

DAVID R. STORM
2715 Hustleville Road
Albertville, AL 35951,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 04-410

FINAL ORDER

The Revenue Department assessed David R. Storm (“Taxpayer”) for 2000 Alabama income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on September 3, 2004. The Taxpayer and his wife, Donna Storm, attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer failed to file a 2000 Alabama income tax return. The Department received IRS information indicating that the Taxpayer resided in Alabama and had income sufficient to require him to file an Alabama return in 2000. The Department accordingly assessed the Taxpayer on the approximately \$61,000 in income he received in 2000, less the itemized and other deductions and exemptions allowed by the IRS. The Taxpayer appealed.

The Taxpayer argues that the IRS information on which the final assessment is based is hearsay “and cannot be used as a foundation for the final assessment as such is only prima facie evidence. Prima facie evidence and law is challenged at all times.” Taxpayer’s Motion to Dismiss at 1. I disagree.

The Department is specifically authorized to calculate and assess a taxpayer's liability based on the best information available. Code of Ala. 1975, §40-2A-7(b)(1)a.¹ A final assessment based on the best information available is *prima facie* correct, and the burden is on the taxpayer to prove that the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c.

The final assessment in issue is based on IRS information, i.e. the best information available. The final assessment is *prima facie* correct, and the burden was on the Taxpayer to prove that the assessment was incorrect. The Taxpayer failed to do so. To the contrary, the Taxpayer does not dispute that he received income of approximately \$61,000 in 2000, or that he resided in Alabama in that year.

The Taxpayer also argues generally that he is not liable for Alabama income tax. Again, I disagree. Every individual residing or domiciled in Alabama is subject to Alabama income tax. Code of Ala. 1975, §40-18-2. As indicated, the Taxpayer does not dispute that he resided or was domiciled in Alabama in 2000. Consequently, he was subject to and liable for Alabama income tax on his income earned in that year.

The final assessment is affirmed. Judgment is entered against the Taxpayer for \$5,080.95. Additional interest is also due from the date of entry of the final assessment, April 1, 2004.

¹ In the documents submitted by the Taxpayer that the Administrative Law Division treated as a notice of appeal, the Taxpayer requested – “Please provide me with the authority by which your agency is authorized to prepare a year 2000 State of Alabama tax return for me . . .” That authority is found in §40-2A-7(b)(1)a.

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

Entered September 9, 2004.

BILL THOMPSON
Chief Administrative Law Judge