

ALABAMA TAX TRIBUNAL

DEVON M. FRANKLIN, §
Taxpayer, § DOCKET NOS. INC. 22-239-JP
INC. 23-246-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

OPINION AND FINAL ORDER

Docket No. INC. 22-239-JP involves a final assessment of 2020 income tax. Docket No. INC 23-246-JP involves the entry of a final assessment of income tax for 2021. A trial was held on June 21, 2023. Ralph Clements represented the Revenue Department, and Clifford Jennings, the Revenue Department’s tax auditor, appeared and testified. The Taxpayer also appeared and testified.

It is undisputed that the Taxpayer timely filed Alabama income tax returns for 2020 and 2021 and included no wage income on his returns.¹ The Revenue Department adjusted the returns to add the Taxpayer’s wage income as reported on Forms W-2 which listed the Taxpayer as payee for the years in question. The adjustments resulted in tax due, which led to the entry of the final assessments at issue. The Taxpayer admitted during the trial that he lived in Alabama and earned employment income through his work as a longshoremen during years 2020 and 2021.

Section 40-18-2(a)(1), Ala. Code 1975, provides: “In addition to all other taxes

¹ The Taxpayer testified that he included certain investment income on his 2021 return.

now imposed by law, there is hereby levied and imposed a tax on the taxable income, as defined in this chapter, which tax shall be assessed, collected, and paid annually at the rate specified herein and for each taxable year as hereinafter provided. Persons and subjects taxable under this chapter are: (1) Every individual residing in Alabama.” Section 40-18-15.1, Ala. Code 1975, provides that “the term ‘taxable income’ or ‘net income’ shall mean ‘gross income,’ as defined in Section 40-18-14, less the deductions allowed to individuals by this chapter.” Gross income is defined in section 40-18-14(1), Ala. Code 1975, as including:

... gains profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, including the salaries, income, fees, and other compensation of state, county, and municipal officers and employees, or from professions, vocations, trades, business, commerce or sales, or dealings in property whether real or personal, growing out of ownership or use of or interest in such property; also from interest, royalties, rents, dividends, securities, or transactions of any business carried on for gain or profit and the income derived from any source whatever, including any income not exempted under this chapter and against which income there is no provision for a tax...

The Taxpayer argues that he is a “private-sector worker” and that the state income tax was authorized to be imposed on “the income derived from the salaries, fees, income, or other compensation of state, county, and municipal officers, and employees from whatever source derived within this state. This amendment does not include the unprivileged pay of private-sector workers.” (underline in original). However, the definition of “gross income” in § 40-18-14(1) is expressly written in very broad, inclusive terms and is not limited to income from certain “privileged” activities.

Also, the Taxpayer relies on the United States Supreme Court’s decision in

Brushaber v. Union P. R. Co., 36 Sup. Ct. 236 (1916). Again, according to the Taxpayer, he was not exercising a “privilege” in his employment, therefore his income was not taxable. The Taxpayer’s reliance upon Brushaber is misplaced, however. First, Brushaber concerned the validity of the United States Congress’s imposition of income tax pursuant to the 16th Amendment of the United States Constitution. Moreover, the Supreme Court in Brushaber noted that the Sixteenth Amendment provided Congress with the “power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.” Id. As quoted, Alabama’s income tax is equally broad, defining “gross income” as “...income derived from any source whatever...” § 40-18-14(1).

Further, the Taxpayer cites Ala. Code 1975 § 40-18-1.1(a), which states as follows:

For purposes of this chapter, the statement that gain, loss, income, basis, earnings and profits, or any other item shall be determined in accordance with a specified section or sections of Title 26 United States Code (26 U.S.C.) or a specified federal public law (Pub. L. or P.L.) means that the principles set forth in such specified section or sections and the computations required by such section or sections shall be applied for purposes of this chapter, but shall be applied to the amounts of gain, loss, income, basis, earnings, and profits or other items determined for purposes of this chapter and not to such items for federal income tax purposes.

Here, though, the Alabama code sections in issue do not refer to specific sections of the Internal Revenue Code. Therefore, there is no specific federal code section to follow. Instead, the broad, inclusive definition of “gross income” in § 40-18-14(1) controls, which, as noted, is equal to the broadness of the 16th Amendment of

our federal constitution.

Section 40-2A-7(b)(5)c.3, Ala. Code 1975, states the following: “On appeal ... to the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.” Here, the Taxpayer has failed to meet his burden of proving that the assessments are incorrect. Therefore, the final assessments are upheld.

Judgment is entered against the Taxpayer and in favor of the Revenue Department in the following amounts: for 2020, \$684.50; and for 2021, \$1,512.86; plus additional interest that continues to accrue from the date of entry of the final assessments until the liabilities are paid in full.

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

Entered June 30, 2023.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:ac:maj

cc: Devon M. Franklin
Ralph M. Clements III, Esq.