

MELISSA A. HENDRIX &
RAYMOND M. MALONE
351 Bowden Drive
Auburn, AL 36830,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-202

FINAL ORDER

The Revenue Department assessed 1995 Alabama income tax against Melissa A. Hendrix and Raymond M. Malone (ATaxpayers@). Melissa Hendrix Garland (ATaxpayer@) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a.¹ A hearing was conducted on June 20, 2001. The Taxpayer attended the hearing. Assistant Counsel Gwen Garner represented the Department.

The issue in this case is whether the Taxpayer should be relieved of liability for the 1995 income tax in question.

The Taxpayer was married to Raymond Malone in 1995. The couple filed a joint 1995 Alabama income tax return on which they reported only the income earned by the Taxpayer. The Taxpayer and Raymond Malone divorced in 1998.

The Department received IRS information indicating that the Taxpayer and her ex-husband had failed to report income of \$9,851 on their 1995 federal return. That income had been earned by Raymond Malone during the year. The Department assessed the Taxpayers jointly based on the IRS information.

¹The Taxpayer's name was Melissa Malone in 1995. For some reason, the Department used her maiden name, Hendrix, on the final assessment. However, that clerical error has no effect on her liability, if any, for the tax in issue.

The Taxpayer claims she was unaware that her ex-husband had failed to report his income on their joint 1995 Alabama return. She claims that because of financial difficulties brought on by her ex-husband's activities, she filed for Chapter 13 bankruptcy protection in 1996.

Taxpayers that file a joint Alabama income tax return are jointly and severally liable for the tax due for the year. Code of Ala. 1975, § 40-18-27(e). However, that same statute provides that an innocent spouse may be relieved of an otherwise joint liability to the same extent as allowed by the Internal Revenue Code for federal tax purposes.

For liabilities arising before July 22, 1998, an innocent spouse could be relieved of liability for federal purposes if (1) the spouse filed a joint return which included a substantial understatement of tax attributable to erroneous items of the other spouse, (2) the innocent spouse did not know or have reason to know that there was a substantial understatement, and (3) under all facts and circumstances, it would be unfair to hold the innocent spouse liable for the tax attributable to the understatement. 26 U.S.C. § 6013(e).²

²The § 6013(e) innocent spouse provision was repealed effective July 22, 1998 upon passage of 26 U.S.C. § 6015. Section 6015 includes expanded innocent spouse and other equitable relief provisions. However, § 6015 applies only to liabilities that accrued after July 1998, and thus does not apply in this case. Rather, the pre-1998 innocent spouse provision controls.

The above factors must be decided on the facts and circumstances of each case. Unfortunately for the Taxpayer, however, pre-1998 federal law specified that the innocent spouse provision did not apply to any liability under \$500. 26 U.S.C. § 6013(e)(3) (repealed July 22, 1998). The additional tax due in this case is \$495. Consequently, the Taxpayer cannot by statute qualify for innocent spouse status.³

The Taxpayer also is not relieved of liability as a result of her 1996 bankruptcy petition. Tax not assessed by the bankruptcy filing date, but assessable on that date, is not dischargeable in bankruptcy. 11 U.S.C. § 507(a)(8)(A)(iii). That section applies in this case.

The final assessment is affirmed. Judgment is entered jointly and severally against Melissa Hendrix (Garland) and Raymond M. Malone for 1995 tax, penalty, and interest of \$731.78. Under the circumstances, however, the Department should first attempt to collect the amount due from Raymond M. Malone. The Taxpayer provided Mr. Malone's address as 1412 Road Lane, Sulphur Springs, Texas 75482. His work telephone number is 903-707-1941.

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

Entered June 21, 2001.

³It is also unclear if the Taxpayer otherwise qualified for innocent spouse status.