

MARVIN L. & MARY L. CORSER
4403 Shawnee Circle SE
Decatur, AL 35603,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 03-648

FINAL ORDER

The Revenue Department denied a refund of 2002 Alabama income tax requested by Marvin and Mary Corser (“Taxpayers”). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. The Taxpayers represented themselves. Assistant Counsel Mark Griffin represented the Department. The parties agreed that the case would be submitted for decision based on information and documents submitted by the parties.

The Taxpayers’ 2002 Alabama income tax return reported total income of \$36,829, and tax due of \$393. The return also showed Alabama tax withheld of \$874 and estimated payments of \$195, which resulted in a net refund due of \$676.

The Taxpayers also submitted a W-2 from Fidelity Investments showing income of \$21,686.04 from Pharmacia Corporation/Monsanto Corporation concerning a nonqualified pension plan, and \$874.44 in Alabama tax withheld from that amount. The Taxpayers failed, however, to report the above income as gross income on the return.

The Taxpayers also submitted a Form 1099-R from Fidelity Investments showing a gross distribution of \$31,269 received from Pharmacia Corporation/Monsanto Corporation. That amount also was not included as income on the return, nor was any Alabama income tax withheld from the amount.

The Department reviewed the return and conceded that the \$31,269 reported on the 1099-R was from a defined benefit plan, and was thus exempt from Alabama income tax pursuant to Code of Ala. 1975, §40-18-19(a)(6). The Department also determined, however, that the W-2 income of \$21,686.04 was not from a defined benefit plan because Alabama income tax had been withheld from the amount. The Department thus included that amount in the Taxpayers' income, which eliminated the refund claimed by the Taxpayers and resulted in additional tax due of \$413.35. The Department notified the Taxpayers of the denied refund and the additional tax due. The Taxpayers appealed.

The issue in this case is whether the \$21,686.04 received by the Taxpayers was from a defined benefit plan, and thus exempt from Alabama tax pursuant to §40-18-19(a)(6). The Department questions whether the income was from a defined benefit plan because it was from a "nonqualified plan," and Alabama tax had been withheld from the amount.

The Taxpayers contend that the nonqualified portion of the pension plan is also part of a defined benefit plan. In support of that claim, they submitted two letters from the plan administrator, Pharmacia Monsanto, indicating that the nonqualified portion was from a defined benefit plan. They also presented W-2s they received concerning the income in 1997, 1998, and 1999, which indicate that Alabama tax was not withheld in those years. The Taxpayers argue that Alabama tax was mistakenly withheld in 2002 only because a new company began administering the plan.

Based on the evidence submitted by the Taxpayers, I find that the income in issue was from a defined benefit plan, and thus exempt from Alabama income tax. The final assessment is voided. The Department should issue the Taxpayers a refund in due

course.

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

Entered February 9, 2004.

BILL THOMPSON
Chief Administrative Law Judge