

ANITA E. SPRUCE
304 Millridge Drive
Millbrook, AL 36054-1679,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-279

FINAL ORDER

The Revenue Department denied refunds of 1996 and 1997 income tax requested by Anita E. Spruce (ATaxpayer@). The Department also assessed the Taxpayer for 1998 income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' ' 40-2A-7(c)(5)a. and (b)(5)a. A hearing was conducted on August 10, 2000.

The Taxpayer and Joe Giarraffa appeared at the hearing. Assistant Counsel Margaret McNeill represented the Department.

The issue in this case is whether alimony received by the Taxpayer in the subject years constituted exempt military retirement pay pursuant to Code of Ala. 1975, ' 40-18-20.

The Taxpayer divorced in 1980. The divorce decree included the following provision:

Defendant shall pay to Anita E. Spruce the sum of TWELVE HUNDRED and NO/100 DOLLARS (\$1200.00) per month as periodic alimony for her support and maintenance beginning May 1, 1980 and a like amount shall be due on the first day of each month thereafter until such time as the said Anita E. Spruce shall remarry or die. The sum hereto agreed shall increase pro-rata as Defendant receives cost of living increases in his military retirement pay.

The Taxpayer reported the monthly payments as taxable alimony on her Alabama income tax returns through 1997. In preparing her 1998 Alabama return, the Taxpayer was informed that the payments were exempt as military retirement pay. The Taxpayer

consequently excluded the payments from her 1998 Alabama return, and also requested refunds for the tax paid on the income in 1996 and 1997. The Department denied the refunds and also assessed the Taxpayer for additional 1998 tax. The Taxpayer appealed.

As indicated, the Taxpayer reported the alimony as income in 1997 and prior years. The Taxpayer's ex-husband also deducted the payments as alimony in 1996. He did not deduct the payments after 1996 because he was not required to file Alabama returns after 1996.

The Taxpayer claims that the alimony constitutes exempt military retirement. She also argues that because her ex-husband did not deduct the amounts as alimony in 1997 and 1998, she should not be required to report the amounts as income in those years.

The divorce decree specifies that the Taxpayer will receive a pro-rata increase in her alimony for any cost of living increases her ex-husband receives in his military retirement pay. Unfortunately for the Taxpayer, the divorce decree does not indicate that the initial \$1,200 per month payments were tied to the ex-husband's military retirement pay. The payments could have been derived from any source, not just the ex-husband's military retirement.

The Taxpayer concedes that the payments were taxable in 1996 because her ex-husband deducted the payments in that year. The taxability of the payments to the Taxpayer did not change because the Taxpayer's ex-husband was not required to file Alabama returns after 1996. If the payments constituted taxable alimony in 1996, which the Taxpayer concedes, they constituted taxable alimony in subsequent years.

The Department correctly denied the 1996 and 1997 refunds. The 1998 final assessment is affirmed. Judgment is entered against the Taxpayer for \$675.54.

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

Entered August 11, 2000.

BILL THOMPSON
Chief Administrative Law Judge