

G. DANIEL & CHARLENE WILEY
6425 Canebrake Road
Mobile, AL 36693,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 01-312

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed G. Daniel and Charlene Wiley (ATaxpayers@) for 1991 and 1992 income tax. 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 September 14, 2001 in Mobile, Alabama. CPA-s Xavier Hartmann and Tammy Clark represented the Taxpayers. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether Charlene Wiley should be relieved of liability for the tax in issue as an Ainnocent spouse@pursuant to Code of Ala. 1975, ' 40-18-27.

The Taxpayers were married in 1991 and 1992. They filed joint Alabama income tax returns in those years. Daniel Wiley subsequently pled guilty to federal charges of filing a false tax return and money laundering. He admitted in his plea agreement that he received \$199,019.41 in 1991 and \$369,681.66 in 1992 from his illegal activities. The Taxpayers had failed to report those amounts on their joint 1991 and 1992 Alabama returns.¹ The Department assessed the Taxpayers accordingly. The Taxpayers appealed.

The Taxpayers do not dispute the amount of tax assessed by the Department. Rather,

¹The Taxpayers filed an amended 1992 Alabama return in April 1994 on which they reported \$278,992 of the ill-gotten income. They never amended their 1991 return.

they claim that Charlene Wiley should not be held jointly and severally liable for the tax due because she was an innocent spouse pursuant to ' 40-18-27.

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.²

The Taxpayers argue that this case is similar to *Bartlett v. State of Alabama, Inc.* 97-479 (Admin. Law Div. 7/9/98), in which innocent spouse status was granted. In *Bartlett*, the wife that was granted innocent spouse status had a good job and supported herself and her two small children with little or no help from her husband. Her husband abused alcohol and drugs, and mentally and physically abused her. He provided little or no financial support for the family, and was evasive and threatening when the wife asked him about his finances. The

²Section 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.

husband's tax preparer prepared the couple's returns, and the tax in issue resulted from fraudulent expenses claimed on the return relating to the husband's business. The couple's relationship was contentious, and they divorced after the period in issue. Under those circumstances, the Administrative Law Division held that the wife was clearly entitled to innocent spouse status.

Finally, subparagraph (4) of '6013(e)(1) is satisfied because it would be inequitable to require the Taxpayer to pay the additional taxes resulting from her ex-husband's disallowed business expenses. She and the children clearly did not benefit from the claimed expenses. The Taxpayer was financially secure and credit-worthy when she married. But as a result of the financial strain caused by her husband's philandering and failed businesses, the Taxpayer lost her house, her credit rating was ruined, and she suffered a bankruptcy. She is now struggling alone to support her two children. This is exactly the type of situation that the innocent spouse rule was intended to apply.

Bartlett at 5.

The facts in *Bartlett* are not present in this case. The Taxpayers lived in a nice house in an exclusive neighborhood in Mobile during the subject years. They led a comfortable lifestyle. Charlene Wiley did not work, 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 Charlene Wiley substantially benefited from her husband's ill-gotten income in 1991 and 1992. 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. Consequently, innocent spouse relief is denied.

The final assessments are affirmed. Judgment is entered against the Taxpayers, jointly and severally, for 1991 tax, penalty, and interest of \$18,687.98, and 1992 tax, penalty, and interest of \$9,859.45. Additional interest is also due from the date of entry of the final

assessments, April 3, 2001.

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

Entered September 19, 2001.