

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 89-112

RUTH DEASON
P.O. Box 219
Elkmont, AL 35620,

§

§

Taxpayer.

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FINAL ORDER

Ruth Deason ("Taxpayer") claimed a refund on her 1986 Alabama individual income tax return. The Department denied the refund and applied it to an outstanding liability for an earlier year. The Taxpayer appealed to the Administrative Law Division and a hearing was scheduled for May 11, 1989. The Taxpayer was notified of the hearing by certified mail on April 7, 1989. However, at the time and location set for the hearing, the Taxpayer failed to appear.

The Department was represented at the hearing by assistant counsel Gwendolyn Garner. Based on the evidence presented at the hearing, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The Taxpayer was married to Mauriece Deason ("husband") during 1983 and 1984. A 1983 Alabama income tax return was filed in the name of both parties and indicated a filing status of married, filing jointly. However, the return was signed by the husband only. A 1984 return was filed in the husband's name only, but again indicated a filing status of married, filing jointly. The

signed names of both parties were included on the signature block of the 1984 return. The only income reported in both years was earned by the husband. The tax as reported on both returns was not paid and the Department subsequently entered joint preliminary assessments of \$1,457.58 for 1983 and \$1,870.52 for 1984 against the couple in May, 1987.

The Deasons were divorced in May, 1985. The Taxpayer filed a 1986 individual income tax return with a filing status of unmarried, head of household. The 1986 return claimed a refund of \$182.00.

The Department applied the 1986 refund due the Taxpayer to the joint liability assessed for 1983. The balance of the deficiencies for both years was eventually paid by the husband.

The Taxpayer objected, stating that she did not owe Alabama tax for 1983 or 1984 and that her 1986 refund should not have been used to pay either of those liabilities. The Taxpayer's position is that she did not authorize her husband to file joint returns and that she did not sign either return, and thus should not be held liable for either year.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-27 provides that a husband and wife filing a joint return are jointly and severally liable for the tax due thereon. However, both parties must sign a joint return, see Department Regs. 810-3-27-.01 and 810-3-27-.02. A return that

purports to be a joint return but is signed by only one party is in effect an individual return. The Department can either return the document for the missing signature, or treat the return as an individual return for the signing party and make the necessary adjustments.

In the present case, the Taxpayer's signature or signed name does not appear on the 1983 return. Consequently, she cannot be held liable for tax in that year.

However, the Taxpayer's signed name does appear on the 1984 return. The Taxpayer argues that she did not sign the return. However, the existence of her signed name on the return is prima facie evidence that the return was actually signed by her, see 26 U.S.C.A. §6064, and U.S. v. Cashio, 90 S. Ct. 1234, 397 U.S. 1007.

Consequently, the Taxpayer was liable for the joint liability for 1984, and the Department thus correctly applied the 1986 refund to the amounts due for 1983/1984.

It is technically immaterial that the refund was applied to the 1983 liability instead of the 1984 liability, as the result would have been the same, denial of the refund due for 1986.

The above considered, the refund claimed by the Taxpayer on her 1986 return was properly applied to the outstanding liability for 1983/1984, owed in part by the Taxpayer. This order shall constitute the final order for purposes of judicial review according to the provisions of §41-22-20, Code of Alabama 1975.

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Done and ordered this 23rd day of May, 1989.

JAMES M. SIZEMORE, JR., Commissioner