

DONALD R. & MARIE P. OSWALD
8778 MOBILE ROAD
GREENVILLE, AL 36037,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 11-911

**FINAL ORDER ON TAXPAYERS'
APPLICATION FOR REHEARING**

This appeal involves final assessments of 2008 and 2009 Alabama income tax entered against the above Taxpayers. A Preliminary Order was entered directing the Taxpayers to submit records substantiating the dependent deductions claimed on their 2008 and 2009 returns to the Administrative Law Division by January 27, 2012. The Order further stated that if the records were not received by the above date, the final assessments would be affirmed. The Taxpayers failed to submit the records, and a Final Order affirming the assessments was entered on February 13, 2012.

The Taxpayers timely applied for a rehearing. A hearing was conducted on July 26, 2012. The Taxpayers attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayers claimed Mrs. Oswald's parents, Thomas and Lillie Plant, as dependents on their Alabama income tax returns for the subject years. The Department requested records verifying that the Taxpayers were entitled to claim the parents as dependents. The Taxpayers failed to submit any records. The Department consequently disallowed the unsubstantiated deductions and entered the final assessments in issue.

Alabama allows a taxpayer to claim a dependent deduction for every person dependent upon the taxpayer, but only if the taxpayer provides over one-half of the person's support in the subject year. See, Code of Ala. 1975, §40-18-19(9). The term "dependent" is also defined at §40-18-19(9) to include a taxpayer's mother and father.

Marie Oswald (Taxpayer") conceded at the July 26 hearing that she and her husband are not entitled to claim her parents as dependents on their 2008 return because the parents filed a separate Alabama return for that year. Concerning 2009, she explained that her parents are elderly and in bad health. They live entirely on Social Security, and received total Social Security payments of \$18,217 in 2009. The Taxpayer testified that she paid her parents' house mortgage of \$778 a month in 2009. She also bought some food and prescription medicines for her parents as necessary in the year. She wrote checks to pay the mortgage, but bought the other items for her parents with cash.

The mortgage payments the Taxpayer made for her parents totaled \$9,336. Consequently, the Taxpayer had to spend almost \$9,000 on her parents in 2009 for the total to be over one-half of the parents' support in the year. The Taxpayer may have spent that amount on her parents in the year, but there is no evidence she did so.

The Taxpayer is obviously a loving daughter that spends a great deal of time and energy caring for her parents. But providing love and care is, by itself, not sufficient to be allowed a dependent deduction. Rather, as indicated, a taxpayer claiming the deduction must provide at least one-half of the dependent's financial support. The Taxpayers obviously spent some money supporting the Taxpayer's parents in 2009 (and in other years), but I cannot assume that the Taxpayer spent almost \$9,000 on food and medicine on her parents in 2009, in addition to the mortgage payments.

I sympathize with the Taxpayers, but the final assessments must be affirmed. Judgment is entered against the Taxpayers for 2008 tax and interest of \$207.04, and 2009 tax and interest of \$433.74. The 2009 late payment penalty is waived for cause. Additional interest is also due from the date the final assessments were entered, October 24, 2011.

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

Entered August 3, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Marie & Donald Oswald
Kim Peterson