

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. INC. 93-339

WILLIAM D. & DENISE RATLIFF  
305 East College Street  
Columbiana, AL 35051,

§  
§

Taxpayers.

§

### FINAL ORDER

The Revenue Department assessed income tax against William D. and Denise Ratliff (together "Taxpayers") for the year 1988. Denise Ratliff (individually "Taxpayer") appealed to the Administrative Law Division and a hearing was conducted on January 19, 1994. The Taxpayer appeared at the hearing. Assistant counsel Beth Acker represented the Department.

The issue in this case is whether the Taxpayer should be relieved of liability as an "innocent spouse" as provided by Code of Ala. 1975, §40-18-27.

The Taxpayer and her husband filed a joint Alabama tax return for 1988. The couple filed separate 1988 returns for federal income tax purposes.

The Taxpayers' joint Alabama return reported income earned by the husband from Munford, Inc., and income earned by the Taxpayer from Brookwood Medical Center. The joint return showed a refund due of \$24.47.

The Department subsequently received IRS information showing that the Taxpayer's husband had failed to report income of \$6,981.00 on his individual 1988 federal return. Based thereon, the Department jointly assessed the Taxpayers for additional 1988 tax due.

The Taxpayer argues that she should be relieved of liability as an innocent spouse. Unfortunately, while I sympathize with the Taxpayer's situation, the innocent spouse rule does not apply in her case.

Alabama in effect adopted the federal innocent spouse rule by amending Code of Ala. 1975, §40-18-27 as follows:

In the event a husband and wife file a joint return, the husband and wife shall be jointly and severally liable for the income tax shown by said return or as may be determined by the Department of Revenue to be due by them to the State of Alabama, provided, however, an innocent spouse without knowledge of all entries on the return shall be relieved of certain liabilities to the same extent and in the same manner as granted by the Internal Revenue Code for federal income tax purposes.

The federal innocent spouse rule is set out at 26 U.S.C. §6013(e). An innocent spouse is relieved of liability under §6013(e) if (1) a joint return is filed, (2) there is a substantial understatement attributable to the other (non-innocent) spouse, (3) the innocent spouse did not know or have reason to know about the substantial understatement, and (4) it would be unfair under the circumstances taken as a whole to hold the innocent spouse liable.

The Taxpayer in this case cannot be allowed innocent spouse treatment for two reasons. First, the Taxpayer knew that her husband had earned income as a musician and as a construction worker in 1988 that was not reported on their joint 1988 Alabama return. The Taxpayer may not have know the amount of the unreported income, but she knew when she signed the joint return that some amount of taxable income had not been reported on the return.

Also, even if the Taxpayer otherwise qualified as an innocent spouse, the rule could not be applied in her case because pursuant to §6103(e)(3), the understatement

of tax must be at least \$500. The understatement of tax resulting from the husband's unreported income was only \$355 (exclusive of penalty and interest).

The above considered, the joint assessment in issue is upheld. Judgment is entered against both Taxpayers jointly and severally for 1988 Alabama income tax in the amount of \$521.84. Additional interest is due from the date of entry of the final assessment, September 3, 1993.

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

Entered on January 27, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge