

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NOS.      INC. 86-263  
                          INC. 86-264  
                          INC. 86-265  
                          INC. 86-266

ALVIN C. DIXON, SR.  
100 North Anton  
Montgomery, AL 36105,

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ALPHONSO DIXON  
5310 Connie Circle  
Montgomery, AL 36108,

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ALVERTIS DIXON  
102 Southlawn  
Montgomery, AL 36108,

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ALMARIE DIXON  
5400 Connie Circle  
Montgomery, AL 36108,

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Taxpayers.      §

ORDER

The Revenue Department entered individual income tax assessments against Reverend Al Dixon, Sr. for the years 1977 through 1983, Alphonso Dixon for the years 1979 through 1983, Alvertis Dixon for the years 1977 through 1983, and Almarie Dixon for the years 1982 and 1983. the Taxpayers appealed to the Administrative Law Division, the cases were consolidated and a hearing was conducted on October 28, 1987. The Hon. Allen W. Howell represented the Taxpayers. Assistant counsel Mark Griffin appeared for the Department. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayers failed to file Alabama individual income tax returns for the various years under assessment. During those years, the Taxpayers were partners in the Montgomery-Tuskegee Times, a partnership, which opened in December, 1977.

The Department audited the Taxpayers for income tax and were provided with the partnership returns and partial expense and income records for 1983 and 1984.<sup>1</sup> No records were provided for the years 1977 through 1982.

The Department computed each Taxpayer's income for 1983 (\$26,247.77) and 1984 (\$22,569.00) based on the partnership returns and records for those years. Each Taxpayer's income for 1977 through 1982 was calculated at \$24,409.89 based on an average of the income figures for 1983 and 1984. The assessments are based on the above income figures, with allowance in each year for the optional deduction and personal exemption.

The Taxpayers filed delinquent returns for the subject years in October, 1986, subsequent to the Department's audit. The returns showed little or no tax due, but were not accepted because no substantiating records were provided.

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<sup>1</sup>The Department also entered sales tax assessments against the partnership based on independent vendor records. Those sales tax assessments were made final by the Department and were not appealed by the Taxpayers.

CONCLUSIONS OF LAW

All taxpayers are required by both Alabama and federal law to maintain adequate records from which their income tax liability can be determined. 26 U.S.C. §6001 and Code of Ala. 1975, §40-1-5(c).

When a taxpayer fails to file a return, or fails to maintain adequate records, the government can use whatever method and information it deems appropriate to reconstruct income. Moore v. C.I.R., 722 F.2d 193; Mallette Bros. Const. Co., Inc. v. U.S., 695 F.2d 145; Thor Power Tool Company v. Commissioner, 439 U.S. 522, 99 S.Ct. 773.

The government's findings are presumptively correct. Mallette Bros. Const. Co., Inc., supra; Southwestern Life Insurance Co. v. U.S., 560 F.2d 627; Denison v. C.I.R., 689 F.2d 771. Further, to overcome the government's findings, a taxpayer must not only show error by the government, but must also establish by competent evidence the correct liability. U.S. v. Janis, 428 U.S. 433, 96 S.Ct. 3021. A taxpayer's uncorroborated testimony is insufficient to disprove the government's calculations. Heyman v. U.S., 497 F.2d 121; Carson v. U.S., 560 F.2d 693.

However, the government cannot rely solely on the presumption of correctness. Its calculations must be based on a minimal evidentiary foundation. The government must show that its determination of liability is reasonable under the circumstances. Weimerskirch v. C.I.R., 596 F.2d 358; Breland v. U.S., 323 F.2d

492; Edwards v. C.I.R., 680 F.2d 1268; Moore v. C.I.R., 722 F.2d 193; Denison v. C.I.R., supra.

In both Moore and Edwards, the taxpayers failed to file returns or provide adequate records for several tax years. The IRS computed liability based on information from a prior year return, adjusted for each subsequent year based on the Consumer Price Index. In both cases the government's computations were upheld as reasonable.

However, in Denison, the government calculated liability for 1977 based on the taxpayer's average profit for 1975 and 1976. The proposed assessment was rejected because the government failed to show a rational basis for the alleged deficiency. The matter was remanded to the tax court to allow the government to submit additional evidence of reasonableness. As stated by the Court:

Where the record reflects no reasonable basis for the Commissioner's assessment, where the assessment cannot be deemed reasonable on its face, and where no finding is made in that regard, we cannot afford a presumption of correctness to attach automatically to the assessment.

A similar result was reached in Alan Enterprises, Inc. v. State, CV-85-1472-G, a 1985 Montgomery County Circuit Court decision. In that case, a sales tax assessment based on unsupported estimates was remanded to the Revenue Department for further investigation. As stated by the circuit judge, "[I]t is required that the estimation be based upon "information" of some type and not upon fiction."

In the instant case, the 1983 and 1984 income figures were

properly based on the best information available. The average income for those years can be used as a basis in computing liability for the prior years for which no records were provided.

However, the Department applied the average income arbitrarily to each year without considering such factors as inflation, the Consumer Price Index and a fluctuation in sales as reflected in the sales tax audit. Also, the same income was applied to 1977 as in the other years, with no allowance for the fact that the partnership did not begin operating until December, 1977.

Clearly, the Taxpayers are liable for some tax in each of the years in question. Liability cannot be avoided by failing or refusing to provide records or by filing unsubstantiated delinquent returns. But the Department's method of calculation must be reasonable under the circumstances and must put to use all information that has a possible bearing on the Taxpayers true liability. In the present case, various relevant factors were not considered by the Department. While those factors may not ultimately change the Department's determination of liability, the Department is required to at least consider them and give valid reasons why they were not used.

The above considered, the Department is hereby directed to recompute the assessments, taking into account such factors as inflation, the Consumer Price Index, the yearly fluctuation in sales as reflected in the sales tax audit, and any other factors that may have a bearing in estimating the Taxpayers' liability. A

subsequent hearing will be set to allow the Department to show the reasonableness of its recomputations.

Done this 4th day of December, 1987.

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BILL THOMPSON  
Chief Administrative Law Judge