

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NO. INC. 93-236

ELVIS & LILLIE M. ROBERTS  
Route 1 Box 194  
Jackson, Alabama 36545,

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§

Taxpayers.

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FINAL ORDER

The Revenue Department assessed income tax against Elvis and Lillie M. Roberts for the year 1988. Lillie M. Roberts ("Taxpayer") appealed to the Administrative Law Division and the matter was submitted on stipulated facts. Franklin D. Lee represented the Taxpayer. Assistant counsel Duncan Crow represented the Department.

The Taxpayer concedes that the assessment is correct. The only issue in dispute is whether the Taxpayer can be relieved of liability as an "innocent spouse" pursuant to Code of Ala. 1975, §40-18-27.

Code of Ala. 1975, §40-18-27 adopts the federal innocent spouse rule found at 26 U.S.C. §6013(e). The innocent spouse rule provides that a spouse may be relieved of liability on a joint return if (1) the spouse did not know or have reason to know that there was a substantial understatement of income on the return, and (2) it would be inequitable under the circumstances to hold the spouse liable for the tax on the income. A major consideration is whether the spouse claiming innocent spouse status benefitted from

the income. Sanders v. U.S., 509 F.2d 162. The burden is on the person claiming innocent spouse relief to prove that it should be allowed. Clevenger v. C.I.R., 826 F.2d 1379.

The Taxpayer claims that she had no knowledge of her husband's business affairs and was not aware of the pension income on which the assessment in question is based. The Taxpayer also claims she did not benefit from the income.

The evidence, although sketchy, supports the Taxpayer's claim that she had no direct knowledge of the income in question. However, the Taxpayer has failed to prove that she did not benefit from the income. The Taxpayer's husband received the income in 1988, and presumably used the income for the benefit of his family, including his wife. There is no evidence that the money was used for any other purpose. Accordingly, although I sympathize with the Taxpayer's circumstances, she cannot be allowed innocent spouse status.

In addition, innocent spouse status cannot be allowed in any case because the substantial understatement of tax did not exceed \$500.00 as required at 26 U.S.C. §6013(e)(3).

The final assessment in issue is upheld and judgment is entered against the Taxpayer, Lillie M. Roberts, for 1988 income tax in the amount of \$522.18.

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

Entered on June 10, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge