

ROSE M. SCOTT	§	STATE OF ALABAMA
1707 PERCH DRIVE		DEPARTMENT OF REVENUE
MOBILE, AL 36605,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 12-808
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Rose M. Scott ("Taxpayer") for 2008 and 2010 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 20, 2012. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer and Robert Scott were divorced in 2006. The divorce decree agreement required Robert Scott to pay the Taxpayer \$2,708 per month in alimony. Scott apparently failed to pay the amount due in each month. The court subsequently entered an order in July 2008 modifying the original agreement. The 2008 modification required Scott to pay the Taxpayer \$200 a month in back alimony, plus \$800 in future monthly alimony, for a total of \$1,000 a month.

The Taxpayer failed to report the \$1,000 in monthly alimony as income on her 2008 and 2010 Alabama returns. The Department consequently entered the final assessments in issue for the additional tax due, plus a late penalty and interest.

The Taxpayer claims that her "alimony" issue was settled in a prior case before the Administrative Law Division involving her 2006 liability. The Department had also assessed the Taxpayer on the payments received from her ex-husband in that year. The

Taxpayer appealed, and the case was docketed as Docket No. Inc. 07-856. The Department eventually conceded in that case that the 2006 final assessment should be voided.

The Department argues in this case that it agreed to void the 2006 final assessment on its understanding at the time that the payments from the ex-husband constituted a nontaxable property settlement. It has since reviewed the Taxpayer's divorce decree and modification order, which, as indicated, establishes that the payments were taxable alimony.

The Taxpayer argues that the amounts she receives from her ex-husband constituted exempt military retirement. She again submitted a January 19, 2008 letter from her ex-husband that she had previously submitted in the 2006 appeal. The ex-husband states in the letter that he and the Taxpayer had agreed in their divorce settlement that he would pay the Taxpayer \$700 a month from his military retirement.

Military retirement income is exempt from Alabama income tax. Unfortunately for the Taxpayer, while she and her ex-husband may have verbally agreed that he would pay her part of his military retirement, that agreement is not reflected in the divorce decree or the subsequent modification order. The payments thus could have come from any source.

This same issue was addressed in *Spruce v. State of Alabama*, Docket No. Inc. 00-279 (Admin. Law Div. 8/11/2000). As in this case, the taxpayer in *Spruce* argued that the payments she received from her ex-husband constituted exempt military retirement income. The Division disagreed. "The Taxpayer claims that the alimony constitutes exempt military pay. . . . Unfortunately for the Taxpayer, the divorce decree does not

indicate that the (monthly payments) were tied to the ex-husband's military retirement pay. The payments could have been derived from any source, not just the ex-husband's retirement pay." *Spruce* at 2. The same rationale applies in this case.

Because the payments in this case constituted taxable alimony, the Taxpayer is liable for Alabama income tax on the payments. Based on the July 2008 modification order, however, it appears that the ex-husband had failed to pay the Taxpayer any alimony through July 2008. Consequently, the Taxpayer would owe 2008 tax on only the \$1,000 per month (\$800 current plus \$200 back alimony) she received from the ex-husband from August through December of that year. The Department should recompute the Taxpayer's 2008 liability accordingly. The full \$12,000 was properly assessed for 2010.

The 2008 tax and interest due, as reduced, and the 2010 tax and interest due will be affirmed after the Department provides the adjusted amount due for 2008. The penalties assessed in each year will also be waived for cause.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 5, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Rose M. Scott
Kim Peterson