

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 90-263

ARTHUR & LILLY BAILEY
2560 Arapahoe Circle
Auburn, AL 36830,

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Taxpayers.

§

FINAL ORDER

The Revenue Department assessed income tax against Arthur and Lilly Bailey (Taxpayers) for the years 1987 and 1988. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on November 20, 1991. The Taxpayers represented themselves. Assistant counsel Mark Griffin appeared for the Department.

FINDINGS OF FACT

The Department denied a portion of the Taxpayers' claimed church contributions in both 1987 and 1988 because the Taxpayers failed to provide substantiating records. The Taxpayers claimed \$4,025.00 in 1987 and \$3,867.00 in 1988, but provided cancelled checks for only \$1,680.00 and \$1,550.00, respectively. The Department accepted the checks and disallowed the balance. Various other adjustments made by the Department are not in dispute.

The Department also added a 50% fraud penalty in both years because the Taxpayers had been warned in a prior audit that cancelled checks would be necessary to verify any future church contributions. The Taxpayers also provided a log of contributions

from their church which the Department considers to be bogus. The log shows contributions in different amounts and on different dates than established by the cancelled checks. The log also shows a contribution on the fifth Sunday in February, 1987 even though that month did not have five Sundays.

The Taxpayers deny that they intentionally overreported their church contributions and argue that they provided their records to their tax preparer and trusted that he would correctly file the returns. The Taxpayers also deny responsibility for the church log because it was prepared by their preacher without their assistance. The Taxpayers also argue that they should be allowed credit for a \$500.00 check dated July, 1987 which was produced at the administrative hearing and for which no credit was previously allowed.

CONCLUSIONS OF LAW

A taxpayer is required to provide specific evidence that a deduction should be allowed. Hintz v. C.I.R., 712 F.2d 281; Doyal v. C.I.R., 616 F.2d 1191. The Department should not be required to rely on guesses or estimates. Consequently, the Department properly allowed only the church contributions for which the Taxpayers provided verifying cancelled checks.

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.

C.I.R., 796 F.2d 303. The repeated failure to keep adequate over an extended period is evidence of fraud. Biggs v. C.I.R., 440 F.2d 1; Bahoric v. C.I.R., 363 F.2d 151.

The Taxpayers in this case were previously warned that cancelled checks would be necessary to verify all church contributions. The church log is also suspicious at best and does not coincide with the Taxpayers' own cancelled checks. After listening to the Taxpayers at the administrative hearing, I do not believe that they intentionally overreported their church contributions in either year with the requisite intent to evade tax.

The Taxpayers trusted that their tax preparer would properly report their contributions on each year's return. The Taxpayers should have checked to see if their returns coincided with their records, but failure to verify a preparer's computations is not unusual and under the circumstances does not constitute fraud. Any future failure to keep records could be viewed differently.

The fraud penalty should be removed from the assessments and the Taxpayers should be allowed an additional \$500.00 deduction in 1987. The assessments should then be made final as adjusted, with applicable interest.

Entered on November 26, 1991.

BILL THOMPSON
Chief Administrative Law Judge