

VERNON SNODDY
9400 CLEVELAND ROAD
NORTHPORT, AL 35473-8356,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 05-421

FINAL ORDER

The Revenue Department assessed Vernon Snoddy (“Taxpayer”) for 1997 and 2000 Alabama income tax. 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 December 8, 2005 in Birmingham, Alabama. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Glen Powers represented the Department.

The Department received IRS information indicating that the Taxpayer failed to report “prizes and awards” of \$7,905 on his 1997 Alabama income tax return. The Taxpayer also claimed a married filing status on the return. However, he was not entitled to that filing status because his wife claimed head of family status on her 1997 Alabama return. The Department included the \$7,905 in the Taxpayer’s income, and also adjusted his filing status to single. It then assessed him for the tax due, plus penalties and interest.

The Taxpayer failed to report USDA lawsuit proceeds of \$50,000 on his 2000 Alabama return. The Department included the amount in the Taxpayer’s 2000 income, and then assessed him for the tax due, plus penalties and interest.

The Department is authorized to assess additional tax due based on the best information available. Code of Ala. 1975, §40-2A-7(b)(1)a. In this case, the Department received IRS information indicating that the Taxpayer had failed to report taxable income on his 1997 and 2000 Alabama returns. It correctly assessed the Taxpayer based on that information. It also correctly adjusted the Taxpayer's 1997 filing status to single. The amounts assessed by the Department in both years are affirmed.

At the December 8 hearing, the Department also requested that the fraud penalty be assessed concerning 1997 because the Taxpayer (1) omitted income of \$7,905 received for "prizes and awards," (2) claimed an incorrect filing status, and (3) had not filed an Alabama return before 1997. The request is denied.

The Department is required to prove fraud by clear and convincing evidence. *Bradford v. C.I.R.*, 796 F.2d 303 (1986). "The burden is upon the commissioner to prove affirmatively by clear and convincing evidence actual and intentional wrongdoing on the part of the (taxpayer) with a specific intent to evade the tax." *Lee v. U.S.*, 466 F.2d 11, 14 (1972), citing *Eagle v. Commissioner of Internal Revenue*, 242 F.2d 635, 637 (5th Cir. 1957). The existence of fraud must be determined on a case by case basis, and from a review of the entire record. *Parks v. Commissioner*, 94 T.C. 654, 660 (1990). However, because fraud is rarely admitted, "the courts must generally rely on circumstantial evidence." *U.S. v. Walton*, 909 F.2d 915, 926 (6th Cir. 1990), citing *Traficant v. Commissioner*, 884 F.2d 258, 263 (6th Cir. 1989). Consequently, fraud may be established from "any conduct, the likely effect of which would be to mislead or conceal." *Walton*, 909 F.2d at 926, quoting *Spies v. United States*, 63 S.Ct. 364, 368

(1943). The failure to keep adequate records and the consistent underreporting of tax is strong evidence of fraud. *Wade v. C.I.R.*, 185 F.3d 876 (1999) (“There is no dispute (taxpayer) kept inadequate books and records, further suggesting fraud.”).

It is not known from what source the Taxpayer received \$7,905 from “prizes and awards” in 1997. However, the Taxpayer’s failure to report the income does not constitute fraud. The mere underreporting of tax is by itself insufficient to establish fraud, unless coupled with other circumstances showing a clear intent to evade tax. *Barragan v. C.I.R.*, 69 F.3d 543 (9th Cir. 1995). No “other circumstances” are present in this case.

Claiming an incorrect filing status also does not establish fraud. The form 1040EZ that the Taxpayer filed in 1997 states that “If single, enter \$6,800. If married, enter \$12,200.” The Taxpayer, who was married in 1997, entered the \$12,200 amount. He should have filed as single because his wife claimed head of family status. But the Taxpayer could not have known that from simply reading the return.

Finally, the Department claims that the Taxpayer’s failure to file Alabama returns before 1997 evidences fraud. But there is no evidence that the Taxpayer was required to file before 1997. And even if the Taxpayer was required to file returns before 1997, his failure to do so in no way establishes that his 1997 return was fraudulent.

The final assessments are affirmed. Judgment is entered against the Taxpayer for 1997 tax, penalty, and interest of \$544.30, and 2000 tax, penalty, and interest of \$3,079.60. Additional interest is also due from the date the final assessments were entered, February 10, 2005.

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

Entered December 13, 2005.

BILL THOMPSON
Chief Administrative Law Judge