

CARL J. & LINDA M. BARTLETT
6504 Tree Crossings Parkway
Birmingham, AL 35244,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 97-479

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1991 and 1992 income tax against Carl J. and Linda M. Bartlett (together "Taxpayers"). Linda M. Bartlett (individually "Taxpayer") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on April 14, 1998. The Taxpayer and her attorney, Steven C. R. Brown, appeared at the hearing. Assistant Counsel Antoinette Jones represented the Department.

Issue

The issue in this case is whether the Taxpayer should be granted "innocent spouse" status in both 1991 and 1992 pursuant to Code of Ala. 1975, § 40-18-27.

Facts

The Taxpayer and Carl Bartlett (also "husband") were married in 1985. Carl Bartlett worked for an auto parts dealership in Birmingham at the time. The Taxpayer was employed by South Central Bell (now BellSouth), where she had worked since 1969.

Carl Bartlett quit his job and operated several small businesses during the late 1980s and early 1990s, including a paint and body shop, a service station, and an auto parts business. The businesses failed, and the Taxpayer was forced to support herself and her two small children primarily on her BellSouth salary.

Carl Bartlett purchased another auto parts business in 1991. The Taxpayer traveled extensively for BellSouth, and was also the primary caregiver for her two children. Consequently, she was too busy to be involved in her husband's business.

The Taxpayer's marriage was difficult. She testified that her husband abused alcohol and drugs, and also mentally and physically abused her. He provided little or no financial support for the family. He was evasive and threatened her when she inquired about money. He also had several girlfriends while married to the Taxpayer. The Taxpayers finally divorced in 1997, after years of separations and controversy.

The Taxpayers filed joint 1991 and 1992 federal income tax returns. The returns were prepared by a bookkeeper employed by one of the businesses for which Carl Bartlett had worked. The Taxpayer's only input in preparing the returns was to give the bookkeeper her W-2 forms from BellSouth. The Taxpayer signed the 1991 and 1992 returns, but had no knowledge concerning her husband's income and expenses reported on the returns.

The IRS disallowed certain business-related expenses claimed on Schedule C in both years. The expenses related to the husband's auto parts business. The IRS accordingly assessed additional tax against the Taxpayers in both years. The IRS later granted the Taxpayer innocent spouse status and relieved her of liability for 1991. However, it rejected her claim for innocent spouse status for 1992. There is no evidence why the IRS granted innocent spouse status in one year, but not the next. The circumstances in both years were similar.

The Department used the IRS audit to assess the Taxpayers jointly in both years. The Department allowed the Taxpayer innocent spouse status in 1991, but, like the IRS, denied her innocent spouse status for 1992.

Analysis

An innocent spouse may be relieved from liability for Alabama income tax to the same extent allowed by the Internal Revenue Code for federal income tax purposes. Code of Ala. 1975, § 40-18-27. 26 U.S.C. § 6013(e)(1) relieves an innocent spouse of liability if four conditions are met:

- (a) A joint return is filed for the year;
- (b) There is a substantial underpayment attributable to grossly erroneous items of one spouse;
- (c) The other (innocent) spouse proves that he or she did not know, or have reason to know, that there was a substantial underpayment; and
- (d) Considering all the facts, it would be inequitable to hold the other (innocent) spouse liable.

Subparagraphs (a) and (b) are clearly satisfied in this case. The Taxpayers filed joint returns in 1991 and 1992, and there was a substantial underpayment due to the disallowed business expenses in both years.

Concerning subparagraph (c), the Eleventh Circuit, in Kistner v. Commissioner, 18 F.3d 1521 (1994), addressed the "reason to know" standard as follows:

A spouse has "reason to know" if a reasonably prudent taxpayer under the circumstances of the spouse at the time of signing the return could be expected to know that the tax liability stated was erroneous or that

further investigation was warranted. Stevens v. Commissioner of Internal Revenue [89-1 USTC ¶ 9330], 872 F.2d 1499, 1505 (11th Cir. 1989). The test establishes a duty of inquiry on the part of the alleged innocent spouse. Stevens [89-1 USTC ¶ 9330], 872 F.2d at 1505.

The courts have recognized several factors that are relevant in determining the reason to know, including (1) the alleged innocent spouse's level of education; (2) the spouse's involvement in the family's business and financial affairs; (3) the presence of expenditures that appear lavish or unusual when compared to the family's past levels of income, standard of income, and spending patterns; and (4) the culpable spouse's evasiveness and deceit concerning the couple's finances. Stevens [89-1 USTC ¶ 9330], 872 F.2d at 1505.

In this case, factor (1) above works against the Taxpayer because she is college educated and has a responsible job with BellSouth. However, considered together, the facts establish that the Taxpayer did not know or have reason to know, and could not have reasonably discovered, that her husband was claiming false business expenses on their joint returns.

The Taxpayer was too busy to be involved in her husband's business. He was evasive and contentious when the Taxpayer inquired about money, and he otherwise kept her in the dark about his finances. Factor (2) is satisfied.

Her husband provided little or no financial support for the family. The Taxpayer struggled, and even filed bankruptcy during their marriage. Clearly, there were no lavish or unusual expenditures in 1991 or 1992 that would have alerted the Taxpayer that her husband was claiming false expenses on their tax returns. Factor (3) is satisfied.

Finally, the Taxpayer's husband abused drugs and alcohol, and had several girlfriends during their marriage. It is understandable that he would also deceive his wife concerning his business dealings. Factor

(4) is satisfied.

Based on the above, the Taxpayer has established that she did not know, or have reason to know, that her husband was claiming false business expenses on their joint income tax returns.

Finally, subparagraph (4) of § 6013(e)(1) is satisfied because it would be inequitable to require the Taxpayer to pay the additional taxes resulting from her ex-husband's disallowed business expenses. She and the children clearly did not benefit from the claimed expenses. The Taxpayer was financially secure and credit-worthy when she married. But as a result of the financial strain caused by her husband's philandering and failed businesses, the Taxpayer lost her house, her credit rating was ruined, and she suffered a bankruptcy. She is now struggling alone to support her two children. This is exactly the type of situation that the innocent spouse rule was intended to apply.

The Taxpayer is relieved of liability on both final assessments. The Department should collect the entire amounts from Carl Bartlett. According to the Taxpayer, he lives with his girlfriend at 256-G West Lake Lodge Apartments in Bessemer, Alabama. He works at Jefferson County Auto Salvage.

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

Entered July 9, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

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