

ALBERT W. HUDSON	§	STATE OF ALABAMA
104 North Wise Street		DEPARTMENT OF REVENUE
Samson, Alabama 36477,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 95-402
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed income tax against Albert W. Hudson ("Taxpayer") for the year 1994. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on March 11, 1996. The Taxpayer represented himself at the hearing. Assistant Counsel Claude Patton represented the Department.

The Taxpayer paid his ex-wife a lump sum of \$58,000.00 in 1994 pursuant to a divorce decree entered in that year. The issue in this case is whether that amount can be deducted by the Taxpayer as alimony pursuant to Code of Ala. 1975, §40-18-15(18).

The facts are undisputed.

The Taxpayer was divorced in Coffee County, Alabama on October 18, 1994. The divorce decree provided in pertinent part as follows:

4. The Defendant shall pay to Plaintiff the sum of \$58,000.00 as alimony in gross. Said sum shall be due and payable on the 1st day of January, 1995.
5. The Defendant shall become the sole owner of the home and property, located at Lot 10, Block A, Second Addition to Indian Lakes Subdivision, Enterprise, Alabama and the mobile home and lot located at Lot #32, Unit 1, Riverview Forest Subdivision, Henry County,

Alabama. As such title is vested to the Defendant and the Plaintiff is divested of any and all interest in and to said home, mobile home and real property.

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7. The Plaintiff shall be entitled to remain in the marital home located at Lot 10, Block A, Second Addition to Indian Lakes Subdivision, Enterprise, Alabama, until January 1, 1995. Plaintiff shall maintain the home in reasonable repair until said time.

The Taxpayer paid \$58,000.00 to his ex-wife in 1994 as provided by the decree, and then deducted the amount as alimony on his 1994 Alabama return. The Department disallowed the deduction and entered the final assessment in issue. The Taxpayer appealed to the Administrative Law Division.

Section 40-18-15(18) provides a deduction for alimony and separate maintenance payments as allowed under federal law at 26 U.S.C. §215. That section allows a deduction to the payor spouse to the extent that such payments are includable as income to the payee spouse under 26 U.S.C. §71.

The tax rules concerning alimony and separate maintenance payments were substantially altered by the Tax Reform Act of 1984.

The post-1984 rules apply in this case. Under those rules, payments by a payor spouse are deductible as alimony if the following conditions are met:

1. The payment must be made in cash.
2. The payment must be received by or on behalf of a spouse under a divorce or separate agreement.

3. In the case of spouses legally separated under a decree of divorce or separate maintenance, the spouses must not be members of the same household at the time the payment is made.
4. The parties must not designate the payment in the instrument as not being alimony for federal tax purposes.
5. Payment must terminate at the death of the spouse and there must be no liability to make any payment (in cash or property) as a substitute for such payment.
6. The spouses must not file a joint return with each other.

Reg. §1.71-2, ¶6094.022, 1994 CCH Standard Federal Tax Reports.

In this case, the \$58,000.00 was a lump-sum payment in the nature of a property settlement. The Taxpayer was obligated to pay the amount to his ex-wife by January 1, 1995. In return, he received title to the marital residence and his ex-wife was required to move out before January 1, 1995. The payment cannot be deducted as alimony because the Taxpayer was unconditionally obligated to pay the amount in full, even if his ex-wife had died prior to the payment date. See condition 5 above. See also, Higgs v. State of Alabama, Admin. Law Docket Inc. 94-282, decided April 26, 1995, in which \$25,000.00 lump-sum attorney fee paid by the husband to his ex-wife's attorney pursuant to a divorce decree could not be deducted because the husband's liability to pay was fixed and did not terminate on his ex-wife's death or remarriage.

The Taxpayer in good faith appealed the assessment in this case based on the advice of his CPA and his belief that he should

be allowed a deduction. I agree with the Taxpayer that the law concerning the deductibility of payments under a divorce decree is somewhat confusing. However, the amount paid by the Taxpayer in this case cannot be deducted under applicable Alabama law.

The final assessment in issue is affirmed, and judgment is entered against the Taxpayer for 1994 Alabama income tax in the amount of \$1,301.38, plus applicable interest.

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

Entered March 21, 1996.

BILL THOMPSON
Chief Administrative Law Judge