

BILLY R. & ANDREA SHERIDAN
117 TAURUS DRIVE
HARVEST, AL 35749-9469,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 17-193

FINAL ORDER

This appeal involves the Revenue Department's partial denial of 2014 and 2015 income tax refunds requested by the above Taxpayers. The Taxpayers appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on July 10, 2017. Assistant Counsel Craig Banks represented the Department. The Taxpayers also attended the hearing.

The Taxpayers submitted joint Alabama income tax returns for tax years 2014 and 2015 requesting a refund of tax. The Department audited the returns and disallowed the Taxpayers' deductions for charitable contributions and medical expenses, and partially disallowed the Taxpayers' deductions for alimony payments made to Mr. Sheridan's ex-wife. The Department's adjustments resulted in the partial denial of the Taxpayers' requests for refunds in the subject years.

The Taxpayers appealed to the Tribunal concerning only the Department's disallowance of their deduction related to the payments of alimony to Mr. Sheridan's ex-wife that constituted payments from Mr. Sheridan's military retirement income. Specifically, the Department disallowed the Taxpayers' \$14,400 deduction for payment of alimony which undisputedly represents payment of a portion of Mr. Sheridan's military retirement to his ex-wife. Because the Taxpayers only appealed concerning this issue, this Final Order

does not address the Department's denial of the Taxpayer's deductions for charitable contributions or medical expenses.

The Department argues on appeal that the Taxpayers are not entitled to an alimony deduction for payments which represent of a portion of Mr. Sheridan's military retirement because the income is not subject to Alabama income tax. Citing *Baker v. State of Alabama*, Administrative Law Division Dkt. No. Inc. 00-754 (March 9, 2001), and *Peterson v. State of Alabama*, Administrative Law Division Dkt. No. 2001-401 (September 17, 2001), the Department argues that the alimony payments at issue should be treated as transfers of non-taxable income from Mr. Sheridan to his former spouse. I agree.

Code of Ala. 1975, §40-18-20 exempts retirement benefits paid to retired military personnel from Alabama income tax. In *Baker*, the Administrative Law Division, this court's predecessor, held that a portion of military retirement pay that was paid directly from the federal government to a former spouse of the beneficiary pursuant to a divorce judgement was not taxable income to the recipient. The court held that the mere fact that the pay was diverted from the ex-husband to the ex-wife did not change the exempt status of the income. In *Peterson*, following the reasoning set forth in *Baker*, the Administrative Law Division held that payments representing a portion of the ex-husband's military retirement paid by him directly to his ex-wife pursuant to a divorce decree were not considered taxable alimony payments when received by his ex-wife because the payments were made from non-taxable military retirement funds. Seeing no substantive difference in the way the retirement income was diverted from one former spouse to the other, the court held that the payments should be treated as if they had been made directly from the federal

government to the ex-wife, i.e., that the payments should be treated as a transfer of non-taxable income.

Pursuant to *Baker* and *Peterson*, cases which are binding precedent on the Tribunal, the alimony payments at issue in this appeal should be treated as a transfer of non-taxable income. As such, the Taxpayers are not entitled to a deduction for transferring a portion of non-taxable income to Mr. Sheridan's ex-wife.

The Department's partial denial of the Taxpayers' request for refunds for tax years 2014 and 2015 is affirmed.

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

Entered July 18, 2017.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Craig A. Banks, Esq.
Billy Ray Sheridan