

JAMES E. WOMACK
2221 Thames Lane
Montgomery, Alabama 36106,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. INC. 97-164

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed 1992 and 1993 income tax against James E. Womack ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, 40-2A-7(b)(5)a. A hearing was conducted on June 16, 1997. Dorothy Womack, the Taxpayer's wife, appeared at the hearing. Assistant Counsel Margaret McNeill represented the Department.

This case involves two issues:

- (1) Should the Taxpayer be allowed "head of family" status even though he was married during the subject years; and
- (2) Did the Department properly disallow various deductions claimed by the Taxpayer for lack of verifying records.

The Taxpayer was married but separated from his wife during the subject years. The Taxpayer filed Alabama returns in both years and claimed head of family status. The Taxpayer also deducted home mortgage interest, medical, real estate and personal property taxes, and employee business expenses on both returns.

The Department changed the Taxpayer's filing status to married filing separate because, according to the Department, a married taxpayer cannot claim head of family

status under any circumstances.¹ The Department also denied some of the claimed deductions for lack of substantiating records.

Head of family for Alabama purposes is defined the same as "head of household" for federal purposes at 26 U.S.C. 2(b). Section 2(b) specifies that an individual can claim head of household status only if he or she is not married at the close of the tax year. However, 2(c) specifies that a married individual will be considered unmarried and eligible for head of household status if the individual qualifies as unmarried pursuant to 26 U.S.C. 7703(b).

A person qualifies as unmarried under 7703(b) if (1) the individual maintained a household which was the principle home for a child for at least one-half of the year, (2) the individual was entitled to claim the child as a dependent for the year, (3) the individual furnished at least one-half of the cost of the household for the year, (4) the individual's spouse was not a member of the household for the last six months of the year, and (5) the

¹Taxpayers claiming head of family and married filing separate status are taxed at the same rate. Code of Ala. 1975, 40-18-5. However, an individual claiming head of family is allowed a \$3,000 personal exemption instead of the standard \$1,500. See Ala. Const. of 1901, Amendment 25.

individual filed a separate return from his or her spouse. The above criteria are listed in the Department's instruction booklet, which the Department mistakenly claimed was wrong at the June 16 hearing.

The evidence is insufficient to determine if the Taxpayer satisfied all five criteria in this case. The Department should review the Taxpayer's returns and contact the Taxpayer for information if necessary. Head of family status should be allowed if the five criteria are met.

Concerning the disallowed deductions, the Department allowed all deductions for which the Taxpayer provided verifying records. The Taxpayer's wife claims she submitted additional records concerning home mortgage interest and taxes that the Department failed to allow. However, the Department denies it received any additional records from the Taxpayer.

The Taxpayer was allowed additional time at the June 16 hearing to submit additional records to the Department. Those records are included with the Department's copy of this Opinion and Preliminary Order. The Department should review the records and notify the Administrative Law Division of its position in the case. Appropriate action will then be taken.

This Opinion and Preliminary Order is not an appealable order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, 40-2A-9(g).

Entered July 15, 1997.

BILL THOMPSON
Chief Administrative Law Judge

BT:dr

cc: Margaret Johnson McNeill, Esq.
James E. Womack
Kim Herman