

PETER S. & REGINA J. MOSS
1846 DARBY DRIVE APT. B6
FLORENCE, AL 35630-2668,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 11-308

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

PRELIMINARY ORDER ON DEPARTMENT'S APPLICATION FOR REHEARING

This case involves a joint final assessment of 2007 income tax entered against Peter and Regina Moss. Regina Moss ("Taxpayer") appealed to the Administrative Law Division, claiming that she should be relieved of liability as an innocent spouse. She also submitted a May 27, 2010 letter from the IRS indicating that she had requested innocent spouse relief from the IRS for 2007. The Administrative Law Division construed the letter as indicating that the relief had been granted. A Final Order was thus entered on May 19, 2011 deleting the Taxpayer from the joint assessment.

The Department has timely applied for a rehearing. It claims that the IRS allowed the Taxpayer partial relief under 26 U.S.C. §6015(c), and that Alabama only accepts complete innocent spouse status under 26 U.S.C. §6015(b).

Alabama adopted the federal innocent spouse provision by Act 87-641 in 1987. The provision, which currently reads as it did when initially enacted, provides that "an innocent spouse shall be relieved of certain liabilities to the same extent and in the same manner as granted by the Internal Revenue Code for federal income tax purposes." Code of Ala. 1975, §40-18-27(e).

In 1987, the federal innocent spouse provision was found at 26 U.S.C. §6013(e). That section was repealed by the IRS Restructuring and Reform Act of 1998 (P.L. 105-206), and replaced by 26 U.S.C. §6015(b), which greatly expanded the scope of innocent spouse relief. The 1998 Act also added a “separation of liability” election for divorced and separated taxpayers pursuant to 26 U.S.C. §6015(c), and an equitable relief provision at 26 U.S.C. §6015(f). Unfortunately, the Alabama Legislature has not amended §40-18-27(e) to include the new types of spousal relief enacted for federal purposes by the 1998 Act. See generally, *Shaw v. State of Alabama*, Docket No. Inc. 08-447 (Admin. Law Div. 3/9/2009); *Laney v. State of Alabama*, Docket No. Inc. 02-151 (Admin. Law Div. 8/29/2002).

A review of the May 27, 2010 IRS letter submitted by the Taxpayer shows that she was granted partial separate liability relief under 26 U.S.C. §6015(c), not full innocent spouse relief under §6015(b). The Department is thus correct that the Taxpayer is not technically entitled to relief as an innocent spouse.

The Taxpayer may, however, be granted relief by the Department’s Taxpayer Advocate pursuant to Code of Ala. 1975, §40-2A-4(b)c. That subparagraph provides that “[a] taxpayer assistance order shall grant relief as deemed appropriate” by the Taxpayer Advocate, which presumably includes equitable relief similar to separate liability status allowed by the IRS at 26 U.S.C. §6015(c).

This Preliminary Order and the IRS documents submitted by the Taxpayer have been submitted to the Taxpayer Advocate for review. I note that the IRS information shows that the Taxpayer was relieved of \$14,855 in federal tax for 2007 and remains liable for \$550. She was also relieved of liability for \$2,970 in penalties and remains liable for \$111.

Appropriate action will be taken after the Taxpayer Advocate responds.

Entered May 24, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Regina J. Moss (w/enc.)
Stoney Trammell
Joe Walls (w/enc.)