

C. WAYNE & MELANIE C. GREGORY	§	STATE OF ALABAMA
120 Fred Atkinson Road		DEPARTMENT OF REVENUE
Huntsville, AL 35806,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 01-256
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### FINAL ORDER

The 1997 final assessment in issue is based on over \$1 million in income received by Wayne Gregory in that year from securities fraud. Melanie Gregory claimed at a June 25, 2001 hearing in the case that she and her husband had additional business-related expenses in 1997 that they should be allowed to claim. She also argued that she was unaware of her husband's illegal activities, and should not be held responsible for the additional tax.

A Preliminary Order was entered on June 27, 2001 directing the Taxpayers to file an amended return and claim all deductions by September 1, 2001. They were also instructed to provide all records verifying the claimed deductions. No return was filed.

Melanie Gregory submitted a letter to the Administrative Law Division in which she claimed in substance that she is an innocent spouse and should not be held liable for the tax in question. A copy of that letter was submitted to the Department's Taxpayer Advocate requesting he investigate and determine if Melanie Gregory is entitled to innocent spouse status. He has notified the Administrative Law Division that she is not entitled to innocent spouse status. I agree.

An innocent spouse may be relieved of liability for Alabama income tax purposes to the same extent allowed for federal purposes at 26 U.S.C. §6013(e). See, §40-18-27. To qualify for innocent spouse relief, four conditions must be met:

- (1) A joint return must be filed for the year;
- (2) There must be a substantial underpayment;
- (3) The innocent spouse must not have known or had reason to know of the substantial underpayment; and,
- (4) Considering all facts, it would be inequitable to hold the innocent spouse liable.<sup>1</sup>

Melanie Gregory did not work during the year in issue, and was supported entirely by her husband's income, which presumably included the money obtained illegally. Without evidence to the contrary, it is reasonable to find that Melanie Gregory substantially benefited from her husband's ill-gotten income in 1997. The burden was on the Taxpayers to establish that innocent spouse relief was appropriate. *Clevenger v. C.I.R.*, 826 F.2d 1379 (1987). They failed to carry that burden.

The final assessment is affirmed. Judgment is entered jointly against the Taxpayers for tax, penalty, and interest of \$79,936.93. Additional interest is also due from the date of entry of the final assessment, February 22, 2001.

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

Entered January 16, 2002.

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<sup>1</sup>Section 6013 was substantially amended effective June 22, 1998 by Public Law 105-206. For the current innocent spouse rules see, CCH 2000 U.S. Master Tax Guide, at §162.