PHIL H. & EVELYN (DEC) CHASTAIN 73 FRAZIER ROAD ALBERTVILLE, AL 35950,	§	STATE OF ALABAMA ALABAMA TAX TRIBUNAL
Taxpayers,	§	DOCKET NO. INC. 14-1219
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Phil H. & Evelyn (dec) Chastain (together "Taxpayers") for 2010 and 2011 Alabama income tax. The Taxpayers appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 24, 2015. Phil Chastain (individually "Taxpayer") and his representative, Joe Ezell, attended the hearing. Assistant Counsel Ralph Clements represented the Department.

The Taxpayers operated a roofing business, Town & Country Roofing, during the years in issue. As discussed below, Evelyn Chastain handled the money, ordered materials, paid the bills, controlled the business's bank account, etc. during the years in issue. The Taxpayer performed the actual roofing labor, but, according to the Taxpayer's representative, otherwise did not participate in running the business.

The Department audited the Taxpayers' Alabama returns for the years in issue. The Taxpayers had failed to maintain organized, complete books and records concerning the roofing business. The Department examiner consequently attempted to compute the Taxpayers' liabilities using their bank records and various other records provided by the Taxpayers. The review was complicated by the large number of bank deposits and withdrawals that related to the Taxpayers' extensive gambling activities in the subject years. After careful analysis, the examiner determined that the net income from the roofing

business was $95,904 and $74,772 in 2010 and 2011, respectively. The Taxpayers had reported income from the business of $10,121 and $32,542, respectively, in those years. The examiner also made other adjustments that resulted in the final assessments in issue. This appeal followed.

The Taxpayers' representative asserts generally that the final assessments are excessive. He primarily argues, however, that Phil Chastain should be allowed innocent spouse status because he was not involved with and had no knowledge concerning the financial side of the business. The representative's post-hearing brief reads in part:

> This was not an examination of Phil Chastain's business. This examination was an examination of Evelyn Chastain, DBA T & C Roofing. Taxpayer only performed labor for T and C while Mrs. Chastain controlled all the purse strings. Mrs. Chastain set the business up, requested the federal employer identification number, kept the books, made the deposits, and operated the financial side of the business. The bank account was in the wife's name only, DBA T and C Roofing. Taxpayer had never had a bank account, never wrote a check or made a deposit, and couldn't, because he wasn't on the signature card. Mrs. Chastain also purchased most of the business supplies in her name and paid for them using her bank account or credit cards.
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> In fact, after her death, he had to get appointed as administrator of his wife's estate to access the bank account. Taxpayer, with his 8th grade education, had never even had an account nor attempted to balance a bank statement or prepare a deposit slip. This account was utilized by Mrs. Chastain only. She also used the same account for her personal use. She deposited funds form gambling winnings and loans to cover previous gambling losses. The Dept. of Revenue used the bank deposits that went into this account to determine taxable income. If more was deposited than was reported, this income could have easily been funds pertaining to Mrs. Chastain only.
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> Mrs. Chastain also kept all and any records pertaining to the business and proved documentation to the tax return preparer. She paid all the household and business bills with her credit cards and whatever funds were in her account. Her untimely death only complicated matters for Mr. Chastain.
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> In the Department's position, the statement was made, "the business in question was that of Mr. Chastain, not his wife's." The bank account of the business, plainly labeled "Evelyn Chastain, DBA T & C Roofing," plainly

> disputes that allegation. Mrs. Chastain ran every facet of the business except for the labor. The business could just as easily be labeled, "Evelyn Chastain DBA Phil Chastain" or "Phil Chastain nominee of Evelyn Chastain."
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> No one could farther remove from the financial operation of a business than was this uneducated and unsophisticated man attempting to support his family in a labor intensive business than was Mr. Chastain. As technology advanced, Mrs. Chastain became able to transact business through the use of such things as electronic transfers to pay bills. At the same time, Taxpayer because more confused and out of touch with financial affairs.

