

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

vs.

§

THOMAS P. DOYLE  
Riverview Plaza Office Tower  
Suite 606, 63 South Royal St.  
Mobile, AL 36602,

§  
§

DOCKET NO. INC. 93-362  
INC. 94-127

Taxpayer.

§

FINAL ORDER

The Revenue Department entered final assessments of income tax against Thomas P. Doyle ("Taxpayer") for the years 1989 and 1990.

The Taxpayer appealed and the cases were consolidated and heard together on July 8, 1994 in Mobile, Alabama. The Taxpayer was notified of the hearing, but failed to appear. Assistant counsel Duncan Crow represented the Department.

The Taxpayer filed his 1990 Alabama income tax return on May 17, 1993. The return showed a liability of \$2,164.00. However, no money was paid with the return.

The Taxpayer paid \$1,000.00 toward the liability on August 9, 1993. The Taxpayer also remitted a check for \$500.00 on August 24, 1993 which was returned by the Taxpayer's bank for insufficient funds. The Department subsequently entered the final assessment in issue for the balance due plus late filing and late payment penalties and interest. The final assessment was entered on October 22, 1993. The Taxpayer appealed on November 19, 1993.

The Taxpayer filed his 1989 Alabama income tax return on June 1, 1993. That return showed a liability of \$2,185.00, but no money was paid with the return. The Taxpayer paid \$1,000.00 on August 23, 1993 and another \$300.00 on September 27, 1993. The Department subsequently entered the final assessment in issue for the tax due plus penalty and interest on December 20, 1993. The Taxpayer appealed to the Administrative Law Division on January 19, 1994. The Taxpayer subsequently paid the liability in full on June 2, 1994.

Both final assessments in issue were based on the Taxpayer's own signed returns. The Taxpayer, an attorney, failed to specify in his notices of appeal why he disagreed with the final assessments. The Taxpayer also did not at any time during the pendency of the appeals state any reason why he thought the assessments were incorrect, other than the amounts assessed were not owed. The Taxpayer subsequently paid one assessment in full and did not appear at the administrative hearing to contest the other assessment. The logical conclusion is that the Taxpayer appealed only to allow himself additional time to pay.

Code of Ala. 1975, §40-2A-11(f) levies a frivolous appeal penalty of \$250.00 or 25% of the tax due, whichever is less, if an appeal to the Administrative Law Division is determined to be

frivolous or filed primarily for the purpose of delay. That penalty applies in this case.

The above considered, judgment is entered against the Taxpayer for (1) a frivolous appeal penalty relating to the 1989 final assessment in the amount of \$394.61 (25% of the assessed tax of \$1,578.43); and (2) for 1990 tax, penalty and interest as set out in the 1990 final assessment in the amount of \$2,462.94, plus additional interest on that amount from the date of entry of the final assessment. In addition, a 1990 frivolous appeal penalty is also assessed in the amount of \$396.48 (25% of the assessed tax of \$1,583.90). The total judgment entered against the Taxpayer for both years is \$3,254.03, plus additional interest due on the 1990 final assessment amount until the date of payment.

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

Entered on July 18, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge