

STATE OF ALABAMA §
DEPARTMENT OF REVENUE, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v. §

DOCKET NO. INC. 91-207

WILLIAM T. & BRENDA J. ESCUE §
P.O. Box 305
Tanner, AL 35671, §

Taxpayers. §

FINAL ORDER

The Revenue Department assessed income tax against William T. and Brenda J. Escue (Taxpayers) for the years 1988 and 1989. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on November 8, 1991. James R. Hinson, Jr. represented the Taxpayers. Assistant counsel Dan Schmaeling appeared for the Department.

FINDINGS OF FACT

The Taxpayers donated a road (Escue Drive) to Limestone County in 1986 and claimed the road as a charitable deduction on their 1986 Alabama income tax return. The Taxpayers carried the resulting net operating loss forward to 1988 and 1989. The Department disallowed the deduction and the resulting loss carryforwards and entered the preliminary assessments in issue.

The relevant facts are undisputed.

William T. Escue (Taxpayer) purchased 40 acres of undeveloped farmland near Tanner in Limestone County, Alabama in 1975. The Taxpayer used the land for agricultural purposes until 1985 when he began developing the property as Tanner Industrial Park.

Escue Drive was constructed by the Taxpayer in mid-1986 to provide access to the east side of the Park. The Taxpayer concedes that the road was necessary to develop and sell lots in the Park.

A diagram of the Industrial Park is attached. As shown, Escue Drive runs from north to south through the east side of the Park and dead-ends after approximately 1200 feet. Eight lots are platted on the east side of the road. Lots 5, 6, 7 and 8 were sold by the Taxpayer for between \$12,500 and \$14,500 each. Lot 2 was sold to the county at a reduced price and is now used as a fire station.

A U.S. Post Office is located on the northeast corner of the Park and a Christian food mission leases a lot at the end of the road.

Lots 1, 3 and 4 are still for sale. The west side of the road and the remainder of the Park will be developed by the Taxpayer as demand dictates.

The road cost over \$90,000 and was constructed to exceed county road specifications. A former Limestone County Commissioner testified that the county routinely accepts all private roads if they meet or exceed county road specifications. The county then becomes responsible for maintaining and repairing the road in the future.

The Taxpayers claim that they should be allowed a charitable deduction because the road has promoted economic development and jobs in the county and may be used to expand and improve the county road system in the future. The Taxpayers submitted an appraisal to

the Department showing the fair market value of the road to be \$115,500.00.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(10) allows a charitable deduction in Alabama to the same extent as allowed under federal law at 26 U.S.C. §170.

To qualify for a charitable deduction, a gift of property must be motivated by a "detached and disinterested generosity". A gift cannot be deducted if the donor receives a direct economic benefit as a result. Stubbs v. U.S., 428 F.2d 885; Commissioner v. Duberstein, 363 U.S. 278, 81 S.Ct. 1190.

In this case, the Taxpayers directly benefited by constructing Escue Drive because it allowed them to develop and sell lots in the Industrial Park. The Taxpayers also benefited by donating the road to Limestone County because the county is now responsible for maintaining the road in the future. The Taxpayers will further benefit if the road is eventually tied into the county road system because the Park will be more accessible and thereby more attractive to potential buyers.

The Taxpayers gave up nothing by deeding the road to the county. The road still provides the same full access to the Taxpayers' property and can be used or expanded by the Taxpayers to further develop the Park in the future. Given the above facts, no charitable contribution should be allowed.

I also question the amount of the deduction claimed by the Taxpayers. Although no evidence was submitted on this issue, the fair market value appraisal of over \$115,000 apparently includes the \$90,000 cost of the road plus land value. However, I doubt whether a willing buyer could be found to buy a dead-end road on someone else's property. The county was not willing to build or buy the road, as shown by the following testimony of former County Commissioner Swanner -- ". . . but, evidently, the county wouldn't have built the road. I mean, the county doesn't just build a road to be doing it. They have to have a reason for it." (Transcript at page 39)

The Taxpayer is a civic-minded individual and development of the Industrial Park, including Escue Drive, has unquestionably helped Limestone County. However, no charitable deduction can be allowed because the Taxpayers primarily benefited by first building the road and then donating the road to the county.

The above considered, the assessments in issue are correct and should be made final, with applicable interest.

Entered on January 15, 1992.

BILL THOMPSON
Chief Administrative Law Judge