The Department contends that the examiner computed the Taxpayers' liabilities for the subject years using the best information available, and that the final assessments should be affirmed because the Taxpayers failed to present any evidence disputing the amounts assessed. And while it concedes that Phil Chastain has a limited education and was not involved with the financial side of the business, it argues that under the circumstances, he is not entitled to innocent spouse relief.

Alabama has adopted the federal innocent spouse provisions at 26 U.S.C. §§6015(b), (c), and (f). See, Code of Ala. 1975, §40-18-27(e). The Department's detailed and comprehensive post-hearing brief analyzes the above provisions, and their applicability in this case, as follows:

I. Innocent Spouse Relief

A. The Income was Mr. Chastain's

> The Taxpayer urges that "[t]his was not truly an examination of Phil Chastain's business. This was an examination of Evelyn Chastain, DBA T&C Roofing. Taxpayer only performed labor for T and C while Mrs. Chastain controlled all the purse strings." *Taxpayer's Brief* at 1. As will be shown below, this is crucial to the Taxpayer's claim for innocent spouse relief. The Taxpayer's claim, however, must fail.

Alabama has adopted the federal statute relating to innocent spouse claims.[1] The Internal Revenue Code section dealing with innocent spouse claims is found at I.R.C. § 6015. Taxpayers may request relief under subsections (b), (c), or (f) of § 6015. Subsection (b) relief is open to all Taxpayers, regardless of marital status. Subsection (c) relief is available only to Taxpayers who are divorced or separated, and allows proportionate liability according to the innocent Taxpayer's share of the tax. Subsection (f) provides the IRS with the power to grant relief when equitable in cases where the Taxpayer does not qualify for subsections (b) or (c). Even then, though, certain criteria must be met and there are factors that must be weighed, as will be shown.

The reason the Taxpayer's claim regarding who really owned the business is crucial is because, under all three subsections, relief from liability is available generally only for items that are attributable to the *other* (i.e., the "non-innocent") spouse. In § 6015(b), this is explicit. Of the five preconditions for that subsection to apply, the second is that "there is an understatement of tax attributable to erroneous items of one individual filing the joint return."[2] The third is that "the other individual filing the joint return establishes that in signing the return he or she did not know, and had no reason to know, that there was such understatement."[3] Without "erroneous items of one individual," the "other individual" cannot possibly maintain a claim under § 6015(b), regardless of what he or she knew or ought to have known.

This is also explicit under § 6015(c), although the path is a bit more complex. Section 6015(c) states, in relevant part, "if an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to the individual under subsection (d)."[4] Subsection (d), containing the rules for allocating deficiencies between spouses, states "[t]he portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency."[5] Paragraph (3), in turn, states the following, in relevant part: "any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have

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1 *Ala. Code* (1975) § 40-18-27(e).

2 I.R.C. § 6015(b)(1)(B) (emphasis added).

3 I.R.C. § 6015(b)(1)(C) (emphasis added).

4 I.R.C. § 6015(c)(1).

5 I.R.C. § 6015(d)(1).

been allocated if the individuals had filed separate returns for the taxable year."[6] Therefore, the scheme contemplated in § 6015(c) is for former spouses to share liability in the same proportion that they would have owed tax, had they both filed separate returns instead of a joint return.

The Internal Revenue Code is rather spare concerning equitable relief available under § 6015(f).[7] However, guidance published by the I.R.S. fills in some gaps. Requests for innocent spouse relief under § 6015(f) are judged according to the rules published in Rev. Proc. 2013-34,[8] which supersedes and replaces the previous published guidance on this issue, Rev. Proc. 2003-61. Under Section 4 of Rev. Proc. 2013-34 (entitled "General Conditions for Relief"), there are seven conditions that a purportedly innocent spouse must meet to be granted § 6015(f) relief. The seventh factor is "[t]he income tax liability from which the requesting spouse seeks relief is attributable (either in full or in part) to an item of the nonrequesting spouse or an underpayment resulting from the nonrequesting spouse's income. If the liability is partially attributable to the requesting spouse, then relief can only be considered for the portion of the liability attributable to the non-requesting spouse."[9] Again, even in the context of equitable relief under § 6015(f), relief is predicated on the assumption that the items giving rise to the problem originated with the other spouse.

In this case, however, the items in question belonged to the roofing business, and therefore they were attributable to Mr. Chastain himself and not his late wife. This prevents relief being granted under § 6015(b) or (f), and produces a 100% attribution to Mr. Chastain under § 6015(c), which is the same as

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6 I.R.C. § 6015(d)(3)(A).

7 I.R.C. § 6015(f). ("Under procedures prescribed by the Secretary, if (1) taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either); and (2) relief is not available to such individual under subsection (b) or (c), the Secretary may relieve such individual of such liability.").

8 Rev. Proc. 2013-34, 2013-43 I.R.B. 397 (October 21, 2013) (hereinafter, "Rev. Proc. 2013-34").

9 Rev. Proc. 2013-34, § 4.01(7) (emphasis added).

prohibiting relief.[10]

The Department concedes that the late Mrs. Chastain maintained what little books and records existed for the roofing business, and that she was responsible for sending out invoices, paying bills, and the family's financial affairs. However, it is a stretch to argue that the roofing business was somehow owned and operated by Mrs. Chastain.

Mr. Chastain was the roofer. It was his labor and his expertise that the business was offering for sale. Mrs. Chastain's efforts on her husband's behalf were functionally the same as those provided by a bookkeeper. Certainly, had Mrs. Chastain not provided these services, either Mr. Chastain or a paid bookkeeper or accountant would have had to do so. But this was not an accounting or bookkeeping business. The essence of the business was not in sending invoices or collecting checks but in providing roofing services, and these were services that only Mr. Chastain provided. Had he retired or quit, there would have been no business to carry on and nothing in this regard for Mrs. Chastain to do. In short, Mr. Chastain could have carried on the roofing business without Mrs. Chastain, even with some difficulty. Mrs. Chastain could not have carried on the roofing business without Mr. Chastain. It was his business, not hers.

This is not changed by the fact that Mr. Chastain may have had a limited education, or that his late wife used means (such as her personal checking account) to which he had limited access. Persons with limited educations nevertheless sometimes operate successful small businesses, especially in skilled trades like the roofing business here at issue. The business does not become someone else's simply because another person runs the back-office functions of billing and collecting revenue.

This issue is similar to that in the case *Maluda v. Commissioner*, 98 T.C.M. (CCH) 545, T.C.M. (RIA) 2009-281. In that case, the husband operated a tool dealership as a sole proprietor, and (as here) handed over all his income to his wife, who failed to file tax returns. Unlike the present case, the wife in *Maluda* was still living; the husband accused her of having misappropriated the funds he gave her prior to their divorce. The court recognized that the Taxpayer could have adduced evidence to "rebut the presumption that his earnings are attributable to him." *Maluda*, *supra*, at *2. However, no such evidence was introduced, and therefore the court was forced to conclude that

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[10] Had they filed separate returns for 2010 and 2011, the Department contends that all the income and expenses attributable to the roofing business would have been properly reported on Mr. Chastain's separate return. Therefore, the mechanical application of § 6015(c) produces an allocation to him of 100%.

the so-called "nominal ownership exception" did not apply.[11]

The "nominal ownership exception" appears at Rev. Proc. 2013-34, § 4.01(7)(b), and states:

> [i]f the item is titled in the name of the requesting spouse, the item is presumptively attributable to the requesting spouse. This presumption is rebuttable. For example, H opens an individual retirement account (IRA) in W's name and forges W's signature on the IRA in 2006. Thereafter, H makes contributions to the IRA and in 2008 takes a taxable distribution from the IRA. H and W file a joint return for the 2008 taxable year, but do not report the taxable distribution on their joint return. The Service later determines a deficiency relating to the taxable IRA distribution. W requests relief from joint and several liability under section 6015. W establishes that W did not contribute to the IRA, sign paperwork relating to the IRA, or otherwise act as if W were the owner of the IRA. W, thereby, rebuts the presumption that the IRA is attributable to W.

