

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. INC. 89-136

TONY & GLENDA BAKER
Route 1
Phil Campbell, AL 35581,

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Taxpayers.

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FINAL ORDER

The Revenue Department assessed income tax against Tony and Glenda Baker ("Taxpayers") for the calendar year 1985. The Taxpayers appealed to the Administrative Law Division and a hearing was scheduled for 2:00 p.m., December 7, 1989. The Taxpayers were notified of the hearing by certified mail on November 9, 1989, but failed to appear. The hearing proceeded with assistant counsel Mark Giffin representing the Department. The following Final Order is hereby entered based on the evidence submitted by the Department.

FINDINGS OF FACT

The Taxpayers filed a 1985 "short form" 40A Alabama income tax return on February 26, 1986. The return reported gross income of \$10,056.00. The Department subsequently received IRS information indicating that the Taxpayers had additional unreported income of \$8,083.00 in the subject year. As a result, the Department increased the Taxpayers' income by \$8,083.00, allowed an additional optional deduction of \$1,617.00, and based thereon entered the assessment in issue.

The Taxpayers subsequently provided the Department with a copy of an amended 1985 federal return which claimed business deductions equal to the additional income reported by the IRS. The Taxpayers' position presumably is that the business deductions claimed on the amended federal return should be allowed by the Department to offset the additional income, in which case no additional tax would be due.

CONCLUSIONS OF LAW

A taxpayer with gross income of less than \$20,000 (\$40,000 if joint return) may file a "short form" 40A return as provided by Code of Ala. 1975, 540-18-81. Itemized deductions or business losses cannot be claimed by any taxpayer filing a form 40A, and the election to file a short form is "irrevocable for the taxable year for which made and cannot be changed after the time prescribed by law for filing the return", see §40-18-81(c).

In the present case, the Taxpayers filed the short form for 1985 and are now in effect attempting to change their election by claiming the business-related deductions on the federal amended return. However, the Taxpayers had knowledge concerning their total income and deductions for 1985, including the omitted income, at the time they filed their original 1985 return. They chose to file the short form allowed by §40-18-81 at that time and cannot now be allowed to "amend" the return as a result of the IRS picking up additional taxable income for the subject year. Accordingly,

the Department properly increased the Taxpayers' income by the omitted amount and should not allow any deductions relating thereto except the additional optional deduction resulting from the increase in income.

The above considered, the Department is hereby directed to make the assessment final, with appropriate interest to the date of entry of the final assessment.

Entered this the 12th day of December, 1989.

BILL THOMPSON
Chief Administrative Law Judge