

**ALABAMA TAX TRIBUNAL**

JASON & NANH T. NGUYEN,	§	
Taxpayers,	§	DOCKET NO. INC. 19-1200-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**OPINION AND PRELIMINARY ORDER**

This appeal involves final assessments of Alabama income tax for tax years 2010 and 2012 through 2016. The parties have filed a Joint Stipulation of Facts as well as briefs addressing the legal issue in this case.

The parties’ stipulation of facts is as follows:

“1. Taxpayers own and operate a shrimp boat in the Gulf of Mexico.

“2. At all times relevant herein, taxpayers were residents of the State of Florida.

“3. The vessel was at all times relevant hereto documented with homeport in Panama City, Florida.

“4. The percentage of shrimp caught by Taxpayer which were landed (sold) in Alabama was as follows:

“2009 .....	44%
“2010 .....	36%
“2011 .....	.0%
“2012 .....	.0%
“2013 .....	76%

“2014 .....28%

“2015 .....23%

“2016 .....65%

“5. Other than selling their shrimp to processors in Mobile County, the taxpayers had no other contact with the State of Alabama during the audit period.

“6. During the years in question, the Taxpayers issued fourteen (14) 1095s to Alabama Residents.

“7. Taxpayers have filed and paid income taxes proportion to the State of Alabama for the shrimp which was sold in Alabama during the years 2010 to 2016.

“8. The BP oil spill occurred in 2010.

“9. On their BP claim form, the Taxpayers listed Mobile, Alabama [a]s where the vessel primarily landed shrimp between April 20, 2009[,] and April 16, 2012....

“10. During the years 2010, 2011, 2012, 2013, 2014, 2015 and 2016 taxpayers received the following amounts from BP as a result of their claim for los[t] revenues:

“2010 ..... \$338,968.00

“2011 .....\$0.00

“2012 .....\$1,161,378.00

“2013 .....\$659,316.00

“2014 .....\$0

“2015 .....\$875,737.00

“2016 .....\$840,483.00

“11. The Department of Revenue has assessed the taxpayer for the following years and the following amounts.

“2010 .....	\$12,446.70
“2012 .....	\$57,652.31
“2013 .....	\$25,185.94
“2014 .....	\$2,889.35
“2015 .....	\$36,099.95
“2016 .....	\$31,885.96

The parties assert that the issue to be determined is “[w]hether the funds received by the taxpayer[s] from BP are included in their income for purposes of taxation in the State of Alabama.”

In its brief to the Tax Tribunal, the Revenue Department argues that the funds the Taxpayers received as a result of their claims for lost revenues (“the BP funds”) are Alabama sourced income and, therefore, are taxable by Alabama. The Revenue Department points out that, pursuant to section 40-18-14, Ala. Code 1975, “[t]he term gross income, in the case of a nonresident individual, includes only income from property owned or business transacted in Alabama.” See also Ala. Admin. Code r. 810-3-2-.01(3) (“Nonresident individuals receiving taxable income from property owned or business transacted (including wages for personal services) within Alabama are taxable on such income from within Alabama.”) The Revenue Department argues that, because the lost revenues that the BP funds “represented” would have been taxable in Alabama, the BP funds should be taxable in Alabama.

In their brief in response to the Revenue Department, the Taxpayers point out that the BP funds were actually received as a result of business that was not

transacted. Thus, they assert that the BP funds are not taxable under the authority cited by the Revenue Department. The Taxpayers alternatively assert that, if the Tax Tribunal determines that the BP funds were taxable in Alabama, those funds should be taxed only in proportion to the percentage of the Taxpayers' Alabama sales. Finally, the Taxpayers assert that, if the Tax Tribunal determines that the Taxpayers were liable for Alabama taxes on the BP funds, the Taxpayers should not be required to pay any penalties because, according to the Taxpayers, they had reasonable cause to not report the BP funds as Alabama income.

I initially note that the Revenue Department does not contend that the BP funds were received "from property owned" within Alabama. Therefore, the BP funds are taxable under §40-18-14, only if the BP funds were received "from business transacted" within Alabama.

The Eleventh Circuit Court of Appeals has explained: "When a taxpayer's claim is resolved by a settlement, whether the settlement constitutes taxable income depends on the answer to the following question: 'In lieu of what were the damages awarded?'" McKenny v. United States of America, No. 18-10819 (11th Cir. 2020). In Carol J. Dixon v. State of Alabama Department of Revenue, INC. 04-1029 (Admin. Law Div. 6/10/05), the Administrative Law Division of the Revenue Department looked to the character of the proceeds from a lawsuit to determine whether those proceeds were taxable in the state of Alabama. See also Mandell v. Auditing Division of the Utah State Tax Commission, No. 20060521 (Utah Sup. Ct. 2008) (holding that "Utah had authority to tax the proceeds of the original sale because those proceeds

fall within the statutory definition of Utah source income”). In the present case, the joint stipulation specifies that the BP funds were received “as a result of [the Taxpayers’] claim for los[t] revenues”. The joint stipulation also notes that, on the “claim form, the Taxpayers listed Mobile, Alabama [as the place] where the [Taxpayers’] vessel primary landed [(sold)] shrimp between April 20, 2009[,] and April 16, 2012”. Because the BP funds were “in lieu of” business transacted, at least to some extent, in Alabama, a portion of those funds were taxable in the state of Alabama.

As noted, previously, the Taxpayers have asserted that, if the Tax Tribunal determines that the BP funds were taxable in Alabama, those funds should be taxed only in proportion to the percentage of the Taxpayers’ Alabama sales. The Revenue Department is directed to inform the Tax Tribunal, within 14 days of the date of this Order, of its position as to what extent the BP funds are taxable in light of this opinion; the Revenue Department should include proposed calculations of the Taxpayers’ adjusted tax liability. The Taxpayers may respond to the Revenue Department’s filing within 7 days of receipt of the same.

Finally, because I agree with the Taxpayers that they had reasonable cause to not report the BP funds as Alabama income, the penalties on the assessments are hereby waived.

Entered September 1, 2022.

/s/ Leslie H. Pitman  
LESLIE H. PITMAN  
Associate Tax Tribunal Judge

lhp:ac

cc: Robert M. Galloway, Esq.  
Andrew P. Gidiere, Esq.