

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. 91-140

BILLY H. & GAY DEAVERS
322 74th Street North
Birmingham, AL 35206,

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Taxpayers.

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FINAL ORDER

The Revenue Department assessed. income tax against Billy R. and Gay Deavers (Taxpayers) for the years 1986, 1987 and 1988. The Taxpayers appealed. to the Administrative Law Division, and a hearing was conducted on May 13, 1992. Billy H. Deavers (Taxpayer) appeared at the hearing. Assistant counsel Mark Griffin represented the Department.

FINDINGS OF FACT

The Taxpayer worked as a traveling salesman during 1986, 1987 and 1988 and claimed various business related deductions on his Alabama returns for those years.

The Taxpayer kept some receipts, but primarily the deductions were based on the Taxpayer's travel diary and a daily log showing his business travel and related expenses. The Taxpayer claims that the log and diary were approved by the IRS in the mid-1960's and that additional records are not required.

The Department audited the Taxpayer and allowed only the deductions for which verifying receipts were provided. Some unverified meal and lodging expenses were allowed if the Taxpayer's

records showed that he was out of town on business at the time. The examiner also allowed an estimated mileage expense of between 25,000 and 26,000 miles each year.

The Taxpayer provided the examiner with additional motel and hotel receipts during the audit in support of his deductions. The examiner subsequently discovered that the receipts had been forged.

When confronted, the Taxpayer admitted that he had forged the records in an effort to verify his log entries. The Department subsequently assessed a 50% fraud penalty in each year based on the forged records.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(1) is modeled after 26 U.S.C.A. §5162 and allows a deduction for all ordinary and necessary expenses incurred in a trade or business. In such cases, federal case law and authority can be used in interpreting the Alabama statute. Best v. State, Department of Revenue, 417 So.2d 187 (1981).

The Taxpayer argues that his daily, log and diary entries are sufficient without supporting records. However, federal law, at 26 U.S.C.A. §274, requires a taxpayer to keep specific records sufficient to verify all claimed deductions. A taxpayer's unsupported testimony without adequate records is not sufficient to prove a deduction. See also, Dept. Reg. 810-3-5-.02. Consequently, the Taxpayers self-serving and unsupported diary and

log book entries are not adequate to verify his claimed deductions.

The Department applied the 50% fraud penalty levied at §40-18-49 because the Taxpayer admittedly forged receipts during the audit in an attempt to verify his claimed expenses. However, the fraud penalty can be applied only if the Taxpayer intended to commit fraud at the time he filed the returns. The Department has not proved that the returns were filed with the willful intent to evade tax. Rather, the false records were prepared after the returns were filed in an effort to satisfy the Department examiner. The fact that the Taxpayer failed to keep adequate records does not by itself prove fraud. Biggs v. U.S., 440 F.2d 1.

By forging the records the Taxpayer may have violated one or more criminal statutes, specifically §40-29-110 (attempt to evade or defeat tax) and §40-29-116 (fraudulent returns, statements, or other documents), but the civil fraud penalty levied at §40-18-49 does not apply.

The above considered, the fraud penalties should be removed and the assessments should then be made final, with applicable interest.

Entered on June 24, 1992.

BILL THOMPSON
Chief Administrative Law Judge