This exception is inapplicable in the present case. It presupposes that income items are actually vested for legal purposes in the requesting spouse [in this case, Mr. Chastain], but in reality are controlled and used for the benefit of the other spouse [here, Mrs. Chastain]. This is the exact opposite of what the Taxpayer claims.

If it is true that the business and its net income belonged to Mr. Chastain, then necessarily he must be denied innocent spouse status also under the case precedent of this Tribunal. "[F]or an innocent spouse to be relieved of a joint liability, the spouse must not have been aware of the income that led to the liability, and also must not have benefited from the income. Kistner v. Commissioner, 18 F.3d 1521 (11th Cir. 1994); Laney v. State of Alabama, Inc. 02-156 (Admin. Law Div. 8/29/2002). The Taxpayer in [that] case conceded . . . that she earned all of the income reported on the 1995 return. She also presumably benefited from the income. Consequently, innocent

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[11] The court also noted the existence of the "misappropriation exception," which was likewise without evidence. The misappropriation exception and the nominal ownership exception join three other exceptions (community property, abuse, and fraud) to the rule that the liability must be attributable to the other spouse. None of these other exceptions apply in the case of Mr. and Mrs. Chastain.

spouse status does not apply."[12]

In fact, regardless of whose name was on the checking account, the sole proprietorship roofing business belonged to Mr. Chastain and to him only. He naturally trusted his late wife to use her greater education and experience to run those discrete business operations he felt uncomfortable handling. But he could just as well have used someone else's bookkeeping services and continued to carry on his trade as a roofer. The business, such as it was, belonged to him. The items of unreported income, therefore, are attributable to him and not to Mrs. Chastain, thus preventing relief under any subsection of § 6015 or the cases of this Tribunal. That he may have remained blissfully unaware of the specifics of his day-to-day business does not relieve him of the responsibility to accurately account for it on his tax return. That his late wife fell down in her duty to accurately report his business income is unfortunate, but does not give rise to an innocent spouse claim by Mr. Chastain. It was his duty to see to it that, if not he, then at least someone accurately reported his business's tax results. The failure to see that this was done was ultimately his.

B. The Taxpayer Otherwise Fails to Qualify – Regulations

In addition to the fact that relief is barred because the erroneous items in question were Mr. Chastain's, as argued above, Mr. Chastain also fails to qualify even if the items had been attributable to Mrs. Chastain.

Section 6015(b) relief is governed by Treas. Reg. § 1.6015-2. Four criteria must be met:

> (1) A joint return was filed for the taxable year; (2) On the return there is an understatement attributable to erroneous items of the nonrequesting spouse; (3) The requesting spouse establishes that in signing the return he or she did not know and had no reason to know of the understatement; and (4) It is inequitable to hold the requesting spouse liable for the deficiency attributable to the understatement.[13]

Of course, in part A of this Reply Brief, it was explained that the roofing business could not have produced "an understatement attributable to erroneous items of the nonrequesting spouse." Also, there is no doubt that a joint return was filed.

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[12] *Stanley B. & Kay Dawn Dortch*, Ala. Admin. L. Div., dkt. no. INC. 2003-1045 (3/11/2004) (emphasis added).

[13] Treas. Reg. § 1-6015-2(a)(1)-(4).

In judging whether a Taxpayer "did not know and had no reason to know of the understatement," "[a] requesting spouse has knowledge or reason to know of an understatement if he or she actually knew of the understatement, or if a reasonable person in similar circumstances would have known of the understatement."[14] The regulation states that this is a "facts and circumstances" test, and lists several facts or circumstances that ought to be considered.

> The facts and circumstances that are considered include, but are not limited to, the nature of the erroneous item and the amount of the erroneous item relative to other items; the couple's financial situation; the requesting spouse's educational background and business experience; the extent of the requesting spouse's participation in the activity that resulted in the erroneous item; whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question; and whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns . . . .[15]

The factors are considered below in turn.

