STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 90-277
JAMES M. & MYRTLE E. MCELMURRY P.O. Box 2767 Mobile, AL 36652,	§	
Taxpayers.	§	

FINAL ORDER

The Revenue Department assessed income tax against James M. and Myrtle E. McElmurry (Taxpayers) for the year 1987. The Taxpayers paid the tax to stop interest from running and then petitioned for a refund of the tax. The Department denied the refund and the Taxpayers appealed to the Administrative Law Division. A hearing was conducted on September 16, 1991. John J. Crowley, Jr. appeared for the Taxpayers. Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence submitted at the hearing including the transcript, administrative record and Recommended Order of the Administrative Law Judge.

FINDINGS OF FACT

This is a casualty loss case.

The Taxpayers purchased 202.5 acres of undeveloped property in Baldwin County, Alabama in 1980. The Taxpayers discovered in August, 1983 that the property had been contaminated by the seepage of toxic chemicals from an adjacent chemical plant. The chemicals were buried and/or spilled at the chemical facility prior to 1979.

There is no evidence indicating how the chemicals were spilled, when the seepage onto the Taxpayers' property began, or how long it continued.

The Taxpayers joined eight adjacent landowners and sued the owner of the chemical facility in 1984. The Taxpayers won and were awarded $50,000.00 in damages in 1987.

The Taxpayers claimed a casualty loss deduction on their 1987 Alabama return based on the difference between the appraised before and after values of the property, less the $50,000.00 judgment (less legal fees) received in 1987. The Department denied the deduction because (1) the casualty was not caused by a sudden, unexpected or unusual event, and (2) the Taxpayers could not prove that the loss was sustained in 1987.

CONCLUSIONS OF LAW

Code of Ala . 1975, §40-18-15(a)(6) provides a deduction for losses "arising from fires, storms, shipwrecks and other casualty . . .". The above statute is modeled after the federal casualty loss statute, 26 U.S.C. §165(c)(3). In such cases, federal case law can be followed in construing the Alabama statute. Best v. State, Department of Revenue, 417 So.2d 197 (1981).

To be deductible, a loss must be caused by a sudden, unexpected or unusual event. Maher v. C.I.R., 680 F.2d 91 (1982). A loss resulting from progressive and gradual deterioration through a steadily operating cause does not constitute a sudden

catastrophic event within the purview of the statute. Rosenburg v. Commissioner, 198 F.2d 46 (1952).

A deduction must be narrowly construed and the taxpayer bears the burden of proving that the deduction should be allowed. Dosher v. U.S., 730 F.2d 375 (1985); Doyal v. C.I.R., 616 F.2d 1191 (1980). In this case there is no evidence to support the Taxpayers' argument "that entry of the contaminating chemicals into the Taxpayers' land was a sudden invasion." Taxpayers' brief at p. 2. The insidious seepage of chemicals over an indefinite period is not "a sudden invasion." The Taxpayers also cannot prove that the initial spill or spills at the chemical facility were caused by a sudden accident or event, as opposed to the gradual leakage or sporadic dumping of small amounts over an extended period. The Taxpayers have failed to prove that the contamination of the property or the chemical spill(s) that led to the contamination was caused by a sudden, unexpected event within the scope of §40-18-15(a)(6), and therefore the deduction must be denied.

The above finding pretermits a discussion of whether the loss, if allowable, should have been claimed in 1987.

This is a Final Order and may be appealed pursuant to Code of Ala. 1975, §41-22-20.

Entered on November 25, 1991.

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BILL THOMPSON

Chief Administrative Law Judge