

LEWIS C. & LEAH M. MCKINNEY
34 Montcrest Drive
Birmingham, AL 35213,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-276

FINAL ORDER

The Revenue Department assessed 1996 income tax against Lewis C. and Leah M. McKinney (jointly ATaxpayers@). Leah M. McKinney (individually ATaxpayer@) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on August 2, 2000 in Birmingham, Alabama. CPA James C. White, Sr. represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department.

The issues in this case are:

(1) Should the Taxpayer be relieved of liability for the tax in issue as an innocent spouse pursuant to Code of Ala. 1975, ' 40-18-27(e); and,

(2) If the innocent spouse provision does not apply, should the Department collect the amount due from the Taxpayer-s ex-husband, Lewis C. McKinney, and not the Taxpayer.

The Taxpayer and Lewis C. McKinney filed a joint 1996 Alabama income tax return in December 1997. The return includes what purports to be the signature of both spouses.

The Taxpayer-s representative claims, however, that the Taxpayer may not have signed the return.

The Department reviewed the return and disallowed a \$1,000 credit claimed on the return. The Department assessed the Taxpayers jointly for the additional tax due, plus late penalties and interest. The Taxpayer appealed, claiming (1) that she should be relieved of liability as an innocent spouse,¹ and (2) in fairness, the Department should collect the amount due from the Taxpayer's ex-husband, Lewis McKinney.

An innocent spouse may be relieved from liability for Alabama income tax to the same extent allowed for federal purposes at 26 U.S.C. ' 6013(e). For liabilities that arose before July 1998, as did the tax in issue, an innocent spouse may be relieved of liability if the following conditions in ' 6013(e)(1) are satisfied:

- (1) There was a substantial underpayment;
- (2) The innocent spouse did not know or have reason to know of the substantial underpayment; and,
- (3) Considering the facts, it would be inequitable to hold the innocent spouse liable.¹

There was a substantial underpayment (disallowed credit) in this case. There is also evidence that the Taxpayer was not aware of the understatement. The issue thus is whether it would be unfair under the circumstances to hold the Taxpayer liable. An

¹Section 6013 was substantially amended effective June 22, 1998 by Public Law 105-206. For the current innocent spouse rule, see CCH 2000 U.S. Master Tax Guide, at ' 162.

important consideration in deciding that issue is whether the Taxpayer received any substantial benefit from the understatement.

The Taxpayers reported over \$200,000 in adjusted gross income on their 1996 Alabama return. The Taxpayer was a housewife in that year, and had no income. She and her three children were thus supported by the income earned by her husband. Under those facts, the Taxpayer clearly benefitted from her ex-husband's 1996 income. Consequently, I cannot find that the Taxpayer should be relieved of liability as an innocent spouse.

However, the Taxpayer and her husband were divorced in 1998. The divorce decree specifies that the husband shall be liable for any and all taxes owed by the couple for past years. Although the Department was not a party to the divorce decree, the Department should follow the intent of the decree and collect the amount due from the Taxpayer's ex-husband. The Department agreed at the August 2 hearing that the amount due should be collected from the ex-husband, Lewis C. McKinney.

The final assessment is affirmed. Judgment is entered against the Taxpayers, jointly and severally, for \$1,746.58.

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

Entered August 11, 2000.

BILL THOMPSON
Chief Administrative Law Judge