1. The nature of the erroneous item and the amount of the erroneous item relative to other items

The erroneous item in question was the Taxpayer's own primary business activity, which any reasonable person (regardless of education level) should be presumed to know enough about to know when it has been mis-stated by a factor of 10. The Taxpayer may have been ignorant of the actual dollar amount his roofing activities were bringing in, but a cursory review of the tax returns at issue would have revealed numbers that were either 10% or one-half of the true figures. It does not take a great deal of sophistication to see an understatement of that magnitude, especially when it relates to one's primary means of earning a living.

2. The couple's financial situation

Little evidence was introduced. However, it should be noted that the Taxpayer and his late wife were not living a bare-bones existence, particularly in light of their extensive gambling activities, about which more

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14 Treas. Reg. § 1-6015-2(c).

15 *Id.*

will be said below. Although they may not have lived in extravagance, their massive gambling winnings and (particularly) losses prevent the claim that the Taxpayer's late wife caused them to live in poverty while surreptitiously amassing a fortune, the existence of which he was kept unaware.

3. The requesting spouse's educational background and business experience

The Department concedes that this Taxpayer has a limited educational background. It is reasonable to assume that he was incapable of sophisticated financial management. However, even a person with an 8th grade education can be expected to know how to prepare and send an invoice for work done, how to receive and cash checks for payment, and how to keep up with customer accounts and bills in a simple ledger. Even if the Taxpayer was unable to do these simple tasks, his education and intelligence was not so limited as to prevent him from recognizing the results reported on the tax return as being egregiously understated. Presumably, in his work as a roofer, the Taxpayer is able to do some level of mathematics in estimating surface areas, how much roofing material to purchase, how long a job will take to complete, and the like. That level of ability is enough that, had he inspected the tax return, he ought to have recognized the understatements for what they were, at least in a general sense that should have put him on notice to inquire further.

4. The extent of the requesting spouse's participation in the activity that resulted in the erroneous item

Even if the Tribunal accepts the spurious argument that the roofing business was somehow owned and operated by the late Mrs. Chastain, it cannot be seriously denied that Mr. Chastain participated to a great degree in the roofing activity. Indeed, it was he and he alone who (along with helpers he hired) performed the work that led to the business income being generated in the first place.

5. Whether the requesting spouse failed to inquire, at or before the time the return was signed, about items on the return or omitted from the return that a reasonable person would question

The Department alleges, and the Taxpayer has admitted, that this element is completely true. Mr. Chastain admits freely that he failed to inquire about the Schedule C roofing business income. A reasonable person, even a person without an exact knowledge of the business operations, upon seeing a figure that is understated so egregiously, should have and would have questioned the item before the return was filed. Mr. Chastain failed to do so.

6. Whether the erroneous item represented a departure from a recurring pattern reflected in prior years' returns

The Department has no information that the understatement it discovered did or did not represent a pattern and practice of understatement.

C. The Taxpayer Fails to Qualify – Case Law

The "reason to know" test has also been elucidated in this Tribunal's decisions:

The "reason to know" standard was discussed in Kistner v. Commissioner, [citation omitted], 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. [citation omitted]. The test establishes a 'duty of inquiry' on the part of the alleged innocent spouse. [citation omitted] 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. [citations omitted].[16]

The first two factors above are identical to two factors from the regulation. The third and fourth, however, also militate against providing relief in the instant case. While the Taxpayer has suggested that the couple did not have "lavish or unusual" expenditures, the Department contends that their gambling habit was such that the Taxpayer should have been on notice (particularly for 2011) that they could not possibly be supporting themselves based only on the income reported on the return from the roofing business.

As stated above, the net income reported from the roofing business during 2011 was $32,542. In that year, the Taxpayers won $1,540,854 gambling.

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[16] *Kennon R. & Carolyn Patterson*, Ala. Adm. L. Div. dkt. no. INC. 06-1080 (11/19/2009)

Unfortunately, they lost $1,629,085, creating a shortfall of $88,231 (which was non-deductible). That $88,231 had to come from somewhere, and a couple truly earning only $32,542 from the husband's trade (or even the true figure of $74,777) would surely view an expenditure of more than twice their annual income to be "lavish or unusual."

