

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

SARAH P. BUCHANAN
311 North 11th Street
Opelika, AL 36801,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 94-267

FINAL ORDER

The Revenue Department denied a refund of 1988 income tax requested by Sarah P. Buchanan ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on August 29, 1994. The Taxpayer represented herself. Assistant counsel Antoinette Jones represented the Department.

The issue in this case is whether the Taxpayer should be relieved of liability for the tax in issue pursuant to Alabama's "innocent spouse" statute at Code of Ala. 1975, §40-18-27.

The Taxpayer and Fred C. Rhoden filed a joint 1988 Alabama income tax return in April 1989. The return reported income earned by the Taxpayer from the Lee County Commission, and also passive interest income received by the Taxpayer. The return did not include any income earned by Rhoden.

The Taxpayer and Rhoden were married during part of 1988, but separated in July 1988 and divorced in December 1988. The couple had lived in the Taxpayer's house at 311 North 11th Street in Opelika, Alabama. The house had been left to the Taxpayer by her parents. She still lives at that address.

The Taxpayer testified that Rhoden worked as a newspaper distributor during 1988, but that he used whatever money he earned to gamble at the Macon County dog track. Rhoden did not give the Taxpayer any money during 1988, and otherwise did not contribute to the couple's joint living expenses. The Taxpayer paid all expenses for the period that Rhoden lived with her in 1988.

The Department received IRS information in January 1993 indicating that certain income had not been reported by the Taxpayer and Rhoden on their joint 1988 federal return. The unreported income consisted primarily of unreported dog track winnings. The Department adjusted the couple's joint liability accordingly, and mailed the adjustments and all other correspondence concerning the liability to Rhoden's address provided by the IRS, P. O. Box 11, Shorter, Alabama 36075.

After the Department failed to receive any response, a joint final assessment was entered against Fred C. Rhoden and Sarah P. Buchanan on August 19, 1993. The final assessment was mailed by certified mail to Rhoden at P. O. Box 11, Shorter, Alabama 36075.

The return receipt card shows that Rhoden signed for the final assessment on September 9, 1993.

The Taxpayer testified that she was not notified of the IRS adjustments or the 1988 final assessment until she inquired concerning her 1993 refund in May 1994. The Department informed the Taxpayer at that time that the 1993 refund of \$297.00 had been

applied to the outstanding 1988 joint liability. The Taxpayer subsequently paid the balance due and then requested a refund in the amount of \$1,016.23.

The Taxpayer argues that she should be relieved of liability as an innocent spouse pursuant to Code of Ala. 1975, §40-18-27. That section reads in part that "an innocent spouse without knowledge of all entries on the return shall be relieved of certain liabilities to the same extent and in the same manner as granted by the Internal Revenue Code for federal income tax purposes."

The federal innocent spouse rule is found at 26 U.S.C. §6013(e). An innocent spouse may be relieved of liability on a joint return if (1) the spouse did not know or have reason to know that there was a substantial understatement of income on the return, and (2) it would be inequitable under the circumstances to hold the spouse liable for tax on the income. A major consideration is whether the spouse claiming innocent spouse status benefited from the unreported income. Sanders v. U.S., 509 F.2d 162. The burden is on the person claiming innocent spouse relief to prove that it should be allowed. Clevenger v. C.I.R., 826 F.2d 1379.

The undisputed evidence in this case shows that the Taxpayer had no knowledge concerning her ex-husband's gambling winnings during 1988. The Taxpayer also did not receive any money from her ex-husband during 1988 or afterwards, and thus could not have

benefited from the unreported income in issue. Under the circumstances, it would be inequitable to hold the Taxpayer liable for tax on the husband's unreported income earned in 1988. Accordingly, the Taxpayer should be relieved of liability on the joint assessment. The refund in issue of \$1,016.23 should be issued to the Taxpayer.

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

Entered on September 14, 1994.

BILL THOMPSON
Chief Administrative Law Judge