

GERALD J. FONDREN  
749 North County Road 69  
Hartford, AL 36344,

Taxpayer,

GERALD J. & GLENDA F. FONDREN  
749 North County Road 69  
Hartford, AL 36344,

Taxpayers.

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NOS. INC. 00-633 & INC. 00-659

DOCKET NO. INC. 00-444

### **FINAL ORDER**

This case involves appeals filed by Gerald J. Fondren (ATaxpayer@) concerning final assessments of Alabama income tax for 1997, 1998, and 1999. The 1997 final assessment is against Gerald J. and Glenda F. Fondren, jointly. The 1998 and 1999 final assessments are against the Taxpayer, individually. The Taxpayer filed separate appeals to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. The appeals were consolidated, and a hearing was conducted on November 15, 2000. The Taxpayer appeared at the hearing. Assistant Counsel Mark Griffin represented the Department.

### **ISSUE**

The issue in this case is whether the Taxpayer is liable for Alabama income tax on his wages earned in Alabama in 1997, 1998, and 1999.

## **FACTS**

The Taxpayer and his wife reside in Hartford, Alabama. The Taxpayer worked at Dyncorp in Fort Rucker, Alabama during the years in issue. Dyncorp paid the Taxpayer wages of approximately \$37,000 in 1997, \$37,230 in 1998, and \$37,703 in 1999.

The Taxpayer and his wife filed a joint 1997 Alabama income tax return on which they reported zero income. The Taxpayer filed individual returns in 1998 and 1999 with a status of Married filing separate. Those returns also reported zero income. A W2 statement showing the Taxpayer's wages in each year was attached to the returns. The returns also indicated that the Alabama tax withheld in each year should be donated to the Alabama veterans program.

The Department adjusted the returns by including as income the Taxpayer's wages shown on the W2 statements. The Department also allowed a standard deduction and personal exemption in each year. The final assessments are based on the above computations.

## **ANALYSIS**

Alabama income tax is levied on the taxable income of all individuals residing in Alabama. Code of Ala. 1975, '40-18-2. The Taxpayer does not dispute that he and his wife resided in Alabama during the years in question.

The Taxpayer does contend, however, that wages are not income, and consequently, that he did not have taxable income in Alabama during the subject years. I disagree.

AGross income@is defined for Alabama income tax purposes as Agains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, . . .@ Code of Ala. 1975, ' 40-18-14. The Taxpayer is correct that the term Aincome@ is not defined in the Alabama Revenue Code, and that perhaps the Alabama Legislature should not have used the word Aincome@ in defining gross income. But a plain reading of the definition of Agross income@ at ' 40-18-14 indicates that Awages@ constitute gross income.

ATaxable income@ on which Alabama income tax is levied is defined by Code of Ala. 1975, ' 40-18-15.1 as gross income, as defined in ' 40-18-14, less the deductions allowed in Chapter 18 of Title 40. The Department thus properly included the Taxpayer's wages as part of gross income, which, after allowing all deductions claimed by the Taxpayer, constituted taxable income in Alabama.

The Taxpayer claimed no deductions on the returns. Consequently, the Department properly allowed the standard deduction and personal exemption in each year. The Taxpayer asserted at the November 15 hearing that he could have filed a Aregular return with all my deductions and received refunds@ in each year. T. at 21. He elected not to.

The federal case law cited by the Taxpayer is inapplicable as to whether the Taxpayer was liable for Alabama income tax in the subject years. To the contrary, the Taxpayer's argument that wages are not income has been repeatedly rejected by the federal courts. See, *Coleman v. C.I.R.*, 791 F.2d 68, 70 (1986) (AThe code imposes a tax

on all income. Wages are income. . .@ See also, *U.S. v. Thomas*, 788 F.2d 1250 (1986); *Granzow v. C.I.R.*, 739 F.2d 265 (1984).

The final assessments are affirmed. Judgment is entered against Gerald J. and Glenda Fondren for 1997 tax, penalty, and interest of \$342.89; against Gerald J. Fondren for 1998 tax, penalty, and interest of \$576.68; and against Gerald J. Fondren for 1999 tax and interest of \$254. Additional interest is also owed from the date of entry of the final assessments.

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

Entered December 8, 2000.