There is no evidence that the late Mrs. Chastain was at all evasive or deceitful. There is no evidence that she lied to Mr. Chastain, or took steps to hide things from him, or was dishonest in her dealings with him. She simply did not tell him that which he did not ask, which is not the same as being deceitful. It is true that Mr. Chastain did not have access to the financial records used by Mrs. Chastain for the business without her consent, but there is no evidence in the record that he ever asked to see such records and was refused or lied to. She may have been uncommunicative, but she was not deceitful.

D. Refusing Relief would not be Inequitable

Even if, however, the Taxpayer were to satisfy the requirement that he had no knowledge of the understatement and no reason to know, relief may still not be provided because it would not be inequitable to do so, the fourth prong of the test at Treas. Reg. § 1.6015-2(a)(4).

In judging whether failing to provide relief would be inequitable, the Regulations state

> All of the facts and circumstances are considered in determining whether it is inequitable to hold a requesting spouse jointly and severally liable for an understatement. One relevant factor for this purpose is whether the requesting spouse significantly benefitted, directly or indirectly, from the understatement. A significant benefit is any benefit in excess of normal support. . . . Other factors that may also be taken into account, if the situation warrants, include the fact that the requesting spouse has been deserted by the nonrequesting spouse, the fact that the spouses have been divorced or separated, or that the requesting spouse received benefit on the return from the understatement. . . .[17]

The Taxpayer benefitted from the understated income items in two ways. First, because the roofing business provided the bulk of the couple's net income during the year, obviously he benefitted from the expenses that they

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17 Treas. Reg. § 1.6015-2(d).

incurred that otherwise could not have been paid, for ordinary items such as food, clothing, housing, transportation and the like. In cases before the Administrative Law Division in which the innocent spouse has received relief, it has often been the case that the innocent spouse saw no benefit from the understated or omitted income items because the non-innocent spouse was secreting the extra income away.[18] But, in cases where the requesting spouse paid ordinary living expenses out of the underreported or omitted income, this Tribunal has held that such a spouse did benefit.[19] Because payment of their ordinary living expenses would have been difficult or impossible absent Mr. Chastain's roofing business income, he directly and significantly benefitted from the omitted income.

Also, while it is obviously true that Mr. and Mrs. Chastain's marriage was terminated by her death, there is no evidence in the record that she deserted Mr. Chastain at any time before her death, or that they were separated or in the process of divorcing.

On the question of equity, the regulation quoted above also cross-references the factors listed in Rev. Proc. 2000-15, relating to § 6015(f) relief.[20] Those factors are: (a) marital status; (b) economic hardship; (c) knowledge or reason to know; (d) legal obligation; (e) significant benefit; (f) compliance with income tax laws; and (g) mental or physical health. These will be discussed in turn.

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[18] *See, e.g.*, *William C. & Laura Havens*, Ala. Adm. L. Div. dkt. no. INC. 07-980 (1/6/2009); *Joseph R. & Vivian E. Howe*, Ala. Adm. L. Div. dkt. no. INC. 07-936 (4/21/2008); *Kennon R. & Carolyn Patterson*, *supra*.

[19] *See, e.g., Christopher A. & Melissa A. Ward*, Ala. Adm. L. Div., dkt. no. INC. 2002-901 (3/5/2003) ("The Taxpayer did not work in 1999, and thus presumably was supported entirely by her husband's income. Without evidence to the contrary, it is reasonable to conclude that the Taxpayer benefited from her husband's 1999 income."); *C. Wayne & Melanie C. Gregory*, Ala. Admin. L. Div., dkt. no. INC. 2001-256 (1/16/2002) ("[The Taxpayer] did not work during the year in issue, and was supported entirely by her husband's income, which presumably included the money obtained illegally. Without evidence to the contrary, it is reasonable to find that [the Taxpayer] substantially benefited from her husband's ill-gotten income in 1997."); *G. Daniel & Charlene Wiley*, Ala. Admin. L. Div., dkt. no. INC. 2001-312 (9/19/2001) ("Charlene Wiley did not work, and was supported entirely by her husband's income, which presumably included the money obtained illegally. Without evidence to the contrary, it is reasonable to find that Charlene Wiley substantially benefited from her husband's ill-gotten income in 1991 and 1992.").

