

JOEL E. DILLARD  
3702 MONTROSE ROAD  
BIRMINGHAM, AL 35233,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 10-1144

### FINAL ORDER

The Revenue Department assessed Joel E. Dillard (“Taxpayer”) for 2007 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 June 16, 2011. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Lionel Williams represented the Department.

The Taxpayer claimed a credit of \$8,580 as “advance payments” on his 2007 Alabama income tax return. The Department’s records showed that the Taxpayer had not made any advance or other payments concerning his 2007 Alabama liability. The Department consequently disallowed the claimed credit and entered the final assessment in issue.

As discussed below, the “advance payments” the Taxpayer claims he made toward his 2007 Alabama liability were actually payments by the Taxpayer’s employer based on a writ of garnishment issued against the Taxpayer in 2002.

This same issue has been addressed in two prior appeals by the Taxpayer concerning final assessments for 2005 and 2008. See, *Dillard v. State of Alabama*, Docket Nos. Inc. 07-1029 and Inc. 10-514. The Administrative Law Division held in those cases that the payments in issue were made pursuant to a writ of garnishment, and thus were not

voluntary advance payments, as claimed by the Taxpayer.

The Final Order in Docket. No. Inc. 10-514, which involved a 2008 final assessment, reads in pertinent part:

The Administrative Law Division previously decided an appeal of a 2005 final assessment entered against the Taxpayer that involved substantially similar facts and issues of law. In *Dillard v. State of Alabama*, Docket No. Inc. 07-1029 (Admin. Law Div. 10/21/2008), the issue was whether twelve checks for \$715 each submitted to the Department by the Taxpayer's employer in 2005 constituted advance payments on the Taxpayer's 2005 Alabama liability. As in this case, the Department had treated the checks as garnishment remittances relating to its 2002 writ of garnishment, and had thus applied the payments to prior outstanding liabilities owed by the Taxpayer. The Administrative Law Division held that the payments were not advance or estimate payments, and consequently affirmed the 2005 final assessment in issue. The Final Order reads in substantive part as follows:

The Taxpayer's employer, the law firm of Baxley, Dillard, Dauphin & McKnight, submitted twelve \$715 checks to the Department during 2005 on behalf of the Taxpayer. The Taxpayer subsequently claimed on his 2005 Alabama return that he had paid \$8,580 (\$715 x 12) in estimated Alabama tax during 2005. The Department disallowed the credit because it had applied the \$8,580 to the Taxpayer's outstanding liabilities for 1993 and 1994. It consequently entered the 2005 final assessment in issue.

The Taxpayer argues that the twelve payments made on his behalf in 2005 were voluntary advance payments on his 2005 liability. I disagree.

Code of Ala. 1975, §40-18-42(d) does allow a taxpayer to elect to make voluntary advance payments prior to the due date of a tax liability. See also, Dept. Reg. 810-3-42-.01(6). But the payments in issue were not voluntary, nor were they designated by either the Taxpayer or the Taxpayer's employer at the time they were made as being advance payments toward the Taxpayer's 2005 liability.

The Department entered a final assessment of 1993 income tax against the Taxpayer on March 28, 1995 in the amount of \$21,124.79. It later entered a final assessment of 1994 income tax against the Taxpayer on June 26, 1996 in the amount of

\$11,986.55. The Department also entered income tax final assessments against the Taxpayer for numerous other years.

On November 25, 2002, the Department issued a writ of garnishment against the Taxpayer for \$101,198.88. The writ was directed to the Taxpayer's law firm, as garnishee. The law firm consequently began issuing monthly checks to the Department in December 2002. The first check was for \$329. The remaining checks issued through 2005, including the checks in issue, were for \$715. Eleven of the checks submitted in 2005 were applied to the Taxpayer's outstanding 1993 liability. The other was applied to the 1994 liability.

The twelve checks submitted in 2005 were not voluntarily paid because the Taxpayer's law firm, as garnishee, was required by Alabama law to remit the payments, see generally Code of Ala. 1975, §6-6-370, et seq. The law firm and the Taxpayer also did not submit an estimated tax coupon (Form 40-ES) with the payments, as required for the payments to be treated as estimated payments pursuant to Dept. Reg. 810-3-82.01. As indicated, the payments also were not otherwise designated as estimate or advance payments when they were made.

A taxpayer can designate for a payment to be applied to a specific liability. See generally, *Brabner v. State of Alabama, Inc.* 97-196 (Admin. Law Div. O.P.O. 10/29/1997). But the designation must be made at the time the payment is made. The payment must also be voluntary in the sense that it cannot be a required payment pursuant to a writ of garnishment relating to a specific liability or liabilities.

*Dillard, Inc.* 07-1029 at 1 – 2.

*Dillard, Inc.* 10-514 at 2 – 4.

As in the cases involving 2005 and 2008, the evidence in this case shows that the Taxpayer's employer submitted twelve checks for \$715 each to the Department in 2007 in compliance with the previously issued writ of garnishment. The Department correctly applied those payments to the Taxpayer's outstanding 1993 and 1994 liabilities. The Department has not received any other payments from or on behalf of the Taxpayer

concerning his 2007 Alabama liability. The Taxpayer's claimed credit for "advance payments" on his 2007 return was thus correctly disallowed.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2007 tax, penalties, and interest of \$4,738.96. Additional interest is also due from the date the final assessment was entered, November 5, 2010.

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

Entered June 20, 2011.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.  
Joel E. Dillard  
Kim Peterson