

## ALABAMA TAX TRIBUNAL

PHUOC TU & NU HA,	§	
Taxpayers,	§	DOCKET NO. INC. 15-1785-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### FINAL ORDER

On May 14, 2019, the Alabama Tax Tribunal entered an Opinion and Preliminary Order directing the Alabama Department of Revenue to recalculate final assessments that it entered against the Taxpayers for years 2010, 2011, and 2012. The Revenue Department was directed to provide its recalculations to the Tax Tribunal no later than June 21, 2019. In the order, the Tax Tribunal noted the Revenue Department's earlier acknowledgment (in September 2016) that the final assessments should be reduced to \$18,833.49 for 2010, \$36,682.74 for 2011, and \$28,888.62 for 2012. The Tax Tribunal also noted that counsel stated during the hearing (in February 2018) that the only remaining issue concerned Mr. Tu's cashing of payroll checks in his store and the depositing of those checks into a cash account at Regions Bank. The other issue, which involved wire transfers of money, had been resolved, which led to the Revenue Department's acknowledgment that the final assessments should be reduced.

After recounting the evidence presented by the Taxpayers during the hearing (with no witnesses called or evidence produced by the Revenue Department), the Tax Tribunal ruled that the deposits into the cash account at Regions Bank did not constitute taxable income, with two exceptions. After describing those exceptions in detail, the Tax Tribunal

directed the Revenue Department to recalculate the final assessments accordingly.

On June 19, 2019, the Revenue Department filed a “Response to Opinion and Preliminary Order” with the Tax Tribunal. The Response consisted of the following:

The Department has recalculated the final assessments as directed in the Opinion and Preliminary Order. A memorandum from the examiner accompanies this Response.

For the reasons set forth in the examiner’s memorandum (incorporated by reference thereto as if fully set forth herein), the Department requests the Tribunal set an additional hearing in order to allow the Tribunal to reach a more logical and correct conclusion.

As seen, the Response filed by the Revenue Department’s counsel of record offered no specific contention with the Opinion and Preliminary Order and no legal or factual analysis. Instead, it deferred to an internal memo from a person within the Revenue Department’s Individual and Corporate Tax Division to the Revenue Department’s counsel of record. In the final paragraph of that memo, the following is stated: “However, as instructed by the Preliminary Order, the adjustments ordered would result in the Final Assessments being voided and vacated. The adjustment would require the Department to refund the admitted liabilities reported on the returns as filed and paid by the taxpayer in the amounts of \$2,833, \$1,368, and \$718 for tax years 2010, 2011, and 2012, respectively.”

The Revenue Department’s Response was filed too late to be considered an Application for Rehearing of the Opinion and Preliminary Order. See Ala. Code § 40-2B-2(l)(5), stating that “[a]ny party may apply for rehearing from any final order or opinion and preliminary order of the Alabama Tax Tribunal; provided, however, the application must be filed within 15 days from the date of entry of such order.” The Opinion and Preliminary

Order was entered on May 14, 2019. The Revenue Department's Response was filed on June 19, 2019.

The final assessments at issue are voided. Judgment in favor of the Taxpayers is entered accordingly.

Entered June 20, 2019.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:dr

cc: John J. Crowley, Esq. (w/enc.)  
Duncan R. Crow, Esq.