

MORRIS H. & KRISTINE R. BRAMLETT§
5354 BAY SHORE DRIVE
ATHENS, AL 35611-8750,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 12-1136

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

**FINAL ORDER ON TAXPAYERS'
APPLICATION FOR REHEARING**

The Revenue Department assessed Morris H. and Kristine R. Bramlett (together "Taxpayers") for 2009 Alabama income tax. A Preliminary Order was entered directing the Taxpayers to submit records to the Administrative Law Division by February 15, 2013 substantiating the deductions claimed on their 2009 return, and also a corrected 1099-MISC. The Order further stated that if the records and 1099-MISC were not received by the above date, the final assessment would be affirmed. The Taxpayers failed to submit the records or 1099-MISC, and a Final Order affirming the final assessment was entered on February 27, 2013.

The Taxpayers timely applied for a rehearing. A hearing was conducted on July 11, 2013. The Taxpayers and their CPA, Matt Turpin, attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Department received information showing that the Social Security Administration had issued Morris Bramlett (individually "Taxpayer") a 2009 1099-MISC in the amount of \$437,849. The Taxpayers had not reported that income on their 2009 Alabama return. The Department accordingly assessed the Taxpayers for the additional tax due, plus a penalty and interest, based on the 1099-MISC. The Taxpayers appealed.

The Taxpayers' CPA argued in his notice of appeal that the Taxpayer is an attorney that represents clients before the Social Security Administration. He explained that when the Social Security Administration grants social security disability benefits in a case where the recipient is represented by an attorney, the Administration issues a 1099-MISC in the attorney's name, not in the name of the recipient. He thus contended that the 2009 1099-MISC in issue was received by the law firm where the Taxpayer worked, and not the Taxpayer, who only receives W-2 wage income from the law firm.

The comptroller for the law firm in issue, Pitts & Zanaty, LLC, testified at the July 11 hearing that she personally received the check in question and deposited it into the law firm's bank account. She further testified that the Taxpayer is a salaried employee, and that the only income he received from the firm was his wages.

Based on the above evidence, the final assessment in issue is voided. The February 27, 2013 Final Order is also voided.

The Taxpayers and their CPA also explained at the July 11 hearing that their 2010, 2011, and 2012 refunds have been withheld or not issued by the Department. The Department is authorized to withhold or offset a subsequent refund due a taxpayer to satisfy a prior outstanding final tax liability owed by the taxpayer. Code of Ala. 1975, §40-2A-7(c)(4). The 2009 tax in issue was never a final tax liability within the purview to §40-2A-7(c)(4) because the Taxpayers timely appealed the 2009 final assessment to the Administrative Law Division, see *Register v. State of Alabama, Inc.* 12-366 (Admin. Law Div. 6/25/2013). Consequently, the refunds due for the subsequent years should not have been withheld. In any case, assuming that the Taxpayers are not otherwise liable for an

unpaid final tax liability, the Department should issue the Taxpayers their 2010, 2011, and 2012 refunds in due course, plus applicable interest.

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

Entered July 15, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.
Matt E. Turpin, CPA
Brenda Lausane