STATE OF ALABAMA, DEPARTMENT OF REVENUE, vs. JAMES R. & DIANNE H. NABORS 3831 Rosehill Road Millbrook, AL 36054, Taxpayers.	§ § § § § §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NO. INC. 92-111

FINAL ORDER

The Revenue Department assessed income tax against James R. and Dianne H. Nabors (Taxpayers) for the years 1989 and 1990. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on June 9, 1992. James Nabors appeared for the Taxpayers. Assistant counsel Beth Acker represented the Department. The relevant facts are set out below.

The Taxpayers owned a house in Mississippi that was destroyed by fire in October 1987. The Taxpayers filed an insurance claim relating to the house in late 1987. The insurance company initially refused to pay, but eventually settled with the Taxpayers in April 1989.

The Taxpayers were living in Alabama at the time of the fire but moved to Colorado after the fire in late 1987. The Taxpayers moved back to Alabama in February 1989.[1]

The Taxpayers did not claim a casualty loss from the fire on their 1987 Alabama return, but instead, claimed the loss on their 1989 Alabama return. The Taxpayers claimed the casualty loss for federal purposes on their 1988 federal return, and then carried over the loss as a NOL to their 1990 Alabama return.

The Department disallowed the 1989 casualty loss and the 1990 NOL carryover and consequently entered the assessments in issue. The Department does not dispute the amount of the claimed loss. Rather, the Department argues that the loss should have been claimed in 1987, the year in which the fire occurred. The Department, citing Reg. 810-3-15-.07, contends that the Taxpayers should have either (1) claimed the loss in full on their 1987 return and then reported any subsequent compensation as income in the year received, or (2) filed an extension for filing the 1987

[1] The Taxpayers' 1989 Alabama return shows them as part-year Alabama residents from August to December, 1989. However, the Department later accepted the Taxpayers' statement that they actually moved back to Alabama in February, and accordingly, computed their liability from that date.

return until such time as the amount of the insurance compensation could be finally determined.

The Taxpayers argue that they properly claimed the deduction in 1989 because the loss was not sustained for tax purposes until April 1989, when they settled with the insurance company and the amount of the loss could be finally determined. The Taxpayers cite federal Reg. 1.165-1(d) in support of their position.

The Alabama casualty loss statute, Code of Ala. 1975, §40-18-15(6), is modeled after its federal counterpart, 26 USCA §165. In such cases, federal authority should be followed in construing the similar Alabama statute. Best v. State, Dep't of Revenue, 417 So.2d 197.

For federal purposes, a casualty loss is not necessarily sustained in the year in which the catastrophic event occurs. Rather, if a taxpayer has a reasonable claim for recovery arising from the event, a loss is not sustained until it can be determined with reasonable certainty if and how much reimbursement will be received. Dawn v. C.I.R, 675 F.2d 1077; Hills v. C.I.R, 691 F.2d 997; Alison v. U.S., 73 S. Ct. 191, 344 U.S. 167; see also Reg. 1.165-1(d). Whether there is a reasonable prospect of recovery must be decided under the particular facts of each case. Dawn v. C.I.R., supra; Boehm v. Commissioner, 326 U.S. 287, 66 S. Ct. 120.

The Taxpayers in this case clearly had a reasonable chance of recovering from their insurance company. Consequently, a

deductible casualty loss was not sustained until the Taxpayers settled with their insurance company in April, 1989. Department Reg. 810-3-15-.07, insofar as it conflicts with the above federal authority, is rejected. Alabama's casualty loss statute should be construed in accordance with federal authority.

The above considered, the Taxpayers properly claimed the casualty loss in 1989 and their return for that year should be accepted as filed. There was initially some question whether the Taxpayers were Alabama residents in April 1989. If they were not, then the loss could not be allowed because the subject property was located out-of-state. See, §40-18-15(6). However, as previously noted, the Department now accepts that the Taxpayers moved back to Alabama in February 1989, prior to the loss, and consequently the deduction can be allowed.

I do not understand why the Taxpayers claimed the casualty loss on their 1988 federal return and then carried the federal loss over as a deduction to their 1990 Alabama return. Instead, because the Taxpayers elected not to carry the loss back, the balance of the 1989 Alabama loss should have been carried forward to 1990. However, the net result is the same because the loss claimed in 1990, $24,438.00, was less than the amount of the 1989 Alabama loss available for carryover to that year, $48,133.00. Accordingly, the NOL carryforward claimed on the 1990 return should also be allowed in full.

The above considered, the assessments in issue are voided and no additional tax is due by the Taxpayers in 1989 or 1990. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Alabama 1975, §40-2A-9(g).

Entered on January 19, 1993.

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BILL THOMPSON
Chief Administrative Law Judge