

ALABAMA TAX TRIBUNAL

DELVIN M. FRANKLIN,	§	
Taxpayer,	§	
v.	§	DOCKET NOS. INC. 21-1319-JP INC. 22-993-JP
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND FINAL ORDER

Docket No. INC. 21-1319-JP involves final assessments of 2018 and 2019 Alabama individual income tax. Docket No. INC. 22-993-JP involves a final assessment of 2020 income tax. A trial was held on both cases on June 21, 2023. The Taxpayer appeared and testified. Andrew Gidiere represented the Alabama Department of Revenue, and Clifford Jennings, a Revenue Department tax accountant, appeared and testified.

It is undisputed that the Taxpayer filed Alabama individual income tax returns for 2018 through 2020 but reported no taxable income on those returns. The Revenue Department adjusted the returns to include wage income that was reported on W-2 forms which listed the Taxpayer as payee for the years in question. The adjustments resulted in tax due which led to the entry of the final assessments at issue. The Taxpayer admitted during the trial that he lived in Alabama and earned employment income through his work as a longshoremen during years 2018-2020.

Section 40-18-2(a)(1), Ala. Code 1975, provides: “In addition to all other taxes now imposed by law, there is hereby levied and imposed a tax on the taxable income,

as defined in this chapter, which tax shall be assessed, collected, and paid annually at the rate specified herein and for each taxable year as hereinafter provided. Persons and subjects taxable under this chapter are: (1) Every individual residing in Alabama.” Section 40-18-15.1, Ala. Code 1975, provides that “the term ‘taxable income’ or ‘net income’ shall mean ‘gross income,’ as defined in Section 40-18-14, less the deductions allowed to individuals by this chapter.” Gross income is defined in section 40-18-14(1), Ala. Code 1975, as including:

... gains profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, including the salaries, income, fees, and other compensation of state, county, and municipal officers and employees, or from professions, vocations, trades, business, commerce or sales, or dealings in property whether real or personal, growing out of ownership or use of or interest in such property; also from interest, royalties, rents, dividends, securities, or transactions of any business carried on for gain or profit and the income derived from any source whatever, including any income not exempted under this chapter and against which income there is no provision for a tax...

The Taxpayer argues that he is “an unprivileged private sector worker” and that the state income tax is imposed on “gains, profits and income derived from salaries, wages, and compensation for personal services that include state, county, and municipal officers and employees of the State of Alabama, and its corporations. Operating rules make it clear that determinations on gains, profits, and income must be determined in accordance with Title 26 United States Code (IRC). The codes clearly let me know I did not receive gross income, state wages, local wages, salary, or compensation for services.” (underline in original).

However, the definition of “gross income” in § 40-18-14(1) is expressly written

in very broad, inclusive terms and is not limited to income from certain “privileged” activities.

Also, the Taxpayer relies on the United States Supreme Court’s decision in Brushaber v. Union P. R. Co., 36 Sup. Ct. 236 (1916). According to the Taxpayer, he was not exercising a “privilege” in his employment, therefore his income was not taxable. The Taxpayer’s reliance upon Brushaber is misplaced, however. First, Brushaber concerned the validity of the United States Congress’s imposition of income tax pursuant to the 16th Amendment of the United States Constitution. Moreover, the Supreme Court in Brushaber noted that the Sixteenth Amendment provided Congress with the “power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.” Id. As quoted, Alabama’s income tax is equally broad, defining “gross income” as “...income derived from any source whatever...” § 40-18-14(1).

Further, the Taxpayer quotes Ala. Code 1975 § 40-18-1.1(a), which states as follows:

For purposes of this chapter, the statement that gain, loss, income, basis, earnings and profits, or any other item shall be determined in accordance with a specified section or sections of Title 26 United States Code (26 U.S.C.) or a specified federal public law (Pub. L. or P.L.) means that the principles set forth in such specified section or sections and the computations required by such section or sections shall be applied for purposes of this chapter, but shall be applied to the amounts of gain, loss, income, basis, earnings, and profits or other items determined for purposes of this chapter and not to such items for federal income tax purposes.

Here, though, the Alabama code sections in issue do not refer to specific sections of the Internal Revenue Code. Therefore, there is no specific federal code section to follow. Instead, the broad, inclusive definition of “gross income” in § 40-18-14(1) controls, which, as noted, is equal to the broadness of the 16th Amendment of our federal constitution.

Also, at trial, the Taxpayer provided a copy of a notice from the Internal Revenue Service (“IRS”) regarding 2019 which stated that the Taxpayer did not owe the IRS and that the IRS did not owe the Taxpayer a refund. The notice further stated, however, that the IRS had not allowed the amount claimed by the Taxpayer as federal income tax withheld because Forms W-2 were not attached to the return. The notice contained no other explanation. Thus, that notice does not support the Taxpayer’s claim.

Section 40-2A-7(b)(5)c.3, Ala. Code 1975, states the following: “On appeal ... to the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.” Here, the Taxpayer has failed to meet his burden of proving that the assessments are incorrect. Therefore, the final assessments are upheld.

Judgment is entered against the Taxpayer and in favor of the Revenue Department in the following amounts: for 2018, \$2,433.52; for 2019, \$2,396.57; for 2020, \$1,518.37; plus additional interest that continues to accrue from the date of entry of the final assessments until the liabilities are paid in full.

This Final Order may be appealed to circuit court within 30 days, pursuant to

Ala. Code 1975 § 40-2B-2(m).

Entered June 30, 2023.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:ac:maj

cc: Delvin M. Franklin
Andrew P. Gidiere, Esq.