

KEVIN N. & THERESA K. THOMAS
515 SCOTT DRIVE
SARALAND, AL 36571,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 10-974

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Kevin N. Thomas and Theresa K. Thomas, individually, for 2008 Alabama income tax; and Theresa K. Thomas for 2009 Alabama income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 25, 2011. The Taxpayers attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The Taxpayers reside in Alabama and filed Alabama income tax returns for the years in issue. They correctly reported their Alabama-sourced wages on line 5 of the returns. They also deducted the wages on line 20 of the attached Schedule Cs as “non-taxable income.” The returns consequently claimed refunds of the total Alabama tax withheld from the Taxpayers’ wages in both years.

The Department processed the returns and issued the Taxpayers the claimed refunds. It subsequently reviewed the returns and disallowed the wages claimed as deductions on the Schedule Cs. It then assessed the Taxpayers for the tax due, plus penalties and interest.

Succinctly stated, the Taxpayers claim that they are not subject to Alabama income tax. The Taxpayers’ December 8, 2010 Memorandum of Disagreement to the

Department's Position reads in pertinent part as follows:

First, the Administrative Law Division has made a fatal error by labeling Mr. and Mrs. Thomas as "Taxpayers."

According to Alabama Code §40-18-1 (attached and made a part hereof as Exhibit A-1 and A-2), a Taxpayer is "any person subject to a tax imposed by this chapter, or show income is, in whole or in part, subject to a tax imposed by this chapter." (emphasis added in original)

The same section of the Alabama Code defines person as "any individual, trust, estate, corporation, association, disregarded entity, or subchapter K entity."

This section groups artificial entities together. This does not include people. Just like apples, oranges and grapes are grouped together as fruits, it does not include vegetables. (emphasis in original)

This very appeal by the Petitioners concerns whether or not Mr. and Mrs. Thomas, as people, are subject to any tax imposed by Alabama.

Since the Alabama Code does not define "individual," we must look to the federal codes for its definition because state income tax is based on federal income tax. We find the definition of "individual" as follows:

Public Law 93-579, as codified at 5 U.S.C. 552a

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Privacy act of 1974."

SECTION 3

(a) DEFINITIONS

For purposes of this section –

(2) the term "individual" means a citizen of the United State of an alien lawfully admitted for permanent residence:

"A citizen of the United States is a citizen of the federal government. . ." *Kitchens v. Steele*, 112 F.Supp 383. Status of citizenship of United States is a privilege and Congress is free to attach any preconditions to its attainment that it deems fit and proper. In re *Thanner*, D.C. Colo. 1966, 253 F.Supp. 283.

See, also, *Boyd v. Nebraska*, Neb. 1892, 12 S.Ct. 375, 143 U.S. 162, 36 L.Ed. 103; *Application of Bernasconi*, D.C. Cal. 1953, 113 F.Supp. 71; *In re Martinez*, D.C. Pa. 1947, 73 F. Supp. 101; *U.S. v. Morelli*, D.C. Cal. 1943, 55 F.Supp. 181; *In re De Mayo*, D.C. Mo. 1938, 26 F.Supp. 696; *State v. Boyd* 1892, 51 N.W. 602, 31 Neb. 682.

Mr. and Mrs. Thomas are NOT privileged citizens of the United States.

Mr. and Mrs. Thomas are people of their Creator and sovereign to the United States and Alabama.

As such sovereign people, Mr. and Mrs. Thomas are NOT subject to any income tax imposed upon entities by any government.

I disagree with the Taxpayers' position. The Taxpayers are "taxpayers" under Alabama law, and were also subject to and liable for Alabama income tax for the subject years. "Taxpayer" is defined by the Alabama Revenue Code, Title 40, Code 1975, as "[e]very person subject to a tax imposed by this chapter. . . ." Code of Ala. 1975, §40-18-1(19). Code of Ala. 1975, §40-18-2 levies an income tax on certain individuals and entities, including "[e]very individual residing in Alabama." Section 40-18-2(1). The Taxpayers do not dispute that they resided in Alabama. The Taxpayers are thus individual taxpayers subject to Alabama income tax on their Alabama-sourced wages.

This issue was also previously addressed in *Knop v. State of Alabama*, Docket No. Inc. 98-226 (Admin. Law Div. 9/18/1998). The taxpayers in *Knop* argued that the Alabama income tax did not apply to them (Issue 1), and also that individually they were not a "person" or a "taxpayer" as defined by Alabama and federal law (Issue 2). The Administrative Law Division rejected both arguments, as follows:

Concerning arguments (1) and (2), Alabama income tax is levied on every "individual" residing in Alabama, and also on every "person" domiciled in Alabama. Code of Ala. 1975, §40-18-2. The terms "individual" and "person" are synonymous. Code of Ala. 1975, §40-18-1(9). "Individual" is defined by

the American Heritage Dictionary, 2nd College Ed., at page 656, as “of or relating to a single human being”. The same source, at page 925, defines “person” as “a living human being...” The Knops are human beings, and thus are individuals or persons for Alabama income tax purposes. Likewise, “taxpayer” is defined at Code of Ala. 1975, §40-18-1(12) as “any person” subject to the income tax imposed in Chapter 18 of Title 40, Code of Ala. 1975, which, as indicated, includes all individuals or persons (human beings) domiciled or residing in Alabama. Because the Knops are individuals or persons domiciled and residing in Alabama, they are taxpayers subject to Alabama income tax. Arguments (1) and (2) are rejected.

Knop at 2.

The above also applies in this case. The final assessments are affirmed. Judgment is entered against Theresa K. Thomas for 2008 and 2009 income tax, penalties, and interest of \$471.72 and \$5,013.49, respectively; and against Kevin N. Thomas for 2008 tax, penalties, and interest of \$1,696.05. Additional interest is also due from the date the final assessments were entered, September 16, 2011.

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

Entered January 27, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Kevin Thomas
Kim Peterson