

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

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WILLIAM T. AND PATSY A. WILLIAMS
Route 2, Box 115-L
Alpine, AL 35014,

DOCKET NO. INC. 92-213

§

§

Taxpayers.

§

FINAL ORDER

The Revenue Department assessed income tax against William T. and Patsy A. Williams ("Taxpayers") for the year 1985. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on July 20, 1994. The Taxpayers' representative was notified of the hearing by certified mail, but failed to appear. Assistant counsel Jeff Patterson represented the Department.

The issue in this case is whether the Taxpayers should be allowed to deduct a \$10,000.00 loss on their 1985 Alabama return.

The Department received the Taxpayers' 1985 Alabama income tax return in April, 1989. The return showed a liability of \$869.00, but no money was remitted with the return. The Department reviewed the return and disallowed a \$10,000.00 "non-business bad debt" claimed on Schedule C. The assessment in issue is based on the tax due as reported, plus the tax resulting from the disallowance of the \$10,000.00 loss.

A non-business loss can be deducted under Alabama law only if it is incurred in a transaction entered into for profit. Code of

Ala. 1975, §40-18-15(a)(5). The bad debt in this case resulted from non-payment of a loan by William T. Williams to Stewart C. Holmes in 1984. There is no evidence indicating that the loan from Williams to Holmes involved a transaction entered into for profit.

To the contrary, the loan appears to be personal in nature because the commercial note evidencing the loan indicates that no interest was charged on the loan by Williams.

The burden is on the Taxpayers to prove their right to the claimed deduction. U. S. v. Wodtke, 627 F.Supp. 1034. The Taxpayers have failed to prove that the loss in question was a deductible loss under Alabama law. Accordingly, the claimed loss was properly disallowed by the Department.

The Taxpayers appealed the assessment in issue in May, 1992.

The Department acknowledged at the administrative hearing that it was at fault for the two year delay in holding the administrative hearing. Consequently, the Department requested a waiver of the penalty in the amount of \$220.00, which is equal to the interest that has accrued since the appeal was filed. The request is granted.

The assessment as entered, with a partial waiver of the penalty, is upheld. Judgment is entered against the Taxpayers for 1985 income tax in the amount of \$3,205.08 (\$3,425.08 less \$220.00).

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on July 22, 1994.

BILL THOMPSON
Chief Administrative Law Judge