

DANA S. & CORINNE N. HENSLEY
c/o BEN J. SCHILLACI, CPA
601 VESTAVIA PKWY., SUITE 300
BIRMINGHAM, AL 35216,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 09-1225

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Dana and Corinne Hensley (jointly "Taxpayers") for 2008 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 March 2, 2010. CPA Ben Schillaci represented the Taxpayers. Assistant Counsel Keith Maddox represented the Department.

Dana Hensley (individually "Taxpayer") worked for Baptist Health System in Alabama until 2000. He and his wife moved to Tennessee in 2000. They have lived and the Taxpayer has worked in that state since that time.

The Taxpayer received deferred compensation income from Baptist Health in 2008. The Taxpayers filed a 2008 Alabama non-resident return, and reported the deferred compensation on the return as non-Alabama sourced income. They attached a copy of a 2008 W-2 from Baptist Health to the return, which showed Alabama tax withheld of \$6,755.66. The return claimed a refund due of that amount.

The Department reviewed the return and W-2 and determined that the income was Alabama-sourced, and thus subject to Alabama tax. It consequently denied the refund claimed on the return and entered a preliminary assessment against the Taxpayers for

additional tax, penalties, and interest. The Taxpayers petitioned for a review of the preliminary assessment. The petition was denied, and the Department entered a 2008 final assessment against the Taxpayers for \$551.43.

The Taxpayers' representative claims that the deferred compensation received by the Taxpayer in 2008 was not subject to Alabama tax because the Taxpayer moved to Tennessee in 2000 and has resided and worked in Tennessee since that time. He claims that Baptist Health System erroneously withheld Alabama income tax from the lump-sum distribution, and that it should issue a corrected W-2. I disagree.

A non-resident of Alabama is liable for Alabama income tax on income derived from Alabama sources. Code of Ala. 1975, §40-18-14(4) specifies that "'gross income' . . . in the case of a nonresident individual, includes only income from . . . business transacted in Alabama." The Taxpayer's personal services performed in Alabama before 2000, and from which the deferred compensation in issue was derived, clearly constituted business transacted in Alabama. *Lackey v. State of Alabama, Inc.* 06-962 (Admin. Law Div. 4/18/2008). See also, Dept. Reg. 810-3-14-05(b)1., which provides that "[c]ompensation for personal services rendered by a nonresident within this State is to be included in gross income although payment is received at a point outside this State. . . ."

The Taxpayer earned the deferred compensation in issue while employed by Baptist Health System in Alabama. The income was thus Alabama-sourced and subject to Alabama income tax. And because the Taxpayer is a cash basis taxpayer, the income was taxable to him in the year received, 2008.

The final assessment is affirmed. Judgment is entered against the Taxpayers for tax and interest of \$551.43. Additional interest is also due from the date the final assessment

was entered, December 16, 2009.

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

Entered March 10, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.
Ben J. Schillaci, CPA
Kim Peterson