

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 91-105

RICHARD A. & RHONDA F. CARTER §  
301 Gray Street  
Albertville, AL 35950, §

Taxpayer. §

FINAL ORDER

The Revenue Department assessed income tax against Richard A. and Rhonda F. Carter (Taxpayers) for 1988. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on April 23, 1991. Rhonda F. Carter (Taxpayer) and Betty Kirby appeared for the Taxpayers. Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence presented by the parties.

FINDINGS OF FACT

The Taxpayer's now deceased husband, Cecil White, purchased an apartment complex known as Alpine Village in 1985. The purchase price was \$176,000.00, of which \$135,000.00 was financed by the Home Bank of Guntersville, Alabama.

Cecil White died in 1987 and the apartment complex passed to the Taxpayer in February 1988. The Taxpayer leased the property in April 1988 and gave the lessee an option to purchase. The lessee made several monthly payments to the Taxpayer which were used to make the monthly mortgage payments to Home Bank. The lessee subsequently purchased the property in June 1988 for approximately

\$158,000.00.

The Taxpayer and her new husband, Richard A. Carter, claimed a loss on their 1988 Alabama income tax return using Cecil White's cost basis of approximately \$216,000.00 (\$176,000.00 purchase price plus approximately \$40,000.00 in improvements). The Taxpayer's position is that she owned the apartments jointly with her deceased husband and that she should be allowed to use his basis in the property.

The Department disallowed the loss based on its position that Cecil White owned the apartments by himself and that the Taxpayer's basis must be the fair market value of the property when distributed from her husband's estate in February, 1988, citing Code of Ala. 1975, §40-18-6. The Department considers that the fair market value of the complex in February, 1988 was equal to the sales price of the property in June, 1988, in which case the Taxpayer incurred no gain or loss on the sale of the property. The Department also included the lease payments made by the lessee to the Taxpayer as taxable income to the Taxpayer.

#### CONCLUSIONS OF LAW

The documents submitted into evidence at the administrative hearing indicate that the property in issue was purchased individually by Cecil L. White in 1985. The fact that the Taxpayer was listed on the mortgage does not establish that she owned the property jointly with her husband.

The basis of property acquired by inheritance is the fair and reasonable market value of the property when it is distributed by the decedent's estate. See, Code of Ala. 1975, §40-18-6(a)(3). Thus, in this case the Taxpayer's basis in the apartment complex must be the fair market value of the property when she received it in February, 1988. The property was sold in June, 1988 for \$158,000.00. There is no evidence to indicate that the sales price was not the reasonable fair market value of the property at that time, which would also reasonably establish the approximate fair market value of the property in February, 1988. Consequently, the Taxpayer's basis in the property was the same as the sales price and therefore she realized no gain or loss on the sale of the property.

The Department also included the lease payments made from February through May 1988 as income to the Taxpayers. Those payments were used to pay the Taxpayer's mortgage obligation and were correctly included as income to the Taxpayer in 1988.

The above considered, the assessment in issue is correct and should be made final, with applicable interest.

Entered on May 10, 1991.

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BILL THOMPSON  
Chief Administrative Law Judge