

WILLIE L. & IVORY S. WILSON  
515 S. Forsythe Avenue  
Eufaula, AL 36027,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-269

### FINAL ORDER

The Revenue Department assessed 1994 and 1996 income tax against Willie L. and Ivory Wilson (Taxpayers). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on July 10, 2001. Ivory Wilson represented the Taxpayers. Assistant Counsel David Avery represented the Department.

The Taxpayers received proceeds from the settlement of lawsuits in both 1994 and 1996. The primary issue in this case is whether the Department properly assessed the Taxpayers on that income. A second issue is whether the Taxpayers are bound by a Taxpayer Assistance Order entered by the Department's Taxpayer Advocate concerning the liabilities in issue.

The Taxpayers settled separate lawsuits in 1994 and 1996. The Department initially assessed the Taxpayers on the gross proceeds received from the settlements in those years. The Taxpayers failed to timely appeal the final assessments within 30 days, as required by Code of Ala. 1975, ' 40-2A-7(b)(5).

In *Gladie Kitchens v. State of Alabama, Inc.* 97-320 (Admin. Law Div. 12/15/99), the Administrative Law Division held that part of a lawsuit settlement received by the taxpayer should be excluded from income pursuant to Code of Ala. 1975, ' 40-18-14(3)(e). Attorney

fees paid by the taxpayer were also excluded. The lawsuits in which the Taxpayers in this case were involved was the same class action involved in *Kitchens*. Consequently, after the Administrative Law Division issued its Final Order in *Kitchens*, the Department reduced the Taxpayers=liabilities for 1994 and 1996 in accordance with the *Kitchens* holding.

The Department submitted the recalculated amounts to its Taxpayer Advocate. The Taxpayer Advocate entered a Taxpayer Assistance Order on February 15, 2001. The Order voided the final assessments previously entered against the Taxpayers, and stated the reduced amounts due for both years. The Taxpayers signed the Taxpayer Assistance Order.

Based on the Taxpayer Assistance Order, the Department entered the final assessments in issue on March 19, 2001 for the reduced amounts due. The Taxpayers appealed.

The Taxpayers failed to timely appeal the initial final assessments entered against them for the subject years. Before 2000, the Department was not authorized to void or vacate a final assessment that was not timely appealed by a taxpayer. However, Act 2000-233 created the position of Taxpayer Advocate within the Department, and granted the Taxpayer Advocate various extraordinary equitable powers. See, Code of Ala. 1975, ' 40-2A-4(b). The Taxpayer Advocate used that authority in this case to void the initial final assessments entered against the Taxpayers, and then reduce the Taxpayers=liabilities for the subject years in accordance with the holding in *Kitchens*.

The Department argues that the Taxpayers cannot contest the final assessments because their signatures on the Taxpayer Assistance Order constitutes a binding contract between the Department and the Taxpayers. As indicated, a Taxpayer Assistance Order grants a taxpayer extraordinary equitable relief to which he is not otherwise entitled. In this

case, but for the Taxpayer Assistance Order, the Taxpayers would owe the larger amounts set out in the initial final assessments. Consequently, it is unusual that a taxpayer would contest a Taxpayer Assistance Order.<sup>1</sup>

The Taxpayer Assistance Order in this case does not, however, constitute a contract binding on the Taxpayers. The Order does not state that by signing the document, the Taxpayers are agreeing to be bound by its terms. It could be argued that by signing the document, the Taxpayers were only acknowledging the terms of the Order, but not necessarily agreeing to the terms. Further, ' 40-2A-4(b) does not specify that a Taxpayer Assistance Order is binding on a taxpayer.

Notwithstanding the above, the final assessments based on the Taxpayer Assistance Order were correctly entered by the Department, and are affirmed. Judgment is entered against the Taxpayers for 1994 tax and interest of \$1,444.37, and 1996 tax and interest of \$1,050.04. Additional interest is also due from the date of entry of the final assessments, March 19, 2001. The Taxpayers should contact the Department's Individual Income Tax Division concerning payment of the amounts due.

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

Entered July 17, 2001.

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<sup>1</sup>Ivory Wilson testified that she appealed the final assessments because she understood (mistakenly) that she and her husband would owe no tax after the Taxpayer Assistance Order was issued.