

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 87-231

FERDINAND F. WEIL, SR.
1919 3rd Avenue, North
Birmingham, AL 35203,

§

§

Taxpayer.

§

ORDER

The Revenue Department assessed income tax against Ferdinand F. Weil, Sr. ("Taxpayer") for the calendar years 1983, 1984 and 1985.

The Taxpayer appealed to the Administrative Law Division and a hearing was scheduled for July 28, 1988. The hearing was continued until September 7, 1988. The Taxpayer's representative, Mr. Charles W. Hullett, was notified of the September 7th hearing by certified mail dated July 21, 1988.

However, at the time and location set for hearing, the Taxpayer failed to appear. The hearing proceeded, with assistant counsel Duncan Crow appearing for the Department. Based on the evidence presented by the Department, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer was divorced in 1978. The divorce decree dictated that the Taxpayer must maintain two life insurance policies totaling \$75,000.00. The Taxpayer's ex-wife was named as irrevocable beneficiary on both policies, with the couple's children as secondary beneficiaries. The Taxpayer was also required to maintain the policies unencumbered by any loans unless

agreed to by the ex-wife.

The Taxpayer paid the premiums on both policies. The Taxpayer maintained physical possession and technical ownership of the policies, and also retained the right to receive or direct receipt of the policy dividends.

The Taxpayer deducted the insurance premiums as alimony payments on his Alabama individual income tax returns for the subject years.

The Department reviewed the returns, disallowed the premiums as deductions, and based thereon entered the assessments in dispute.

The Taxpayer subsequently appealed to the Administrative Law Division.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-14(18) provides a deduction for alimony and separate maintenance payments to the same extent as allowed by 26 U.S.C. §215.

Insurance premiums paid pursuant to a divorce decree may be taxable to the wife and deductible by the husband. Stevens v. C.I.R. 439 F.2d 69. To be deductible by the husband, there must be "an assignment to the divorced wife of all incidents of policy ownership and upon the irrevocable designation of the wife as beneficiary and their children as contingent beneficiaries of the policy." Stevens, supra, at page 72. Retention of rights and benefits under the policy will defeat any attempted alimony deduction by the paying ex-spouse.

In the present case, the Taxpayer's ex-wife was designated as irrevocable beneficiary, with the children as secondary

beneficiaries. However, the Taxpayer retained ownership of the policy, could borrow money against the policy (although the divorce decree required prior permission from the ex-wife), and most importantly, the Taxpayer had the authority to receive dividends from the policy. Consequently, the Taxpayer retained "incidents of policy ownership" sufficient to defeat the claimed deductions. See also Piel v. Commissioner of Internal Revenue, 340 F.2d 887 and Hyde v. Commissioner of Internal Revenue, 301 F.2d 279.

The above considered, the premium payments were properly disallowed as alimony deductions under §40-18-14(18). Accordingly, the assessments in issue are correct and should be made final by the Department, with interest as required by statute.

Entered this the 13th day of September, 1988.

BILL THOMPSON
Chief Administrative Law Judge