

BILL G. ROBERTS
7845 OLD TUSCALOOSA HWY
McCALLA, AL 35111-4008,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 13-475

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Department denied refunds of 1997 – 2001, and 2003 income tax requested by Bill G. Roberts (“Taxpayer”). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on February 25, 2014. The Taxpayer and his attorney, Brad Howell, attended the hearing. Assistant Counsel Mary Martin Majors and Ralph Clements represented the Department.

The Department received IRS information showing that the Taxpayer had sufficient income in 2009 to require him to file an Alabama return for that year. The Department reviewed its computer records and discovered that the Taxpayer had not filed Alabama returns going back to 1997. It subsequently obtained IRS income information concerning the Taxpayer for the years 1997 through 2003.¹ It then assessed the Taxpayer for the tax due in those years using the IRS information. The 1997 final assessment was entered in December 2010. The final assessments for 1998 through 2003 were entered in February 2011. They were not appealed.

¹ It is not known if the Department requested the information for 1997 – 2003, or whether the IRS automatically sent the information pursuant to Alabama’s exchange of information agreement with the IRS.

The Department subsequently began procedures to collect the assessed amounts due. Taxpayer began making monthly payments of \$1,071 in October 2011 concerning his 2001 liability, and finally paid off that liability in full in September 2012.

The Taxpayer filed Alabama returns for 2002 through 2008 with the Department's Taxpayer Advocate in August 2012. The Taxpayer provided his W-2s with the 2004 through 2008 returns. He also requested relief for the years in issue, 1997 through 2003, because due to the passage of time, he was unable to obtain W-2 information showing the amount of Alabama tax that had been withheld from his wages in those years.

The Department subsequently issued a levy against the Taxpayer's bank account. The bank remitted \$19,954 to the Department on February 11, 2013. The Department applied that amount to satisfy the Taxpayer's liabilities in full for 1997, 1998, 1999, 2000, 2002, and 2003.

The Taxpayer Advocate issued a Taxpayer Assistance Order ("TAO") on February 22, 2013 concerning the Taxpayer's 2002 liability. The TAO reads in part – "The taxpayers filed their Alabama individual income tax return but did not provide the withholding tax statement for this tax year. Through Department research, the information was obtained and the return was accepted as filed. Therefore, the assessment entered on February 16, 2011 has been adjusted to \$485.93."

The Department had applied \$4,216 of the bank levy to pay the Taxpayer's original 2002 liability. Based on the reduced amount due per the TAO, the Department refunded \$2,960.50 to the Taxpayer on March 22, 2013. The Advocate's Office took no action concerning 1997, 1998, 1999, 2000, or 2003, nor did it explain how it had obtained the

withholding amount paid by the Taxpayer in 2002.

On February 12, 2013, the day after the Taxpayer's bank remitted the levied funds to the Department, the Taxpayer petitioned the Department for refunds for the years in issue. The refunds were denied on March 21, 2013. The Taxpayer timely appealed to the Administrative Law Division.

The Taxpayer has worked as a truck driver for the same company since before 1997. He explained at the February 25 hearing that because he was always on the road, his wife, who passed away in 2009, had always filed their joint tax returns. He thought that his wife had timely filed their Alabama returns for the years in issue. He argues that the Department should have notified him earlier that the returns had not been filed, and that it is unfair for the Department to assess him now after so much time has passed. He contends that Alabama tax was withheld from his wages in the subject years, but that he cannot now obtain the Alabama withholding information from his employer, or the IRS, or the Department, due to the extended lapse of time.

The Administrative Law Division routinely hears appeals involving a taxpayer that has failed to file Alabama income tax returns, and the Department subsequently assesses the taxpayer based on IRS income information. The Department generally receives the IRS information one, two, or up to three years after the years in issue. In those cases, the taxpayer is generally allowed to file returns for the subject years, and in most cases the taxpayer is able to do so because the taxpayer's withholding information and records are still available.

In 30-plus years, however, the Administrative Law Division has never heard a case where the Department has assessed tax going back more than 10 years from when it received the IRS information. In this case, the Department assessed the Taxpayer going back from 7 years concerning 2003, and up to 13 years concerning 1997. I understand that there is no statute of limitations for assessing tax if the taxpayer failed to file a return for a given tax period, but certainly fairness should be considered in doing so.

The Taxpayer in this case believed in good faith that his now deceased wife had filed their Alabama returns for the years in issue. Once the Department notified the Taxpayer that his wife had not filed their Alabama returns for 1997 through 2008, he immediately began gathering the information necessary to file the returns. As indicated, he subsequently filed returns for 2002 through 2008 in August 2012.

The Taxpayer's 2004 through 2008 returns included his W-2 withholding information because either his employer or the Department still had that information on record.² He also attempted to obtain his withholding information from his employer for the years before 2004, but the employer understandably did not retain records going that far back. He also requested the W-2 information from the Department, but the Department only maintains such information going back seven years.

Despite the lack of W-2 information before 2004, the evidence strongly suggests that Alabama tax was withheld from the Taxpayer's wages in those years. The IRS transcript shows that the employer withheld federal tax in 1997 and subsequent years, and importantly, the Department's Taxpayer Advocate obtained information from some source

² The record does not show the source of the Taxpayer's W-2 information for 2004 forward.

showing that the Taxpayer's employer had withheld almost \$3,000 in Alabama tax from the Taxpayer's 2002 wages. It would be unusual for tax to be withheld in one year, but not in prior or subsequent years. Those facts strongly suggest that Alabama tax was also withheld in 1997, 1998, 1999, 2000, 2001, and 2003.

The Taxpayer Advocate is requested to attempt to obtain, from the same source it obtained the 2002 withholding information or otherwise, the amount of Alabama tax withheld from the Taxpayer's wages in the above years. If the Advocate deems it fair and appropriate, she also has the authority to estimate the amounts withheld in those years by using the percentage of Alabama tax withheld from the Taxpayer's total wages in 2002. See generally, Code of Ala. 1975, §40-2A-4(b). For example, if the Taxpayer earned \$60,000 in wages in 2002 and had \$3,000 in Alabama tax withheld, or five percent of total income, the Advocate could apply that five percent to determine the Alabama tax withheld in the other years in issue. A Taxpayer Assistance Order could then be issued. But again, the sole discretion to do so is with the Taxpayer Advocate.

The Advocate should notify the Administrative Law Division of her decision in due course. Appropriate action will then be taken.

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 April 8, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.
Brad Howell, Esq.
Kim Peterson
Brenda Russ (w/enc.)