

ALAN S. & ELIZABETH Y. CHOW  
1007 Cassandra Avenue  
Huntsville, AL 35802,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-220

### FINAL ORDER

The Revenue Department assessed 1996 income tax against Alan S. and Elizabeth Y. Chow (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 July 30, 2001 in Birmingham, Alabama. Alan Chow (ATaxpayer@) attended the hearing. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether the Department correctly assessed the Taxpayers based on the best information available.

The Department received IRS information showing that the Taxpayers failed to report interest income, dividend income, and \$18,000 in non-employee compensation on their 1996 Alabama return. The Department assessed the Taxpayers accordingly. The Taxpayers appealed.

The Taxpayers do not dispute the small amount of interest and dividend income in issue. They argue, however, that they did not receive \$18,000 in non-employee compensation in 1996. The Taxpayer explained at the July 30 hearing that he and his wife were members of a network marketing company in 1996. They invested \$4,000 to \$6,000 to join the company. According to the Taxpayer, the company sent he and his wife various collectible items in 1996.

They were supposed to either sell the items or use the items to recruit new members for the company. However, the Taxpayers never sold any of the items or recruited any new members. The company went out of business in 1997 or 1998.

The Taxpayers argue that the \$18,000 value reported by the company as the value of the various items they received in 1996 is inflated. The Taxpayer estimated that the actual value of the items is \$5,000 or \$6,000.

This is a hard case because the Taxpayer appears to be a honest, sincere individual. However, the IRS information shows that the Taxpayers received income or value equal to \$18,000 in 1996. The Department is authorized to assess a taxpayer based on the best information available. Code of Ala. 1975, ' 40-2A-7(b)(1)a. The Department thus reasonably assessed the Taxpayers based on the IRS information.

A final assessment based on the best information available is *prima facie* correct, and the burden is on the taxpayer to prove that the assessment is incorrect. Code of Ala. 1975, ' 40-2A-7(b)(5)c. The fact that the Taxpayers=personal estimate of the value of the property they received in 1996 is less than the value reported by the company is insufficient to overcome the *prima facie* correct final assessment. The Taxpayers have paid the federal tax due on the income. Likewise, the Alabama tax due as assessed must also be affirmed.

The final assessment includes a 5 percent negligence penalty. Code of Ala. 1975, ' 40-2A-11(c). As indicated, the final assessment is based on the value of property received by the Taxpayers in 1996. The Taxpayers were unaware that they were supposed to report the value of the property as income in that year. They were not even aware of the value of the property at that time. Under the circumstances, the negligence penalty is waived for reasonable cause.

Code of Ala. 1975, ' 40-2A-11(h).

The Taxpayers' investment in the network marketing company was a business transaction, or a transaction entered into for profit. The Department agreed at the July 30 hearing that if the Taxpayers could verify the amount they invested in the company, they could deduct that amount in the year the investment became worthless, assuming that the statute of limitations for filing an amended return has not expired for that year.

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayers for tax and interest of \$1,198.95. Additional interest is also due from the date of entry of the final assessment, January 24, 2001.

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

Entered August 2, 2001.