[20] Rev. Proc. 2000-15, 2000-5 I.R.B. 447, Jan. 31, 2000, was superseded by Rev. Proc. 2003-61, which was in turn modified and superseded by Rev. Proc. 2013-34, *supra*, n. 8, which is the current guidance on the topic.

1. Marital Status

The Taxpayer rightly points out that the passing of Mrs. Chastain terminated the marriage between herself and Mr. Chastain. However, under Rev. Proc. 2013-34, this is irrelevant. "For purposes of this section, a requesting spouse will be treated as being no longer married to the nonrequesting spouse only in the following situations: . . . (iii) The requesting spouse is a widow or widower and is not an heir to the non-requesting spouse's estate that would have sufficient assets to pay the tax liability."[21] No evidence was adduced regarding whether Mrs. Chastain died with or without a will. If she died intestate, Mr. Chastain would be at least in part (and possibly in full) her legal heir. If she died with a will, the terms of the will would control the extent to which Mr. Chastain inherited her estate. In either case, it is the burden of the Taxpayer to prove that innocent spouse treatment is warranted, and without evidence, the Taxpayer has not proven that he was not his wife's heir, or that her estate was insufficient to pay the Final Assessments in issue.[22]

2. Economic Hardship

"For purposes of this factor, an economic hardship exists if satisfaction of the tax liability in whole or in part will cause the requesting spouse to be unable to pay reasonable basic living expenses."[23] Again, it is the Taxpayer's burden to prove the elements of an innocent spouse claim. The sole piece of evidence in this regard is the Taxpayer's statement in his brief that his "income is at the poverty level." Before the IRS would accept an argument by the Taxpayer that an economic hardship is present under the applicable guidance, the Taxpayer must prove up specific, objective, identifiable facts, as laid out in the regulations governing release of an IRS levy for hardship.24 The Taxpayer's self-serving and conclusory statement is insufficient.

3. Knowledge or Reason to Know

This factor has been discussed, above. The Taxpayer had a duty of inquiry,

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21 Rev. Proc. 2013-34, § 4.03(2)(a)(iii).

22 *See Sam, Sr. & Ella M. Ervin*, Ala. Admin. L. Div., dkt. no. INC. 2003-102 (June 11, 2003) ("The Taxpayers failed, however, to appear at the June 9 hearing and present evidence that innocent spouse status should apply. Without such proof, innocent spouse status must be denied.").

23 Rev. Proc. 2013-34, § 4.03(2)(b).

24 Rev. Proc. 2013-34, § 4.03(2)(c), which cross-refers to Treas. Reg. § 301.6343-3(b)(3)(i), containing a list of factors to be considered when determining claims of economic hardship in the context of releasing federal tax levies.

especially given the large magnitude of the understatement. He failed to inquire, and therefore had reason to know of the understatement.

4. Legal Obligation

Neither Mr. nor Mrs. Chastain had a binding legal obligation to pay back taxes, as one might find in an order of divorce or separate maintenance agreement. The Taxpayer believes this "Favor[s the] Taxpayer in granting relief." In fact, this factor is merely inapplicable, and is therefore neutral.

5. Significant Benefit

This factor has been discussed, above. Without the income earned by Mr. Chastain through his roofing business that was unreported, he and his wife would have been unable to pay ordinary living expenses. He had a significant benefit.

6. Compliance with Income Tax Laws

The Department's information is that the Taxpayer is in compliance for years following 2010 and 2011. Therefore, the Department concedes that this is a factor in favor of providing relief, although the Department maintains that it is both overwhelmed by the negative factors immediately above and made irrelevant by the fact that the items in question were those of Mr. Chastain himself.

