

IN RE:

FILED

IN BANKRUPTCY NO.:

MADELEINE K. McDONALD,

91-21680-13

Debtor.

APR - 3 1992

FINDINGS AND CONCLUSIONS

CLERK, U.S.
BANKRUPTCY COURT
CASE NO.

INTRODUCTION

On October 25, 1991, at the conclusion of the final hearing on the debtor's objection to the claim of the Internal Revenue Service, I entered preliminary findings and conclusions, determining all disputed deductions, omissions of income, and credits to have been "grossly erroneous" within the meaning of 26 USC § 6013(e)(2) except for \$1,548 of a \$3,472 investment credit pertaining to 2707 South Avenue Associates, (which although erroneous, was not gross), claimed on the 1981 joint tax return of the debtor and her then-husband. I further determined that with respect to these grossly erroneous items, the debtor, as the "other spouse," was entitled to the relief provided by Section 6013(e)(1). Because neither Section 6013(e) nor any other section of the Internal Revenue Code or Treasury Regulations provides guidance as to how the computation under Section 6013(e) is to be performed, I asked the parties to submit post-trial briefs on the appropriate calculations. After reviewing these briefs, I make the following supplemental findings and conclusions:

FINDINGS OF FACT

1. The 1981 tax return ("return") filed by the debtor, Madeleine K. McDonald, and her then-husband, John R. McDonald, understated tax liability by the stipulated amount of \$20,939.

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2. The penalty applicable to the \$20,939 tax deficiency is \$1,047.

3. The total 1981 tax deficiency and penalty is \$21,986.

4. The 1981 return contained \$6,143 in grossly erroneous deductions, specifically:

- a. \$5,000 deduction overstating partnership interest expense;
- b. \$236 unsupported deduction pertaining to Villa Piazza of Menominee;
- c. \$678 Section 1244 stock loss deduction pertaining to the Country Kitchen of Good Hope Road;
- d. \$99 erroneous interest expense deduction pertaining to penalties arising from late payment of real estate taxes; and
- e. \$130 erroneous sales tax-schedule A deduction.¹

5. The return omitted income in the amount of \$16,712, specifically:

- a. \$16,424 Section 1245 gain on the sale of an aircraft (\$53,331 in income offset by a \$36,907 deduction; and
- b. \$288 in unreported income.

6. The return contained a \$13,000 investment credit pertaining to D & MCD (FoodSource) stipulated by the parties as grossly erroneous.

7. The return contained a \$3,472 investment credit pertaining to 2707 South Avenue Associates, of which \$1,924 was an allowable credit, and \$1,548 was an erroneous, but not grossly erroneous, credit.

8. The total of the grossly erroneous items is \$29,712

¹Because the \$18,400 FoodSource loss deduction stipulated by the parties as part of their settlement agreement to be grossly erroneous was not added to income in arriving at the \$20,939 tax liability, it is omitted from the total grossly erroneous deductions. To include it in the total under such circumstances would be unfair to the Internal Revenue Service.

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(\$16,712 in omitted income and \$13,000 in credits), plus the amount of the tax benefit obtained from the \$6,143 in grossly erroneous deductions.

9. Total grossly erroneous items exceed the tax deficiency and penalty by a minimum of \$7,726 (\$29,712 less \$21,986).

CONCLUSIONS OF LAW

1. 26 USC § 6013(e)(1) provides that the innocent spouse, (here, the debtor), "shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement ["of tax attributable to the grossly erroneous items of one spouse"]." (emphasis supplied).

2. In determining whether liability is attributable to the grossly erroneous items of one spouse, total grossly erroneous items must be netted against total tax liability.

3. If total tax liability exceeds total grossly erroneous items, the innocent spouse is liable for the excess tax liability.

4. If total tax liability is less than total grossly erroneous items, the total tax liability is attributable to the grossly erroneous items, and the innocent spouse is not liable for any of the deficiency.

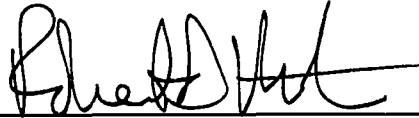
5. Because the total tax liability in this case (\$21,986) is less than the total grossly erroneous items (more than \$29,712), the total tax liability is attributable to the grossly erroneous items.

6. None of the \$21,986 tax liability is attributable to the

\$1,548 tax credit claimed on the return.

7. The debtor is not liable for payment of any part of the \$21,986 total tax liability.

Dated April 3, 1992.



ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WISCONSIN

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CLERK, U.S.
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ORDER

The court having this day entered its findings and conclusions in the above-entitled matter;

IT IS HEREBY ORDERED that, pursuant to 11 USC § 502(b), the claim of the Internal Revenue Service shall be allowed (for tax liability relating to the 1983 tax year) in the amount of \$1,012.45.

Dated April 3, 1992.



ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

IN RE:

IN BANKRUPTCY NO.:

MADELEINE K. McDONALD,

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FINDINGS, CONCLUSIONS AND ORDER

Copies of this Findings, Conclusions, and Order have been mailed to the following parties:

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