

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 91-109

DONNIE AND CYNDIA REEVES
P.O. Box 184
Bellwood, AL 36313,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed income tax against Donnie and Cyndia Reeves (Taxpayers) for the years 1987 and 1988. The Taxpayers appealed to the Administrative Law Division and a hearing was scheduled for June 13, 1991. The Taxpayers were notified of the hearing by certified mail, but failed to appear. The hearing proceeded with assistant counsel Dan Schmaeling, Esq. representing the Department. This Final Order is based on the evidence submitted by the Department.

FINDINGS OF FACT

The Taxpayers filed Alabama income tax returns for 1987 and 1988 and received refunds of \$1,145.00 in 1987 and \$552.00 in 1988.

The Department audited the Taxpayers and (1) disallowed an IRA deduction claimed in 1987 and a credit for retirement contributions in 1988, (2) included as gross income refunds of federal tax received in both years, and (3) disallowed various itemized deductions. The preliminary assessments in issue are based on the above adjustments.

The largest adjustments involve casualty losses and home

mortgage interest claimed by the Taxpayers in both years.

The 1987 casualty loss is based on lightning damage to electrical equipment, the loss of a watch, and repairs to an automobile. The Department allowed the watch and car repairs in full, but reduced the loss claimed for the electrical equipment by requiring a depreciated value for the destroyed property. The Taxpayers had computed the loss based on replacement value.

The 1988 casualty loss was disallowed in full because the Taxpayers had not settled with their insurance company before the close of the year and had also sued the company for damages. The Taxpayers eventually settled the lawsuit in February, 1990.

Finally, the Taxpayers included mortgage points in full as part of their home interest deduction in both years. The Department amortized the points over the life of the mortgages.

CONCLUSIONS OF LAW

The burden is on a taxpayer to establish by adequate records that a deduction should be allowed, and without such records the deduction must be denied. U. S. v. Wodtke, 627 F.Supp. 1034.

In this case, the Department properly disallowed the IRA deduction in 1987 because the Taxpayers failed to provide verifying records. The 1988 retirement contribution was disallowed because it is not exempt under Alabama law. The Department also properly included federal tax refunds as gross income in both years.

The 1987 casualty loss was properly reduced to reflect a depreciated value for the damaged property. The Taxpayers had erroneously used the full replacement value in computing the before fair market value for the equipment.

The Department disallowed the 1988 casualty loss in full because the Taxpayers were still negotiating with their insurance company at the end of the year. However, the Taxpayers should have been allowed the loss in full in 1988 and then reported any reimbursement in the year received (1990). See, Department Reg. 810-3-15.07(3). However, only the actual loss amount should be allowed in 1988.

Concerning the home interest deductions, the Department properly amortized the mortgage points over the life of the mortgage. See, 26 U.S.C. 5461.

The above considered, the 1987 assessment should be made final as entered, with applicable interest. The 1988 assessment should be adjusted as set out above and thereafter made final, with applicable interest.

Entered on the 25th day of June, 1991.

BILL THOMPSON
Chief Administrative Law Judge