

MICHAEL D. MAINOR
111 ALECIA DRIVE
PRATTVILLE, AL 36066-6001,

§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 09-573

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Michael D. Mainor (“Taxpayer”) for 2008 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 July 23, 2009. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayer was divorced in January 2009. The divorce lawyers for the Taxpayer and his then wife attended a hearing before a circuit judge in June 2008 concerning any child support and/or spousal support to be paid by the Taxpayer. The judge subsequently entered a pendente lite order on June 9, 2008, which read in part – “Husband shall pay \$600 spousal support to commence 7/1/08 or in alternative pay to wife an amount equal to 1/2 of equity in residence.”

Pursuant to the above order, the Taxpayer refinanced his house and paid his estranged wife a lump-sum of \$35,000 on October 27, 2008. As indicated, the couple’s divorce was final in January 2009. Paragraph 4 of the divorce decree reads as follows – “There shall be no periodic spousal support nor lump-sum alimony from either party to the other hereafter. The Wife acknowledges that the Husband has paid to her all spousal support due under the Court’s pendente lite order.”

The Taxpayer deducted the \$35,000 as alimony on his 2008 Alabama income tax return. The Department deemed the payment to be a non-deductible property settlement. It consequently disallowed the deduction and entered the final assessment in issue. This appeal followed.

Alimony paid to an ex-spouse pursuant to a divorce or separation agreement can be deducted by the payor spouse. Code of Ala. 1975, §40-18-15(a)(17). But a payment or payments in the nature of a property settlement for the purpose of dividing the couple's assets at the time of divorce are not deductible. *Schatten v. U.S.*, 746 F.2d 319 (6th Circuit 1984).

The Taxpayer also claimed the \$35,000 as deductible alimony on his 2008 federal return. He submitted a copy of that return after the July 23, 2009 hearing, and also a copy of the 2008 refund check he received from the IRS. He argues that because the IRS allowed the deduction, the State should also allow the deduction.

Alimony by its nature generally constitutes regular, periodic payments to an ex-spouse that end upon the ex-spouse's death. The single payment in issue clearly was not in the nature of periodic alimony, but rather was a property settlement for the purpose of dividing the couple's assets. The payment thus was non-deductible.

The Department also correctly asserts that the fact that the IRS issued the Taxpayer a refund is not conclusive. There is no indication that the IRS reviewed the Taxpayer's return before issuing the refund, and specifically, there is no evidence that the IRS reviewed and accepted the deductibility of the \$35,000 payment.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2008 tax and interest of \$388.11. Additional interest is also due from the date the final

assessment was entered, May 11, 2009.

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

Entered November 16, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Michael D. Mainor
Kim Peterson