

ALABAMA TAX TRIBUNAL

MICHAEL J. BATY, §
Taxpayer, § DOCKET NO. INC. 22-928-LP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves final assessments of 2017 through 2020 income tax. A trial was held, via videoconference, on April 28, 2023. Brian Bird represented the Revenue Department, and Tynisha Cunningham, the Revenue Department’s auditor, appeared and testified. The Taxpayer also appeared and testified.

It is undisputed that the Taxpayer is a domiciliary of Florida. The Taxpayer is a director for T.R. Miller Mill Company, Inc., (“T.R. Miller”) which is located in Brewton, Alabama, and only operates in Alabama. According to the Taxpayer he begins his day working from home in Florida at approximately 6:30 a.m. Most days he travels to his office in Brewton and works from approximately 8:30 a.m. until 3:30 p.m. or later. The Taxpayer testified that he travels for meetings approximately two weeks out of each month. T.R. Miller reported the Taxpayer’s wages as Alabama-sourced wages on his Form W-2. According to the Taxpayer, although he requested that T.R. Miller issue a corrected Form W-2, T.R. Miller would not do so.

The Taxpayer contends that, because he does work from home in Florida each day, his income is not Alabama-sourced. Thus, his position is that he is not subject

to Alabama taxes.

The Tax Tribunal recently addressed a similar factual situation in Bollinger v. State of Alabama Dep't of Rev., Docket No. INC. 22-390-JP (March 8, 2023). The Tax Tribunal explained, in pertinent part:

“Pursuant to Section 40-18-2, Ala. Code 1975, every “nonresident individual receiving income from property owned or business transacted in Alabama” is subject to Alabama income tax. See also Ala. Admin. Code r. 810-3-2-.01(3) (“Nonresident individuals receiving taxable income from property owned or business transacted (including wages for personal services) within Alabama are taxable on such income.”) Ala. Admin. Code r. 810-3-14-.05 provides, in pertinent part:

“(1)(a)The gross income of a nonresident includes compensation for personal services only to the extent that the services were rendered in this State.

“(b) Compensation for personal services rendered by a nonresident outside this State and not connected with the management or conduct of a business in this State is excluded from gross income even if payment is made from a point within this State or the employer is a resident individual, partnership or corporation.

“....

“2. Where compensation is received for personal services rendered partly within and partly without this State, that part of the income attributable to this State is included in gross income. In such cases the test of physical presence is used to determine the situs of the rendition of the services, except where the peculiar nature of such services causes the objective of the employment to be accomplished or to take effect within this State, as, for example, where a nonresident acts as a fiduciary of an Alabama estate or trust.... The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of working days employed within this State bears to the total number of working days employed both within and without this State during the

taxable period.”

“.....

“The Administrative Law Division addressed whether certain proceeds were derived from ‘business transacted’ in Alabama’ by looking to binding precedent from the Alabama Supreme Court. The Administrative Law Division explained:

““Doing business” is not statutorily defined for Alabama tax purposes. The Alabama Supreme Court has held, however, that a corporation is doing business in Alabama if it is “engaged (in Alabama) in the transaction of business, or any part of the business, for which it was created.” State v. Anniston Rolling Mills, 27 So. 921, 922 (1900); See also, State v. City Stores Co., 171 So. 2d 121 (Ala. 1965); Dial Bank v. State of Alabama, Docket Inc. 95289 (Admin. Law Div. 8/10/1998) (“On the other hand, doing business in Alabama is a practical question of whether a taxpayer is engaged in a primary business activity in Alabama.” Dial Bank at 13). “Alabama courts have, on occasion, construed the term ‘engage in business’ ... to indicate a regular and legal employment...” Scott & Scott, Inc. et al. v. City of Mountain Brook, 844 So. 2d 577, 591 (Ala. 2002).’

“John A. and Ann A. Gasser v. State of Ala. Dep’t of Rev. Inc., 11-489 (October 15, 2012).”

In the present case, the Taxpayer was clearly engaged in business, i.e., a regular and legal employment with T.R. Miller, which is in Brewton and only operates in Alabama. Therefore, the Taxpayer is subject to Alabama taxes on his Alabama-sourced income.

The final assessments are affirmed. Judgment is entered against the Taxpayer in the following amounts: for 2017, \$6,052.67; for 2018, \$6,585.93; for 2019, \$5,225.21; and for 2020, \$7,757.09.

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

Ala. Code 1975 § 40-2B-2(m).

Entered May 19, 2023.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Judge

Alabama Tax Tribunal

lhp:ac

cc: Michael J. Baty
Brian T. Bird, Esq.