited various examples of income that is not taxable/reportable, including “gifts, money, or other property you inherit or that is willed to you.” Based thereon, the Taxpayer concluded that the money received from the pension fund was not taxable because his wife had received the money by or through her mother’s estate or will. He thus failed to include the amount as income on the return.

The Department determined that the pension distribution was taxable because the Taxpayer’s wife had received it as beneficiary of her mother’s pension plan, and not

through her mother's estate. It assessed the Taxpayers accordingly.

The Taxpayer vigorously argues that the Department's instructions concerning the 2005 return plainly state that money inherited or willed to an individual is not taxable. He thus contends that the pension distribution was not taxable per the instructions because his wife received the money through her mother's will.

The instructions to the 2005 return are correct. Money that is inherited or received through a will is not taxable. What the Taxpayer fails to understand is that his wife did not inherit or receive the money in issue from or through her mother's estate or will. Rather, she received the money outside of her mother's estate as the named beneficiary of her mother's pension fund account. That is, the wife's right to the money was not established by or through the mother's estate or will. Rather, she would have received the pension distribution regardless of the terms of her mother's will. Stated differently, the pension fund money was not included in or a part of the mother's estate, nor was it a distributable asset that passed through her will.

The Taxpayer conceded that the pension distribution was subject to federal tax. Alabama's income tax laws are modeled generally after the federal income tax laws. *State, Dept. of Revenue v. Acker*, 636 So.2d 470 (Ala. Civ. App. 1994), and specifically, the Alabama definition of "gross income" at Code of Ala. 1975, §40-18-14 is modeled after the federal definition at 26 U.S.C. §61. Alabama and federal law also both exclude from income any property received by bequest or inheritance, see Code of Ala. 1975, §40-18-14(3)(c) and 26 U.S.C. §102, respectively. Consequently, just as the pension distribution was not excludable from federal income tax by §102, it also is not excludable from Alabama income tax by §40-18-14(3)(c). Rather, it constituted taxable income for both federal and

Alabama purposes.

The instructions to the 2005 return also included the following:

Beneficiaries. If a former employee is receiving a pension or annuity and dies after recovering all of his or her cost, the entire amount the beneficiary receives is taxable for Alabama purposes. However, if the pension or annuity was exempt under Alabama law to the former employee, it is also exempt to the beneficiary.

The above applies in this case. The mother's pension was a defined contribution retirement fund. The contributions by the mother's employer to the plan were not taxed when made. Consequently, the subsequent distributions from the plan were taxable to the mother, and the Taxpayer's wife, as beneficiary, when made. The Department thus correctly included the lump-sum pension fund payout as taxable income.

The Taxpayer did not include the pension income on the 2005 return based on his good faith, but erroneous, belief that the income was not taxable. Consequently, under the circumstances, the penalties assessed by the Department are waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h).

The final assessment, less the penalties, is affirmed. Judgment is entered against the Taxpayers for 2005 tax and interest of \$4,306.27. Additional interest is also due from the date the final assessment was entered, April 27, 2007.

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

Entered August 22, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Paul Storey
Kim Peterson