

ANDREA D. BURGE
1100 LINLEN AVENUE
MOBILE, AL 36609,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 07-336

FINAL ORDER

The Revenue Department assessed Andrea D. Burge (“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 August 14, 2007. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer was involved in an automobile accident in 1997. She sued for compensatory and punitive damages due to physical injuries received in the mishap. The case settled, and the Taxpayer received settlement proceeds of \$53,623 from her attorneys, McCorquodale & McCorquodale, in 2000. She failed, however, to report the income on her 2000 Alabama return. The Department consequently assessed the Taxpayer for the additional tax due, plus penalties and interest. The Taxpayer appealed.

Code of Ala. 1975, §40-18-14(3)(e) adopts by reference 26 U.S.C. §104, which excludes from income “damages received . . . on account of personal injuries or sickness.” That section excludes from income damages (other than punitive damages) received on account of personal physical injuries. *Dotson v. U.S.*, 87 F.3d 682 (1996).

The Department does not dispute that the settlement proceeds were from a tort-like suit involving specific physical injuries. However, it contends that all of the proceeds must

be taxed because the Taxpayer failed to establish what part, if any, of the proceeds were compensatory damages to compensate her for her physical injuries versus punitive damages. I must agree.

In *Graham v. State of Alabama, Inc.* 06-215 (Admin. Law Div. 5/22/2006), the issue was whether a lawsuit settlement received by the taxpayer was excludable under §104. The Administrative Law Division held that none of the amount could be excluded because the taxpayer failed to establish what part was for physical injuries versus emotional distress.

26 U.S.C. §104 excludes from income the amount of any damages received on account of personal physical injuries or physical sickness. See, Code of Ala. 1975, §40-18-14(3). The Department concedes that physical injuries were included in the settlement. It cannot determine, however, what part of the settlement was for excludible physical injuries or taxable emotional distress. The Taxpayer has failed to submit a copy of the settlement agreement.

In *Pipitone v. U.S.*, 180 F.3d 859 (7th Cir. 1999), the Court of Appeals held that the “failure to show the specific amount of the payment allocable to the claims of tort or tortlike damages for personal injuries results in the entire amount’s being presumed not to be excludible.” (cite omitted) *Pipitone*, 180 F.2d at 864.

As indicated, the Taxpayer failed to attend the May 17 hearing and has otherwise failed to submit a copy of the settlement agreement. Without evidence showing the amount of the award that was for physical injuries, the *prima facie* correct tax due as assessed must be affirmed.

Graham at 1 -2.

The same rationale applies in this case. The Taxpayer’s lawsuit requested compensatory and punitive damages. The Taxpayer provided a copy of her settlement agreement, but the agreement does not identify what part, if any, was for compensatory versus punitive damages. Without such evidence, the §104 exclusion cannot apply. The

negligence penalty is, however, waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h).

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for 2000 tax, penalty, and interest of \$3,518.04. Additional interest is also due from the date the final assessment was entered, March 2, 2007.

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

Entered August 17, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Andrea D. Burge
Tony Griggs