

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-211

MARY WYATT UPHAM ALLEN  
4001 Alabama Avenue NE.  
St. Petersburg, FL 33703,

§

§

Taxpayer.

§

ORDER

The Revenue Department assessed income tax against Mary Wyatt Upham Allen ("Taxpayer") for the calendar year 1984. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 25, 1989. William V. Linne, Esq. appeared for the Taxpayer. Assistant counsel Duncan Crow represented the Department. Based on the evidence and arguments presented by the parties, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The relevant facts are undisputed.

The Taxpayer resides in Florida and is one of numerous limited partners in an Alabama limited partnership, Taslog, Ltd. Taslog maintains an office in Escambia County, Alabama, but its only assets are various royalty interests in Alabama and Florida. Taslog was formed in 1980 for the sole purpose of receiving and then distributing the royalty payments to the various limited and general partners. Taslog conducts no other business in Alabama.

The Taxpayer received \$19,927.00 as her proportionate share of

the royalties distributed by Taslog in 1984. The royalties were derived from the severance and production of oil and gas in Alabama.

The Department determined that the royalties were taxable to the Taxpayer in Alabama and entered the assessment in issue. The Taxpayer then appealed to the Administrative Law Division.

#### CONCLUSIONS OF LAW

The determinative issue is whether the royalty income was derived from "property owned or business transacted" in Alabama so as to be subject to Alabama income tax under Code of Ala. 1975, §40-18-2(6). The above section levies an income tax on "[E]very nonresident individual receiving taxable income from property owned or business transacted in Alabama;"

The Taxpayer argues that a royalty is intangible personal property and thus taxable only at the domicile of the owner. However, intangible property "refers to rights not related to physical things - rights which are but relationships between person, natural and corporate, . . . ", quoting 71 Am. Jur. 2d §669. Items generally referred to as intangible personal property are open accounts, credits, promissory notes, mortgages, bonds, shares of stock or judgments, see Crane Co. v. Des Moines, 225 N.W. 344; also 76 A.L.R. 806.

While a royalty involves a right to receive income, it is also related to and derived from the ownership of property and has been

determined to be an interest in the minerals and land itself. First National Bank of Laurel v. Continental Nat. B. & T. Co., 152 So.2d 502; Mabee Oil & Gas Company v. Hudson, 156 F.2d 450; Warner v. U.S., 87 F.2d 77; Humble Oil & Refining Co. v. Copeland, 398 F.2d 364. Thus, the royalty income received by the Taxpayer was derived from property (oil and gas) located in Alabama and as such is taxable to the nonresident Taxpayer under §40-18-2(6).

The above finding is supported by Department Reg. 810-3-14-.05 which reads in pertinent part that "[T]he income (of a nonresident) from property may be derived from the operation of the property, from rents or royalties for its use, or from the sale, exchange or other disposition of the property."

The above considered, the royalties received by the Taxpayer from Taslog in 1984 are taxable in Alabama. Accordingly, the assessment in issue should be made final as entered, with interest as required by statute.

Entered this the 15th day of June, 1989.

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BILL THOMPSON  
Chief Administrative Law Judge