

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE

§

ADMINISTRATIVE LAW

DIVISION

vs.

§

DOCKET NO. INC. 91-225

ALPHONSO AND GWENDOLYN E. BECKLES
3102 Angora Drive
Huntsville, AL 35810,

§

§

Taxpayers.

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FINAL ORDER

The Revenue Department assessed Alphonso and Gwendolyn E. Beckles (Taxpayers) for income tax for the years 1987 and 1988. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on April 20, 1993. The Taxpayers' authorized representative was notified of the hearing by certified mail, but failed to appear. Assistant counsel Gwen Garner represented the Department.

The Department audited the Taxpayers' 1987 and 1988 Alabama income tax returns and denied numerous claimed deductions because the Taxpayers failed to provide verifying records.

The Taxpayers' CPA appeared at an informal conference in Montgomery on April 19, 1991 and presented various records on behalf of the Taxpayers. The records were not accepted by the Department reviewing examiner because they were unorganized and not properly identified. The CPA was instructed to organize the records and then resubmit them to the examiner. The CPA failed to do so within a reasonable time, and consequently all unverified

deductions were denied. The Taxpayers then appealed to the Administrative Law Division.

The adjustments for both years involve various disallowed Schedule A, Schedule C, and Schedule E expenses. The 1988 adjustments also include a \$20,000.00 gain on a sale of property by the Taxpayers on January 27, 1988. A 50% fraud penalty was also added based on the Taxpayers' failure to report the gain. No facts or circumstances surrounding the sale of the property were submitted at the administrative hearing.

A taxpayer has the burden of proving a deduction, and in the absence of verifying records, the deduction must be disallowed. U. S. Wodtke, 627 F.Supp. 1034; Doyle v. C.I.R., 616 F.2d 1191.

In this case, the Department rejected various records offered by the Taxpayers at an informal conference. I do not know what records were offered, or whether they should have been accepted as presented. However, the Taxpayers were given a reasonable opportunity to resubmit the records at a later date. They failed to do so, and they also failed to appear at the administrative hearing conducted on April 20, 1993. Consequently, the Department's denial of the deductions is upheld.

However, while the burden is on the Taxpayers to verify their deductions, the burden is on the Department to prove fraud by clear and convincing evidence. Biggs v. C.I.R., 440 F.2d 1.

The fraud penalty in this case is based on the Taxpayers' failure to report a gain on the sale of property. The failure to report the gain is evidence of fraud, but without additional evidence indicating a willful intent to evade tax, the evidence is insufficient to support the fraud penalty. The Department failed to prove that the Taxpayers willfully omitted the income with the intent to evade tax. Consequently, the fraud penalty of \$1,610.50 should be removed from the 1988 assessment.

The above considered, the assessments in issue are upheld, except concerning the 1988 fraud penalty. Judgment is entered against the Taxpayers for 1987 income tax in the amount of \$7,787.05, and 1988 income tax in the amount of \$5,830.04 (\$7,440.54 less \$1,610.50), both with additional interest computed from September 30, 1991.

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

Entered on April 29, 1993.

BILL THOMPSON
Chief Administrative Law Judge