STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 90-181
YVONNE B. HARGROVE P.O. Box 701 Opelika, AL 36801,	§	
Taxpayer.	§	

FINAL ORDER

The Department assessed income tax against Yvonne B. Hargrove (Phillips) for the years 1987 and 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was scheduled for November 12, 1991. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant counsel Mark Griffin appeared and presented evidence on behalf of the Department.

FINDINGS OF FACT

The Department audited the Taxpayer's 1987 and 1988 Alabama income tax returns and scheduled several appointments for the Taxpayer to produce her records at the Department's Taxpayer Service Center in Opelika. The Taxpayer failed to appear and as a consequence the Department denied all unsubstantiated itemized and dependent deductions claimed by the Taxpayer.

The Taxpayer subsequently provided some records at a conference before Hearings Officer Jack Coats in Montgomery on March 14, 1990. Additional records were provided on April 6, 1990. Coats allowed all deductions for which the Taxpayer provided

substantiating records and also allowed one dependent deduction and head of household status in both years. The preliminary assessments were adjusted accordingly to show a balance due of $1,011.67 in 1987 and $127.67 in 1988, with interest computed to April 20, 1990.

The Department also assessed a 50% fraud penalty against the Taxpayer in both years. The fraud penalty was applied because the Taxpayer had been audited twice before and both times had failed to substantiate most of her claimed deductions. Likewise, the Taxpayer claimed over $23,000.00 in itemized deductions in both 1987 and 1988, but substantiated only $9,032.28 in 1987 and $5,280.00 in 1988. Also, the Taxpayer claimed a $6,400.00 casualty loss deduction in both years based on the same car accident. The 1987 return indicated that the wreck occurred on April 9, 1987 and the 1988 return indicated that the wreck occurred on April 9, 1988.

CONCLUSIONS OF LAW

All taxpayers are required to keep adequate records from which their income tax liability can be accurately computed. Also, the burden is on the taxpayer to provide specific evidence that a deduction should be allowed. Hintz v. CIR, 712 F.2d 291; Doyal v. CIR, 616 F.2d 1191.

In this case the Taxpayer was allowed all deductions for which she provided verifying records. All unsubstantiated deductions were properly disallowed.

Concerning the fraud penalties, the Department is required to prove fraud by clear and convincing evidence. However, fraud can be established by strong circumstantial evidence. Bradford v. CIR, 796 F.2d 303. The repeated failure to keep adequate records over an extended period is evidence of fraud. Biggs v. CIR, 440 F.2d 1; Bahoric v. CIR, 363 F.2d 151.

The Taxpayer has been audited three times over the last few years. In this case, as in the prior two audits, the Taxpayer failed or refused to provide adequate records to substantiate her claimed deductions. It is understandable that the Taxpayer could have misplaced or failed to keep some records involving one or a few of her claimed deductions. However, the Taxpayer's continued failure to provide substantiating records for a major portion of her claimed deductions over a period of years indicates to me that she willfully overstated her deductions during 1987 and 1988 with the intent to evade tax.

Also, the fact that the Taxpayer claimed a $6,400.00 casualty loss deduction in both 1987 and 1988 based on the same accident is clear evidence of intent to evade. It is unbelievable (1) that the Taxpayer would forget the year in which the accident occurred, and (2) that in filling out her 1988 return she would not review the 1987 return and see that she had already claimed the casualty loss deduction in that year. Fraud involving one claimed deduction or item of income is sufficient to support imposition of the fraud

penalty. Biggs v. CIR, supra. The repeated failure to document numerous claimed deductions and the double deduction of the casualty loss is sufficient evidence to support assessment of the fraud penalty in both years.

The above considered, the Department is directed to make the preliminary assessments final as adjusted, with applicable interest.

Entered on November 18, 1991.

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BILL THOMPSON
Chief Administrative Law Judge