

EARL G. DURO
1401 Tyler Lane
Birmingham, AL 35235,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 97-332

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1991 and 1992 income tax against Earl G. Duro (Taxpayer). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(b)(5)a. A hearing was conducted on November 10, 1997. The Taxpayer and his attorney, David E. Hodges, appeared at the hearing. Assistant Counsel Antoinette Jones represented the Department. At the hearing, the Taxpayer requested and was allowed additional time, until January 30, 1998, to file returns for the subject years. The Taxpayer failed to file the returns, and a second hearing was conducted on August 27, 1998. The Taxpayer and his attorney were notified of the August 27, 1998 hearing, but failed to appear. Assistant Counsel Antoinette Jones again represented the Department.

The issue in this case is whether final assessments in question were correctly entered by the Department.

The Taxpayer failed to file Alabama income tax returns for 1991 and 1992. The Department received IRS information indicating that the Taxpayer should have filed

Alabama returns for those years. The Department requested information from the Taxpayer on several occasions concerning his 1991 and 1992 liabilities. The Taxpayer failed to respond. The Department consequently computed and assessed the Taxpayer's liabilities using the IRS information.

The Taxpayer claims that (1) he has been denied due process by the Department, (2) the Department improperly relied on illegally-obtained IRS information, (3) the IRS information is false, and (4) the Department failed to provide facts to support its assessments. He also argues (5) that he did not receive any taxable source income pursuant to federal law, in which case he only had exempt income under 26 CFR ' 1.861-85, and (6) that he is a citizen of Alabama due to his ownership of land in Alabama, and thus is not a legal resident of Alabama. The Taxpayer's arguments are rejected.

First, the Taxpayer has not been denied due process. Procedural due process is satisfied if an individual is given notice and a reasonable opportunity to be heard. U. S. v. Eufracio Torres, 890 F.2d 266 (10th Cir. 1989); Ballard v. Blount, 581 F.Supp. 160, affirmed 734 F.2d 1480, cert. denied 105 S.Ct. 590 (1983). The Department gave the Taxpayer several opportunities to provide information from which his Alabama liabilities, if any, could be computed. The Taxpayer failed to respond. The Taxpayer also had an opportunity to be heard at the November 10, 1997 hearing. Instead, he requested additional time to gather information and file returns for the subject years. The Taxpayer failed to file the returns, and a second hearing was scheduled for August 27, 1998. The Taxpayer and his attorney were notified of the hearing, but neither appeared.

Under the circumstances, the Taxpayer clearly was allowed due process and an opportunity to respond to the Department's assessments.

The Taxpayer's arguments concerning the IRS information are also rejected. The Department is authorized to obtain and use IRS information to compute a taxpayer's Alabama income tax liabilities. See, Code of Ala. 1975, ' 40-2A-10(d) and Dept. Reg. 810-14-1-.29. If a taxpayer fails to file a return, as the Taxpayer did in this case, the Department may calculate the taxpayer's correct liability using the best information available. Code of Ala. 1975, ' 40-2A-7(b)(1)a. The Department thus correctly computed the Taxpayer's 1991 and 1992 Alabama liabilities using the properly obtained IRS information.

The Taxpayer asserts generally that the IRS information is false. However, a final assessment on appeal is *prima facie* correct. Code of Ala. 1975, 240-2A-7(b)(5)c. The Taxpayer thus had the affirmative burden of proving that the final assessments are incorrect. He failed to carry that burden. The Taxpayer cannot refuse to file returns or provide records, and then complain that the Department's calculations based on the best information available are unfounded or incorrect. Jones v. C.I.R., 903 F.2d 1301 (10th Cir. 1990); Webb v. C.I.R., 394 F.2d 366 (5th Cir. 1968).

The Taxpayer's argument that he only had exempt income during the subject years is rejected. The burden is on the Taxpayer to establish that his income was exempt. Best v. State, Department of Revenue, 423 So.2d 859 (Ala.Civ.App. 1982); Bashinky v. Sparks, 146 So.2d 303 (1962). The exemptions from Alabama income tax are enumerated at Code of Ala. 1975, ' ' 40-18-19 and 40-18-20. The Taxpayer failed to cite any provision in those statutes by which his income received in the subject years was

exempt.

Finally, the Taxpayer's claim that as a "Citizen" of Alabama he is not subject to Alabama income tax is also rejected. Alabama income tax is levied on every person or individual residing or domiciled in Alabama. Code of Ala. 1975, ' ' 40-18-2 and 40-18-5. The Taxpayer is a person or individual residing and domiciled in Birmingham, Alabama, and thus is subject to Alabama income tax. That conclusion is not affected by the fact that the Taxpayer may own land in Alabama. See also, Harris v. State, Docket INC. 97-316 (Admin. Law Div. 10/29/97), in which the taxpayers (who lived in Selma, Alabama) unsuccessfully argued that they resided in the Republic of Alabama, not the State of Alabama, and thus were not within Alabama's taxing jurisdiction.

The final assessments are affirmed. Judgment is entered against the Taxpayer for 1991 income tax, penalty, and interest of \$3,263.86, and 1992 income tax, penalty, and interest of \$3,235.51. Additional interest is also due from the date the final assessments were entered.

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

Entered September 18, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Antoinette Jones, Esq.
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Kim Herman (263-80-6951)