

THEATIS & MARIE E. BELL
215 South Park Road
Birmingham, AL 35211,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-273

FINAL ORDER

The Revenue Department assessed 1995 and 1997 income tax against Theatis and Marie E. Bell (Taxpayers). 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 12, 2001 in Birmingham, Alabama. Theatis Bell (Taxpayer) attended the hearing. Assistant Counsel Wade Hope represented the Department.

The primary issue in this case is whether the Department correctly assessed the Taxpayers for the tax in question. A second issue is whether the penalties assessed by the Department should be waived for reasonable cause.

The Taxpayers failed to file their 1995 Alabama income tax return.

The Taxpayers' house burned in 1996. They claimed a casualty loss of \$38,400 on their 1996 Alabama return. They also claimed a large casualty loss on their 1997 return based on the 1996 fire.

The Department audited the Taxpayers for 1995, 1996, and 1997. Because the Taxpayers had failed to file a 1995 return, the examiner computed their 1995 liability by allowing the standard deduction and a credit for tax paid by withholding during the year. The Taxpayers concede the tax due as assessed, but contest the penalties assessed by the

Department.

The Department requested information concerning the amount of the casualty loss caused by the fire in 1996. The Taxpayers submitted a fire department estimate indicating that the building was worth \$25,000, and the contents \$15,000. Based thereon, the Department examiner allowed the entire \$38,400 casualty loss claimed in 1996. The examiner disallowed the casualty loss claimed in 1997 because the loss did not occur in that year. The examiner did, however, allow the Taxpayers an additional \$1,600 casualty loss (for a total of \$40,000) in 1996.

The burden was on the Taxpayers to prove the amount of their 1996 casualty loss. The only evidence they submitted concerning the loss was the \$40,000 estimate provided by the fire department. The Department allowed that amount. Without evidence of an additional loss, no additional casualty loss can be allowed.

Concerning the penalties assessed for 1995, the Taxpayer claims he was unable to file the 1995 return because his records were lost in the 1996 fire. There is no evidence the Taxpayers have previously failed to timely file their income tax return with the Department. Consequently, the failure to timely file penalty assessed for the Taxpayers=one time failure to timely file is waived for reasonable cause. Code of Ala. 1975, ' 40-2A-11(h). The failure to timely pay penalty does not apply because it only applies if a taxpayer fails to timely pay tax due as reported on a return. The negligence penalty in both years is affirmed.

The final assessments, less the failure to timely file and failure to timely pay penalties assessed for 1995, are affirmed. Judgment is entered against the Taxpayers for 1995 tax, penalty, and interest of \$566.03, and 1996 tax, penalty, and interest of \$1,701.96. Additional interest is also due from the date of entry of the final assessments, March 28, 2001.

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

Entered July 17, 2001.