

MARK S. KIRKHAM
1933 S. Brownstone Court S.W.
Decatur, Alabama 35603,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

Taxpayer,

§

DOCKET NO. INC. 95-169

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed income tax against Mark S. Kirkham ("Taxpayer") for the year 1991. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on December 11, 1995. The Taxpayer represented himself at the hearing. Assistant Counsel Jeff Patterson represented the Department.

The issue in this case is whether the Department correctly computed the Taxpayer's income tax liability for the year in question.

The Department reviewed the Taxpayer's 1991 Alabama return and disallowed the Schedule C expenses and a net operating loss ("NOL") claimed on the return because the Taxpayer failed to substantiate the amounts claimed. The Department recomputed the Taxpayer's liability using the standard deduction, and based thereon entered the final assessment in issue. The Taxpayer timely appealed.

The Taxpayer subsequently provided the Department with records in support of the claimed Schedule C expenses. However, the verified expenses greatly exceeded the Taxpayer's reported income for the year. The Department requested information from the

Taxpayer concerning the source of the unidentified income.

The Taxpayer responded that the expenses were paid with loans from his father-in-law (now his ex-father-in-law). The Taxpayer provided a number of check stubs indicating that the ex-father-in-law had issued some checks to the Taxpayer and other family members during 1991. However, the Taxpayer failed to provide any actual checks issued by the ex-father-in-law, or to present any evidence that the amounts were deposited in his checking account or otherwise used to pay his expenses during the subject year.

Because the Taxpayer failed to reasonably verify the source of the unidentified income, the Department imputed income to the Taxpayer sufficient to pay the expenses. Based thereon, the Department recomputed the Taxpayer's 1991 liability to show tax due of \$1,523.00, plus interest of \$425.65 and penalty of \$380.75, for a total 1991 liability of \$2,329.40. That amount is less than the original final assessment amount of \$3,248.19. If a taxpayer fails to provide adequate records, the Department may use any reasonable means available to calculate his liability. U. S. v. Conaway, 11 F.3d 40 (5th Cir. 1993); Hintz v. CIR, 712 F.2d 281 (1983); Webb v. CIR, 394 F.2d 366 (1968).

If the Taxpayer had proved a non-taxable source for the money used to pay his 1991 expenses, the Department could not have imputed additional income to the Taxpayer. However, the Taxpayer failed to do so. The check stubs are not sufficient because they

do not establish with reasonable certainty either that the Taxpayer actually borrowed money, or, importantly, that the money was available to pay the expenses. Consequently, the Department's calculations are reasonable and must be upheld. The final assessment, as adjusted, is affirmed, and judgment is entered against the Taxpayer for 1991 Alabama income tax in the amount of \$2,329.40, plus applicable interest.

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

Entered January 10, 1996.

BILL THOMPSON
Chief Administrative Law Judge