

BENNY F. & SANDRA J.
RICHARDSON
132 Hickory Lane
Pell City, AL 35128,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 98-520

FINAL ORDER

The Revenue Department assessed 1997 income tax against Benny F. & Sandra J. Richardson (ATaxpayers@). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(b)(5)a. A hearing was conducted on March 3, 1999. The Taxpayers=representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Margaret McNeill represented the Department.

The issue in this case is whether the Taxpayers should be allowed to carry over a net operating loss (ANOL@) from 1996 to 1997.

The Taxpayers filed a joint 1997 Alabama income tax return. The return reported wages earned by Benny Richardson of \$18,253, and by Sandra Richardson of \$3,531. The return also claimed a \$215,000 loss carryover from 1996. The NOL carryover reduced the Taxpayers= 1997 income to zero. The Department disallowed the NOL and assessed the tax in issue. The Taxpayers appealed.

Sandra Richardson never filed an Alabama return before 1997. Benny

Richardson filed a 1996 return with a filing status of single. After this appeal was filed, Sandra Richardson also filed a 1996 Alabama return with a filing status of single. That return

included a \$335,000 Schedule D loss, which the Taxpayers carried over to their 1997 joint return. The claimed loss related to the sale of commercial real estate and a business bad debt.

The Department disallowed the NOL carryover to 1997 for the following reasons:

(1) The Taxpayers failed to substantiate that they incurred a loss in 1996. Specifically, they failed to verify their cost basis in the real estate. The Taxpayers also provided information showing that the real estate was sold in 1995, not 1996. The Taxpayers also failed to substantiate that they suffered a business bad debt in 1996.

(2) If a loss was incurred in 1996, it was incurred by Sandra Richardson before she married Benny Richardson. An NOL sustained before a marriage cannot later be used to reduce the income of the spouse that did not incur the loss. Dept. Reg. 810-3-15.22. Rather, the loss can only be applied to offset the income of the spouse that incurred the loss. Consequently, Benny Richardson's 1997 income of \$18,253 cannot be offset by the NOL incurred by Sandra Richardson in 1996, before the couple married.

The final assessment is affirmed. Judgment is entered against the Taxpayers for 1997 income tax of \$360.71, plus applicable interest.

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

Entered March 24, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

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