

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

vs.

§

NICK AND VANGALIA KORDOMENOS  
306 Thornton Place  
Mobile, AL 36609,

§

DOCKET NO. INC. 94-101

§

Taxpayers.

FINAL ORDER

The Revenue Department assessed income tax against Nick and Vangalia Kordomenos (together "Taxpayers") for the years 1991 and 1992. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on May 27, 1994 in Mobile. The Taxpayer, Nick Kordomenos, appeared at the hearing along with his CPA, Carolyn Lee. Assistant counsel Duncan Crow represented the Department.

The issue in this case is whether a loss incurred by the Taxpayers in 1990 can be carried forward as a net operating loss ("NOL") to 1991 and 1992. That issue turns on whether the loss was a "business" or "non-business" loss pursuant to Code of Ala. 1975, §40-18-15(16)f.3.

Nick Kordomenos (individually "Taxpayer") and another individual formed a corporation in 1987 for the purpose of operating a restaurant. The Taxpayer invested \$248,000.00 for the initial start-up of the business. The Taxpayer also worked as a chef at the restaurant.

The business struggled financially, and the Taxpayer loaned the corporation approximately \$100,000.00 to pay operating expenses from 1987 through 1990. The corporation went out of business in 1990. The Taxpayer subsequently claimed the unpaid loans as a loss on his 1990 individual Alabama return in the amount of \$95,831.00.

The Department does not dispute that the Taxpayer incurred a deductible loss in 1990.

The Taxpayer subsequently carried the 1990 loss over as a NOL to 1991 and 1992. The Department disallowed the carryovers based on its position that the 1990 loss was a non-business loss, and thus subject to the limitation at Code of Ala. 1975, §40-18-15(16)f.3. That section provides that a non-business loss can be considered for NOL purposes only to the extent of non-business income. Business losses are allowed in full. Loans to a corporation by a shareholder that is also employed by the corporation may constitute a business transaction, but only if the shareholder/employee's dominant motive is to protect his job with the corporation, not his investment. U.S. v. Generes, 405 U.S. 93, 92 S.Ct. 827.

The Taxpayer in this case worked for the corporation as a chef. However, he received no salary in 1986 and 1987 and only a small salary of \$6,100.00, \$2,400.00 and \$1,000.00 in 1988, 1989 and 1990, respectively. Comparing the small salary received by the

Taxpayer during the subject years versus his initial \$248,000.00 investment in the corporation, I must conclude that the Taxpayer's loans to the corporation were for the purpose of protecting or saving his investment in the corporation, not his salary. Accordingly, the loans must be treated as non-business transactions.

The above considered, the Department properly disallowed the NOL carryover to 1991 and 1992. The assessments in issue are upheld, and judgment is entered against the Taxpayers for 1991 income tax in the amount of \$1,902.64, and 1992 income tax in the amount of \$474.21. Additional interest is also due from the date of entry of the final assessments, November 30, 1993.

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

Entered on June 14, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge