

LELA GILCHRIST
P.O. Box 112
Gardena, CA 90248,

' STATE OF ALABAMA
' DEPARTMENT OF REVENUE
' ADMINISTRATIVE LAW DIVISION

Taxpayer,

' DOCKET NO. INC. 00-190

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1998 income tax against Lela Gilchrist (ATaxpayer@). 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 May 11, 2000. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether pension income received by the Taxpayer in 1998 was from a Adefined benefit plan,@and thus exempt from Alabama income tax pursuant to Code of Ala. 1975, ' 40-18-19(a)(6).

The Taxpayer reported taxable pension income of \$12,104 on her 1998 Alabama income tax return. The pension income was received from BT SVCS Tennessee, Inc. Alabama income tax of \$199.32 was withheld from the income. The Taxpayer-s return reported tax due of \$119. The Taxpayer failed, however, to pay the tax with the return.

The Taxpayer filed an amended 1998 Alabama return on January 6, 2000. The amended return excluded \$11,485 of the pension income as Anontaxable pension income.@ The Department rejected the amended return because the Taxpayer failed to present evidence that the pension income was from a defined benefit plan. The Department

consequently entered the final assessment in issue for the tax due as reported on the Taxpayer's original return.

Section 40-18-19(a)(6) exempts retirement income received from a defined benefit plan, as that term is defined in 26 U.S.C. ' 414(j). However, as with any deduction or exemption, the burden was on the Taxpayer to prove that she was entitled to the exemption. McDonald v. C.I.R., 114 F.3d 1194 (1997). In this case, the Taxpayer failed to establish that the pension income in question was from a exempt defined benefit plan. The fact that Alabama income tax was withheld from the pension indicates that the payor corporation believed that the income was not exempt.

In any case, because the Taxpayer failed to prove that the pension income was from a defined benefit plan, the Department properly rejected the Taxpayer's amended return and assessed the tax in issue. The final assessment is affirmed. Judgment is entered against the Taxpayer for \$140.10.

If the Taxpayer has evidence proving that the pension was from a defined benefit plan, she should apply for a rehearing within 15 days from the date of this Final Order and present such evidence to the Administrative Law Division. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

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Entered May 11, 2000

BILL THOMPSON
Chief Administrative Law Judge