

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 87-121

JERRY M. GRIMES
Route 2 Box 369-E
Fairhope, AL 36532,

§

§

Taxpayer.

§

ORDER

The Department assessed income tax against Jerry M. Grimes ("Taxpayer") for the years 1981, 1982, 1983, 1984 and 1985. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on January 13, 1988. The Taxpayer was present and represented himself. Assistant counsel Mark Griffin appeared for the Department. Based on the evidence and arguments presented by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer and his wife filed joint Alabama income tax returns for the years 1981 through 1985. Each return contained only the Taxpayer's name, home address and signature. No other information was provided. Each return contained the following statement:

I OFFER TO AMEND OR REFILE THIS RETURN EXACTLY AS YOU WISH IT, IF YOU WILL PLEASE SHOW ME HOW TO DO SO WITHOUT WAIVING MY CONSTITUTIONAL RIGHTS.

An asterisk was placed on various lines on the return in lieu of information, with the following explanation.

"This means specific objection is made under the Fifth Amendment, U.S. Constitution. Similar objection is made to the question under the First, Fourth, Seventh, Eighth, Ninth and Fourteenth Amendments for civil issues."

The Department audited the Taxpayer and obtained information

from the Taxpayer's employer, The Mobile Press Register, indicating income of \$35,000 in 1983 and \$31,897.50 in 1984.

The assessments for 1983 and 1984 were based on the income information received from the Mobile Press Register. The 1982 assessment was based on 1983 income, less a 10% allowance for inflation. The 1981 assessment was based on 1982 income, again less a 10% allowance for inflation. The Taxpayer's 1985 income was estimated at \$50,000.00. In computing the subject assessments, the Taxpayer was allowed the optional deduction and a personal exemption for each year.

CONCLUSIONS OF LAW

A "protest return" which contains only a taxpayer's name and a claim of constitutional privilege does not constitute a valid tax return. U.S. v. Porth, 426 F.2d 519, cert. denied, 400 U.S. 824, 91 S.Ct. 47; Beatty v. C.I.R., 676 F.2d 150. Further, a general claim of constitutional privilege cannot be used to avoid production of records and payment of tax due. Edelson v. C.I.R., 829 F.2d 828; Edwards v. C.I.R., 680 F.2d 1268; U.S. v. Sullivan, 47 S.Ct. 607, 274 U.S. 259.

When a taxpayer fails to file a proper return, 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. The government's findings are presumed to be correct. Denison v. C.I.R., 689 F.2d 771. However, its calculations must be based on at least a minimal

evidentiary foundation. The government must show that its computation of liability is reasonable under the circumstances. Weimerskirch v. C.I.R., 596 F.2d 358; Edwards v. C.I.R., supra; Moore v. C.I.R., 722 F.2d 193.

The assessments for 1983 and 1984 were based on actual income information obtained from the Taxpayer's employer. Those assessments are clearly acceptable, although the Taxpayer was benefited by the fact that the 1984 assessment was based on income for only nine months of the year.

The 1982 and 1981 assessments were computed from the 1983 income figure, adjusted downward 10% each year as an allowance for inflation. The courts have accepted the computation of liability over several years based on information from a single tax year. However, the projections must take into consideration such adjusting factors as the Consumer Price Index and inflation, see Moore and Edwards, cited above.

No information was available for 1981 and 1982. Thus, it was reasonable that the Department should compute liability for those years based on 1983 income. Actual inflation during those years was less than the 10% estimated by the examiner. However, the liberal 10% allowance could only benefit the Taxpayer. Thus, the 1981 and 1982 assessments should be upheld. Income for 1985 was estimated to be \$50,000. The examiner apparently considered \$50,000 to be a reasonable increase from 1984. The Taxpayer's income for nine months of 1984 was approximately \$32,000.00.

Projected income for the full year would be approximately \$42,750.00. Thus, an increase to \$50,000 for 1985 would constitute an unreasonable 17% increase over 1984. Inflation for 1984/1985 was approximately 4%. Consequently, the assessment for 1985 should be based on a projected income of \$42,750.00, plus a increase of 4% for inflation.

The Revenue Department is hereby directed to make preliminary assessments as set out above, with required by statute.

Done this 27th day of January, 1988.

BILL THOMPSON
Chief Administrative Law Judge