

ALABAMA TAX TRIBUNAL

MARTA M. VARGAS, §
Taxpayer, § DOCKET NO. INC. 24-0180-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

**FINAL ORDER GRANTING ALABAMA DEPARTMENT
OF REVENUE’S APPLICATION FOR REHEARING**

This appeal involves the entry of a final assessment of income tax for 2022. The Alabama Department of Revenue filed a Motion for Judgment in Favor of Taxpayer on April 9, 2024. On April 10, 2024, the Tax Tribunal entered a Final Order declaring the final assessment at issue void. On April 16, 2024, the Alabama Department of Revenue filed a Motion for Rehearing. The Tax Tribunal’s Preliminary Order on Alabama Department of Revenue’s Application for Rehearing directed the Taxpayer to respond to the Department’s Application no later than May 17, 2024. The Tax Tribunal never received any form of response from the Taxpayer.

A trial was held on the Revenue Department’s Motion for Rehearing on October 10, 2024. Ralph Clements represented the Alabama Department of Revenue, and Jennifer Williams appeared and testified on behalf of the Revenue Department. Despite having been notified of the date, time, and place of the trial, neither the Taxpayer nor a representative of the Taxpayer appeared for the trial.

The Revenue Department stated at trial that a document submitted by the Taxpayer in this appeal differed in substance from the public court records of the

Taxpayer's divorce action. Specifically, the document submitted to the Tax Tribunal by the Taxpayer is styled as a "Modified Settlement Agreement" that purportedly was entered into on January 6, 2020, and filed in Case No. DR. 12-90073.02 before the Circuit Court of Montgomery County, Alabama. The Modified Settlement Agreement stated the following regarding alimony at page 2, paragraph 4:

The Husband will begin paying the wife 7500.00 per month alimony as of **February, 2020** for health and maintenance until she either remarries, becomes self-supporting or dies. **Alimony payments shall not be taxable to the Wife** and shall be deductible for the Husband who shall be responsible for payment of all taxes.

(emphasis added). Notably, this document did not feature any stamp representing its filing with the clerk of the Montgomery Circuit Court.

In contrast, the Revenue Department stated at trial that "[t]he document the Taxpayer supplied appears nowhere in the public record of any of her domestic relations cases." The Revenue Department submitted as Revenue Department's Exhibit 1 ("RD Ex. 1") an almost identical Modified Settlement Agreement. However, the few differences between the Agreement submitted at trial as the Revenue Department's Exhibit 1 and that provided by the Taxpayer are significant. First, unlike the Agreement provided by the Taxpayer, RD Ex. 1 prominently features a stamp from the Clerk of the Montgomery Circuit Court that indicates it was electronically filed with that court on January 9, 2020. Second, in the first paragraph of RD Ex. 1, the spaces representing the date on which the agreement would have been entered are blank. Third, the paragraph regarding alimony, again located on page 2 at paragraph 4, states only the following: "He will begin paying the wife \$7,500.00 per

month alimony as of **February 2018** for health and maintenance until she either remarries, becomes self-supporting or dies.” (emphasis added). Crucially, this agreement that was filed with the Montgomery Circuit Court and thus entered into the court record for the divorce proceedings makes no mention of the tax treatment of the alimony payments.

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 her burden of proving that the final assessment is incorrect. As stated, the Modified Settlement Agreement submitted by the Taxpayer is not the same as what was filed with and approved by the Montgomery Circuit Court. Further, because the Taxpayer did not respond to the Revenue Department’s Motion for Rehearing and did not appear for trial, the discrepancy between the Modified Settlement Agreement she submitted with her Notice of Appeal and that filed with the Montgomery Circuit Court remains unexplained.

Therefore, the Revenue Department’s Application for Rehearing is granted and the final assessment is upheld. Judgment is entered against the Taxpayer in the amount of \$5,501.29, plus additional interest that continues to accrue from the February 5, 2024, date of entry of the final assessment until the liability is paid in full.

This Final Order Granting Alabama Department of Revenue’s Application for Rehearing may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered October 11, 2024.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:thb

cc: Marta M. Vargas
Ralph M. Clements, III, Esq.