

JANELLE DAVIS
3700 Fieldcrest Drive
Montgomery, AL 36111,
DIVISION

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

Taxpayer,

§

DOCKET NO. INC. 00-795

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed 1994 and 1995 income tax against Janelle Davis ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 27, 2001. The Taxpayer's authorized representative, Gene Bridges, was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether the Department correctly computed the Taxpayer's liability for the subject years using the best information available.

The Taxpayer resides in Montgomery, Alabama. She failed to file Alabama income tax returns for 1994 and 1995. The IRS notified the Department that the Taxpayer had sufficient income in those years to be required to file Alabama returns. The Department contacted the Taxpayer concerning the returns. The Taxpayer failed to respond. The Department consequently computed the Taxpayer's liabilities using the best information available, the IRS information. The Department also allowed the Taxpayer the standard deduction, a personal exemption, and a deduction for federal taxes paid in each year. The Taxpayer appealed.

The Taxpayer does not claim that the final assessments are incorrect. Rather, she only demands that all collection actions by the Department must cease and desist. However, the case before the Administrative Law Division is not a collection action. It is an appeal to determine if the amounts assessed by the Department are correct. Because the Taxpayer does not dispute the final assessments, the *prima facie* correct assessments must be affirmed. Judgment is entered against the Taxpayer for 1994 tax, penalty, and interest of \$2,807.51, and 1995 tax, penalty, and interest of \$2,195.11. Additional interest is also due from the date of entry of the final assessments, December 11, 2000.

The Department requested at the March 27 hearing that the Taxpayer should be assessed the frivolous appeal penalty at Code of Ala. 1975, §40-2A-11(f). The Administrative Law Division previously assessed the frivolous appeal penalty in *Cook v. State of Alabama, Inc.* 00-330 (Admin. Law Div. 9/11/00). The Taxpayer's representative in this case also represented the taxpayer in *Cook*. The frivolous appeal penalty was assessed in *Cook* because the representative argued that the Cooks were exempt from U.S. income tax as non-resident aliens. The U.S. Tax Court had previously deemed that argument to be frivolous. See, *Anders v. C.I.R.*, 1999 WL 682050 (1999).

The Taxpayer in this case did not make the same frivolous claim as in *Cook*. She only claimed that the Department should stop all collection actions against her. Her claim is without merit, but other taxpayers have appealed to the Administrative Law Division on equally meritless claims, and the frivolous appeal penalty was not applied. Consequently, the frivolous appeal penalty will not be applied in this case.

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

Entered March 29, 2001.