

STEPHEN C. & SHEILA C. HOFFMAN §
2042 WILDFLOWER DRIVE
BIRMINGHAM, AL 35244, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 04-646

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Stephen C. and Sheila C. Hoffman (“Taxpayers”) for 1992, 1993, 1994, 1995, 1996, 1997, and 2000 Alabama income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 27, 2006. Darrell Cartwright represented the Taxpayers. Assistant Counsel Glen Powers and Keith Maddox represented the Department.

The Taxpayers owned and operated an Aloette Cosmetics franchise from 1992 until 1997. They purchased the cosmetics in bulk from Aloette, and then resold the products either through independent contractors or home shows. Sheila Hoffman (individually “Taxpayer”) testified that she and her husband were losing money and got out of the cosmetics business in 1997.

Various individuals hosted the home shows at which the Taxpayers showed their products. The Taxpayer testified that in return for hosting a show, the host received cosmetics valued at 40 percent of the amount sold at the show.

The Taxpayers failed to timely file Alabama income tax returns for 1992 through 1997. The Taxpayer claims that she discovered in 1999 that she and her husband had not filed returns for the above years. She contends that she was not aware that the returns

had not been filed because she was busy building the business and trusted her husband to handle their taxes.

The Taxpayer gathered information in mid-1999 so that returns for the prior years could be prepared and filed. As discussed below, she obtained gross receipts amounts based on a telephone conversation she had with the former owner of Aloette Cosmetics. The Taxpayer took the information to a Mississippi accountant, who prepared and filed the returns with the Department in October 1999. The Taxpayers subsequently also timely filed their 2000 return with the Department.

The Department requested records verifying the income and deductions claimed on the returns. The Taxpayers provided an assortment of miscellaneous records for each year. The Department examiner sorted the records by year and found that only a small amount of the Schedule C expenses and cost of goods sold claimed on the returns could be verified. The most expenses and cost of goods sold that were verified for any one year totaled 31 percent of the gross receipts reported for the year. The verified amounts in the other years were much less. Giving the Taxpayers the benefit of the doubt, the examiner allowed the Taxpayers the 31 percent amount in all years. She also accepted the gross receipts amounts as reported on the Schedule Cs because she had no evidence indicating that the amounts were incorrect.

The Taxpayers do not dispute the expenses and/or the cost of goods sold as allowed by the examiner because they have no records verifying any additional amounts. They argue, however, that the gross receipts initially reported on the returns are excessive because they include the 40 percent that was given to the home show hosts.

The Taxpayer testified that Aloette Cosmetics is bankrupt and out of business. She telephoned the former owner of the company in 1999 and asked her how much she and her husband had sold in the subject years. The owner apparently gave the Taxpayer an amount in each year, which the Taxpayers' accountant reported as their gross receipts from the business in each year. As indicated, the Taxpayers now argue that the gross receipts amounts as reported erroneously included the 40 percent given to the home show hosts.

This case is unusual because the Department contends that the Taxpayers' gross receipts as reported are correct, and the Taxpayers argue that their reported gross receipts are incorrect. The opposite is usually the case.

There is no evidence from which the Taxpayers' gross receipts from their cosmetics business can be verified. The amounts reported on the Schedule Cs may include the 40 percent the Taxpayers gave to the home show hosts, but there is no evidence supporting that claim. The Taxpayer testified that she did not know how the Aloette representative determined the amounts that were subsequently reported as gross receipts on the Schedule Cs.

Q. Okay. What happened to (Aloette's) records? Do you know.

A. I don't. In fact, when I got those gross receipt numbers, I called Trichia, you know, who was, you know, the chairman of the board, you know. She was the original founder of the company.

Q. How did Trichia arrive at the numbers that she gave you, if you know?

A. I'm not really sure how the parent company - - I mean, I don't know for sure to testify exactly how they did that.

A final assessment on appeal is *prima facie* correct, and the burden is on the taxpayer to prove that it is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. If the Taxpayers had timely filed their returns and maintained records showing their sales and expenses in the subject years, they would not have been required to reconstruct or estimate their income and expenses in those years. Unfortunately for the Taxpayers, they have presented no reliable evidence proving that the gross receipts amounts as reported are incorrect. The burden was on them to do so. Consequently, the *prima facie* correct final assessments must be affirmed.

Judgment is entered against the Taxpayers for 1992 tax, penalty, and interest of \$36,267.37; 1993 tax, penalty, and interest of \$25,949.96; 1994 tax, penalty, and interest of \$50,201.04; 1995 tax, penalty, and interest of \$65,145.23; 1996 tax, penalty, and interest of \$10,832.79; 1997 tax, penalty, and interest of \$1,694.79; and 2000 tax, penalty, and interest of \$861.05. Additional interest is also due from the date the final assessments were entered, June 21, 2004.

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

Entered March 27, 2006.

BILL THOMPSON
Chief Administrative Law Judge