

MICHAEL VOGT  
2400 IVY LANE  
BLOOMINGTON, MN 55431,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 11-660

### **FINAL ORDER ON TAXPAYER'S APPLICATION FOR REHEARING**

This appeal involves a final assessment of 2008 Alabama income tax entered against the above Taxpayer. The Taxpayer failed to file a 2008 Alabama income tax return. The Department received IRS information indicating that the Taxpayer received Alabama-sourced income from Streamline Automation, LLC in 2008, and was required to file an Alabama return for that year. It consequently assessed the Taxpayer for the tax due, plus penalties and interest, based on the IRS information.

The Taxpayer filed a 2008 Alabama return with his notice of appeal. The Department rejected the return because it showed no Alabama-sourced income. The Taxpayer subsequently filed amended Alabama returns. The Department responded to the last amended return by indicating that the final assessment should be reduced to \$9,573.34. A Final Order affirming that amount was entered on April 5, 2012.

The Taxpayer timely applied for a rehearing. A hearing was conducted on May 22, 2012. The Taxpayer, who lives in Minnesota, was notified of the hearing by certified mail, but failed to attend. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer resided and worked in the State of Minnesota in 2008. He was a member of and received income from Streamline Automation, LLC, an Alabama-based

multimember LLC in 2008, as reflected on a K-1 issued by the LLC to the Taxpayer. The Taxpayer had no contacts in or connections with Alabama in 2008, or in any other years, other than receiving income from the Alabama LLC.

Although the Taxpayer received Alabama-sourced income in the subject year, he cannot be personally assessed for the tax due based on the Court of Civil Appeals' opinion in *Joe E. Lanzi, III v. Alabama Department of Revenue*, 968 So.2d 18 (Ala. Civ. App. 2006). As discussed in the Administrative Law Division's decision in *Lanzi*, Docket Inc. 02-721 (Admin. Law Div. 9/26/2003) at 16, 17, the Department could have assessed the Alabama LLC for the tax due on the income paid to the nonresident Taxpayer pursuant to Code of Ala. 1975, §40-18-24.1.<sup>1</sup> It elected not to do so.

The 2008 final assessment and the April 5, 2012 Final Order are voided.

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

Entered January 3, 2013.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
Dr. Michael Vogt  
Kim Peterson

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<sup>1</sup> Section 40-18-24.1 was repealed by Act 2009-144, effective January 1, 2009, and replaced by Code of Ala. 1975, §40-18-24.2. Section 40-18-24.2(b)(1) requires a pass-through entity to file a composite return on behalf of its nonresident members and report and pay Alabama income tax on the nonresident members' distributive shares of the income of the entity apportioned and allocated to the State at the entity level.