

ROBERT N. MARINELLI, JR.  
8112 PINTO LANE  
MONTGOMERY, AL 36117-3806,

§  
§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 10-903

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

The Revenue Department assessed Robert N. Marinelli, Jr. (“Taxpayer”) for 2009 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 November 16, 2010. The Taxpayer attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer reported \$0 income and Alabama income tax withheld of \$916 on his 2009 Alabama income tax return. The return claimed a refund of the amount withheld. The Taxpayer submitted a Form 4852 with the return, which also showed \$0 income and \$916 in Alabama tax withheld.<sup>1</sup>

The Department received information from the Taxpayer’s employer, the City of Montgomery, that the Taxpayer had received \$30,259 in wages in 2009. It accordingly assessed the Taxpayer for the tax in issue, plus penalties and interest, on that income.

The Taxpayer argues that he is not a “taxpayer” subject to Alabama income tax, and that the Department is otherwise not authorized to assess him for the tax. The Taxpayer submitted a written statement (Taxpayer Ex. A) at the November 16, hearing, which reads

---

<sup>1</sup> Form 4852 is a substitute for a W-2 if a taxpayer cannot obtain a W-2 or the W-2 is incorrect.

as follows:

I am appearing Sui Juris and reserve all my rights without prejudice. Even though I assent to performance in a manner demanded or offered, I do not prejudice those rights reserved.

I am here to rebut to (to refute, especially by offering opposing evidence or arguments) the State of Alabama's claim that I owe them \$407.59. The correct amount is \$916.00 (plus penalties and interest) that the State of Alabama is unlawfully withholding from me.

I arrived at this figure based on the fact that the State of Alabama has been unwilling or unable to verify their claim that I am a "taxpayer" as defined in the Alabama Revenue Code. It appears that the State of Alabama has proceeded with a levy and assessment based on a presumption of law. It is axiomatic that he who makes the claim assumes the burden of proof. The State of Alabama's presumption that I am one who is subject to a "tax" was challenged at the outset. The State of Alabama, having been informed that their presumption was incorrect, was legally bound to ascertain the truth of the matter. Instead, the State of Alabama made the decision to proceed with a "final assessment" without determining whether or not I was one who was subject to or liable for any such "tax". Since then, I have merely and simply declared what I believe to be true about my receipts (which declaration necessitates *rebutting contrary allegation by others* of which I am put on notice by way of "information returns" – W-2s – lest I otherwise constructively testify to the substance of those allegations through acquiescing by silence).

According to my research, Supreme Court decisions are the law of the land. The Supreme Court stated that: "A tax liability must clearly appear." *Higley v. C.I.R.*, 69 F.2d at 162-163 (8th Cir. 1934).

No such liability is evident in this case. In addition, the State of Alabama was also informed that since I am not a "taxpayer" as defined, it was a violation of my right to due process of law to label me a "taxpayer." Again, the law of the land clearly states:

"A reasonable construction of the taxing statutes does not include vesting any tax official with absolute power of assessment against individuals not specified in the statutes as persons liable for the tax without an opportunity for judicial review of this status before appellation of "taxpayer" is bestowed upon them and their property is seized and sold. *A fortiori* (for a still stronger reason; all the more) is the case where the liability is asserted by way of a penalty for a willful act." *Botta v. Scanlon*, 288 F.2d, 504. 508 (2nd Cir. 1961).

No such judicial review to determine my status (taxpayer or nontaxpayer) has taken place. The State of Alabama has no valid claim. Every reasonable effort has been made by me to acquire some form of verification from the State of Alabama that I am one who is subject to or liable for any so-called "tax". All such efforts have, thus far, been unsuccessful. What if any authority the State of Alabama is operating under in this matter is a mystery to me. However, to show my good faith, I would like to repeat an offer made by me to the State of Alabama in a letter addressed to Cynthia Underwood, Assistant Commissioner of Revenue. The offer is as follows:

"Since I am unaware of any such (tax) obligation, prudence dictates that I verify the particulars of your claim. If everything checks out and appears to be in order, I will tender payment without question or hesitation. For that purpose, I shall require of you or your organization all of the following:

- 1) A Certified True Bill showing the exact amount I am supposed to owe to the duly Constituted Alabama State government.
- 2) An itemized statement of my account showing all goods and/or services delivered to me by said entity upon my request or demand; and
- 3) A Certified True Copy of the valid, binding, and subsisting Instrument or Contract bearing my signature which authorizes this or any other related collection activity; and
- 4) A Certified True Copy of the mandatory Article VI Oath of Fidelity for each individual in your organization who is involved in this collection activity; and
- 5) The policy number and name and address of the underwriter of the Bond(s) required by Law that insure said individuals in the handling of public funds; and
- 6) Positive identification of all real parties of interest to any valid Instrument or Contract which authorizes this collection activity, including all holders in due course on the Instrument."

It is my contention that the State of Alabama has no legal ground to rest upon and should return my property immediately with any interest and penalties this honorable hearing deems appropriate.

The Taxpayer is a “taxpayer” under Alabama law, and was also subject to and is liable for Alabama income tax for the subject year. “Taxpayer” is defined by the Alabama Revenue Code, Title 40, Code 1975, as “[e]very person subject to a tax imposed by this chapter. . . .” Code of Ala. 1975, §40-18-1(19). Code of Ala. 1975, §40-18-2 levies an income tax on certain individuals and entities, including “[e]very individual residing in Alabama.” Section 40-18-2(1). The Taxpayer does not dispute that he resides in Alabama. The Taxpayer is thus a taxpayer subject to Alabama income tax on his Alabama-sourced wages.

The Revenue Department is also duly empowered to enforce the revenue laws of Alabama, including the assessment and collection of the Alabama income tax levied on individuals at §40-18-2. See generally, Code of Ala. 1975, §§40-2-11, 40-2A-7 et seq., and 40-29-1 et seq.

The Department fully complied with the assessment procedures specified in §40-2A-7(b). The Taxpayer was provided a final assessment which specifies the exact amount owed by the Taxpayer. The Department is not required to provide an itemized statement showing “all goods and/or services” provided by the State to the Taxpayer. A contract signed by the Taxpayer authorizing the assessment also is not required, nor is a “mandatory Article VI Oath of Fidelity” from the Department’s employees. Finally, The Department is not required to identify the “real parties of interest to any valid Instrument or Contract,” which authorizes the assessment action.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2009 tax, penalties, and interest of \$407.59. Additional interest is also due from the date

the final assessment was entered, September 17, 2010.

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

Entered November 22, 2010.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
Robert J. Marinelli, Jr.  
Kim Peterson