7. Mental or Physical Health

"If the requesting spouse was in neither poor physical nor poor mental health, this factor is neutral."[25] Mr. Chastain has introduced no evidence regarding his mental or physical health. Therefore, he cannot carry his burden of proof to show that his health is poor in any respect.

II. Summary

The Final Assessment stems from items relating to the Schedule C roofing business. The Taxpayer is a roofer. It was his business, not his wife's, even if his wife paid the bills and sent the invoices. Because the erroneous items arise from his items of income, Mr. Chastain is not entitled to relief under any of the three potentially applicable subsections of I.R.C. § 6015. Even if he were, however, the factors that are consulted in such cases nevertheless demonstrate that he is not entitled to innocent spouse relief. He should have

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[25] Rev. Proc. 2013-34, § 4.03(2)(g).

> known that the roofing business income on his 2010 and 2011 returns were woefully and significantly understated. Even a person with little formal education could easily see that at first glance, and Mr. Chastain decided to give it no glance at all. He benefitted from the understatement by using the omitted income to pay his bills, and to sustain tens of thousands of dollars in losses at casinos that he could never have afforded had his income been as it was purported to be.
>
> Mr. Chastain is ineligible for innocent spouse relief under § 40-18-27(e).

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The burden is on a taxpayer to submit evidence proving that a prima facie correct final assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c.3. The Taxpayers failed to do so in this case. Because the Taxpayers failed to maintain complete and accurate records concerning their roofing business, the Department examiner was forced to compute the Taxpayers' liabilities using the best available records, as authorized by Code of Ala. 1975, §40-2A-7(b)(1)a. In such cases, the Taxpayers, having failed in their duty to keep good records, cannot complain that the Department's computations may not be exact. *Jones v. C.I.R.*, 903 F.3d 1301 (10th Cir. 1990); *Denison v. C.I.R.*, 689 F.2d 777 (10th Cir. 1982); *Webb v. C.I.R.*, 394 F.2d 366 (5th Cir. 1968).

I also agree that Mr. Chastain does not qualify for innocent spouse relief. To begin, the underreported income resulted from Mr. Chastain's labor as a roofer. Mrs. Chastain's help in the business was certainly essential, but Mr. Chastain earned the income for the business. To be allowed innocent spouse status, the underreported income must be earned by the non-requesting spouse, Mrs. Chastain in this case. That was not the case.

Mr. Chastain also had reason to know that the couple's joint 2010 and 2011 returns omitted considerable income that he earned in his roofing business. The 2010 returns reported approximately ten percent of the couple's roofing-related income, and the 2011

return reported less that fifty percent. While Mr. Chastain may not have known the exact amount of income he earned as a roofer, he certainly knew how much he charged for his roofing jobs, and also approximately how many jobs he performed in a year. Consequently, even a cursory review of the returns would have alerted him that his roofing income was substantially underreported.

Finally, and importantly, Mr. Chastain personally benefitted from the underreported income. As explained in the Department's brief, Mr. Chastain's roofing income was the couple's primary source of income from which they paid their ordinary living expenses, and presumably also their gambling losses. It consequently would not be inequitable to hold Mr. Chastain liable for Alabama income tax on the unreported income from which he personally benefitted.

I sympathize with Mr. Chastain concerning his wife's unexpected death and his poor financial position, and I appreciate his representative's sincere arguments as to why innocent spouse relief should be granted. Given the undisputed facts, however, Mr. Chastain is not entitled to relief under Alabama law. He should contact the Department's Collection Services Division at 334-242-1220 for a payment plan.

The tax and interest as assessed by the Department is affirmed. The penalties are waived for cause under the circumstances. Judgment is entered against the Taxpayers for 2010 and 2011 tax and interest of $4,636.17 and $2,147.29, respectively. Additional interest is also due from the date the final assessments were entered, September 16, 2014.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-1(m).

Entered April 8, 2015.

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BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: Ralph M. Clements, III, Esq.
Joe A. Ezelle, EA