

MARILYN J. BAKER  
42 W. Chadwick Circle  
Dothan, AL 36305,  
DIVISION

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW

§

Taxpayer,

§

DOCKET NO. INC. 00-754

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

The Revenue Department assessed 1994 and 1995 income tax against Marilyn J. Baker (“Taxpayer”). 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 February 27, 2001. The Taxpayer and her authorized representative, Phillip Hornsby, attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The issue in this case is whether the Taxpayer is liable for Alabama income tax on military retirement pay she received in the subject years.

The Taxpayer divorced in 1994. The divorce decree specified that the Taxpayer would receive one-half of her ex-husband’s military retirement pay. The federal government remitted the retirement pay directly to the Taxpayer.

The Department received IRS information indicating that the Taxpayer had failed to report the retirement pay on her 1994 and 1995 federal returns. The Department investigated and discovered that the Taxpayer had also failed to report the income to Alabama. The Department consequently entered the final assessments in issue based on the IRS information.

Military retirement benefits are not exempt from federal income tax. Such benefits are, however, exempt from Alabama income tax. Code of Ala. 1975, §40-18-20. Consequently, the Taxpayer is not liable for Alabama tax on the income in issue. The fact that the retirement pay was diverted from the ex-husband to the Taxpayer does not change the exempt status of the income.

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

Entered March 9, 2001.