

JOY L. AND ALAN L. HARDY  
2608 VENARO COURT  
MOBILE, AL 36693-3039,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 10-1017

### **PRELIMINARY ORDER**

The Revenue Department assessed Joy and Alan L. Hardy (together “Taxpayers”) for 2000 through 2009 income tax. Joy Hardy (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 May 17, 2011. The Taxpayers’ representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

The Taxpayers filed their Alabama income tax returns for the subject years in June and July 2010. They requested refunds on their 2001, 2002, and 2003 returns. The Department denied the refunds because the two year statute of limitations for granting the refunds had expired. Code of Ala. 1975, §40-2A-7(c)(5)a. It also assessed the Taxpayers for the \$50 late filing penalty for those years.

The Taxpayers paid the reported tax due on their 2004 through 2009 returns. The Department first applied the payments to accrued interest, which resulted in some additional tax due. It also assessed the Taxpayers, jointly, for the late filing and late payment penalties, and the failure to file estimate return penalty for each year.

The Taxpayer appealed and claimed innocent spouse status. She stated in her appeal letter that she timely signed the couple’s 2004 through 2009 Alabama returns, but

that unknown to her, her husband never filed them. She stated that her husband also requested and was given over \$200,000 from her trust fund account to pay the tax due in 2004 through 2009, but that her husband apparently used the money for other purposes. She inadvertently discovered that the returns had not been filed, or the tax paid, when she received an IRS delinquent notice in the mail in April 2010. She immediately hired a CPA to complete and file the delinquent returns, and pay the taxes due. The Taxpayer submitted an affidavit from her husband supporting her assertions.

A person may be relieved of liability as an innocent spouse if (1) they filed a joint return which had an understatement of income due to erroneous items of the spouse, (2) when they signed the joint return they did not know or have reason to know that there was an understatement of tax, and (3) taking into account all facts and circumstances, it would be unfair to hold the innocent spouse liable for tax on the unreported income. 26 U.S.C. §6015.<sup>1</sup>

Innocent spouse relief technically does not apply in this case because there was no hidden understatement of income on the Taxpayers' returns for the subject years. Rather, the Taxpayer is only requesting that she not be held responsible for the late penalties in issue based on the actions, or inactions, of her husband, i.e., that she be absolved of

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<sup>1</sup>Before 1998, the federal innocent spouse provision was at 26 U.S.C. §6013(e). That section was repealed and the current innocent spouse provision at §6015(b) was enacted in 1998 as part of the IRS Restructuring and Reform Act of 1998 (P.L. 105-206). That legislation generally made it easier for individuals to qualify for innocent spouse relief. It also allows a spouse to elect for separation of liability treatment, §6015(c), and also equitable relief, §6015(f). However, Alabama law only allows for innocent spouse relief at §40-18-27(e). For a good explanation of the current federal statute, see, Harper, *Federal Tax Relief for Innocent Spouses: New Opportunities Under the IRS Restructuring and Reform Act of 1998*, 61 Ala. Law. 204 (May 2000).

liability for the penalties for reasonable cause.

The Department's Taxpayer Advocate previously reviewed the matter and found that "these taxpayers have not provided reasonable cause for waiving the late filing, late payment, and estimate penalties." Department Interoffice Memorandum from Taxpayer Advocate. It is not known, however, what facts or information the Advocate's office reviewed before making its decision.

Under the circumstances, the matter will be returned to the Taxpayer Advocate for a determination as to whether the penalties in issue can be waived against the Taxpayer, Joy Hardy, for reasonable cause. The penalties would, of course, still apply against Alan Hardy. The Taxpayers' representative, CPA Charles Moseley, should contact the Taxpayer Advocate's office at 334-242-1055 for the purpose of providing any information the Advocate may need. The Department should notify the Administrative Law Division when the Advocate's review is completed. An appropriate Order will then be entered.

Entered May 23, 2011.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
Charles D. Mosley, Jr., CPA  
Kim Peterson  
Joe Walls (w/enc.)