

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

CHARLES T., JR. &
JANICE E. HARTMAN
Rt. 4, Box 261
Montevallo, AL 35115,

Taxpayers.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC 92-326

FINAL ORDER

The Revenue Department assessed income tax against Charles T., Jr. & Janice E. Hartman for the year 1990. Janice Hartman (Taxpayer) appealed to the Administrative Law Division and a hearing was conducted on March 9, 1993. The Taxpayer's representative, CPA Sammie W. Self, was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Mark Griffin represented the Department. The facts are as follows.

The Taxpayer and her husband filed a joint 1990 Alabama income tax return on April 17, 1991. The return included income earned by both the Taxpayer and her husband, was signed by both the Taxpayer and her husband, and reported tax due of \$82.00. The tax was not paid along with the return. The Department accepted the return as filed and entered the final assessment in issue against the Taxpayer and her husband jointly for tax, penalty, and interest totalling \$108.26.

The Taxpayer argues that she is an innocent spouse because her husband has abandoned her and her nine children and she is unable

to pay the tax due. I sympathize with the Taxpayer, but she is not entitled to relief from the assessment as an innocent spouse.

Alabama law grants an innocent spouse the same relief as allowed under federal law. See Code of Ala. 1975, §40-18-27 and IRC §6013(e).

The purpose for the innocent spouse rule is to spare an innocent spouse from liability on a joint return if the innocent spouse was unaware that substantial income had not been reported on the return and it would be unfair under the circumstances to hold the unaware spouse liable. It is generally not fair to hold an innocent spouse liable if he or she did not benefit from the unreported income. For the specific criteria, see IRC §6013(e).

The innocent spouse rule does not apply in this case because there was no understatement of income on the 1990 return. The Department accepted the return as filed. Payment of the amount due may present a hardship on the Taxpayer, but she is not entitled to relief as an innocent spouse.

The assessment is upheld and judgment is entered jointly against the Taxpayer and her husband in the amount of \$108.26, with additional interest from November 4, 1992. Given the circumstances, the Department is encouraged to pursue payment from the husband first, if at all possible. The Taxpayer should notify

the Department of her husband's whereabouts, when and if he is ever located.

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

Entered on March 11, 1993.

BILL THOMPSON
Chief Administrative Law Judge