

AARON J. HAUBNER  
717 SAIN ROAD  
MOCKSVILLE, NC 27028,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 09-473

### FINAL ORDER

The Revenue Department assessed Aaron J. Haubner ("Taxpayer") for 2007 Alabama 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 December 4, 2009. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayer timely filed a 2007 Alabama income tax return on which he reported \$0 income. He also claimed a refund of \$825 in Alabama tax withheld by his employer, Southern Research Institute, during the year. The Taxpayer also submitted a federal form 4852 with the return, which showed \$0 wages in 2007. That form is used as a substitute for or to correct a W-2 form.

The Department received W-2 information from the IRS showing that the Taxpayer had received wages of \$22,001 from Southern Research Institute in Birmingham, Alabama in 2007. The information also indicated that \$824.87 in Alabama income tax had been withheld from the Taxpayer's wages.

The Department treated the \$22,001 as taxable wages, and consequently recomputed the Taxpayer's 2007 Alabama tax due to be \$864.87. It allowed the Taxpayer a credit for the \$824.87 withheld, which resulted in additional tax due of \$40. It assessed

the Taxpayer accordingly, plus applicable interest.

The Taxpayer does not dispute that he earned “money” from the Southern Research Institute in Alabama in 2007. He does, however, dispute that the money constituted “income” or “wages.” The Taxpayer testified as follows at the December 4 hearing:

ALJ Thompson: So you got wages in 2007 from this company?

Mr. Haubner: No, I did not earn –

ALJ Thompson: Did you get money?

Mr. Haubner: -- income or wages. Yes, I earned money.

ALJ Thompson: Did you get a check from them?

Mr. Haubner: Yes, I did.

T. at 12 – 13.

The Taxpayer argued at the December 4 hearing that the issue is not whether he received taxable income or wages in 2007. Rather, he contends that the Department did not have the authority to change his return by adding the \$22,001 as income on the return. He contends that while “the Department (has) some latitude in proposing changes in the amount of tax due, the Department has practically no authority to propose changes in the amount of income reported.” Taxpayer’s December 11, 2009 letter to the Administrative Law Division, at 2. Finally, the Taxpayer cites Code of Ala. 1975, §40-7-9.1 for the proposition that the Department only has the authority to correct a mechanical error on a tax return. The Taxpayer’s arguments are incorrect.

If the Department determines that the amount of any tax reported on a return is incorrect, it may calculate the correct tax due based on the most accurate information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. In this case, the Department determined

that the Taxpayer's 2007 return showing \$0 tax due was incorrect based on the W-2 information received by the Department from the IRS. It consequently computed the correct tax due based on the IRS information, i.e., the most accurate information obtainable. It was clearly authorized to do so.

The Taxpayer's claim that the Department only has the authority to correct a mechanical error on a return is also incorrect. The statute cited by the Taxpayer, §40-7-9.1, applies only to ad valorem tax returns, not income tax or other returns. As indicated, §40-2A-7(b)(1)a. gives the Department broad authority to compute a taxpayer's correct liability using the best information available. The Department did so in this case by using the W-2 information received from the IRS.

The Taxpayer is also incorrect that the money he received for working for the Southern Research Institute in 2007 did not constitute taxable income. The Administrative Law Division rejected a similar argument in *Hardy v. State of Alabama, Inc.* 05-117 (Admin. Law Div. 5/19/2005), as follows:

Alabama income tax is levied on the taxable income of all individuals residing in Alabama. Code of Ala. 1975, §40-18-2. "Gross income" is defined for Alabama income tax purposes as "gains, 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. As indicated, "wages" constitute gross income under Alabama law.

"Taxable 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 his gross income, which, after allowance for the applicable deductions, constituted taxable income in Alabama.

The Taxpayer's argument that wages are not income has also been repeatedly rejected by the federal courts. See, *Coleman v. C.I.R.*, 791 F.2d 68, 70 (1986) ("The 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).

*Hardy* at 2.

The \$22,001 the Taxpayer received from Southern Research Institute in 2007 clearly constituted taxable wages. The Taxpayer concedes that he received the money from Southern Research Institute, yet reported \$0 wages on his return and filed a form 4852 also showing \$0 wages received in the year. It could be argued that the Taxpayer filed the \$0 income return and the erroneous form 4852 with the intent to evade tax. *Monk v. State of Alabama, Inc.* 99-968 (Admin. Law Div. 1/20/2000), *McAlpine v. State of Alabama, Inc.* 98-432 (Admin. Law Div. O.P.O. 10/26/1999), and *Harris v. State of Alabama, Inc.* 97-316 (Admin. Law Div. 10/29/1997), and federal cases cited therein. I will presume, however, that for purposes of this case, the Taxpayer simply in good faith misunderstood the law. That presumption will not apply in the future.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2007 tax and interest of \$41.32. Additional interest is also due from the date the final assessment was entered, April 9, 2009.

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

Entered January 7, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Mark Griffin, Esq.  
Aaron J. Haubner  
Kim Peterson