

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE, §  
vs. §  
HARRY A. & PATSY H. GAMMONS §  
3473 Firethorn Drive §  
Tuscaloosa, AL 35405-2752, §  
Taxpayers. §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 94-280

FINAL ORDER

The Revenue Department assessed 1990 and 1991 income tax against Harry A. & Patsy H. Gammons ("Taxpayers"). The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on September 29, 1994. The Taxpayers represented themselves at the hearing. Assistant counsel Margaret McNeill represented the Department.

The Taxpayers reported a loss on their 1989 Alabama return and carried the loss over as a net operating loss ("NOL") to 1990 and 1991. The Department audited the Taxpayers, determined that the loss was "nonbusiness", and accordingly disallowed the loss for NOL purposes. The Taxpayer subsequently appealed to the Administrative Law Division.

A "nonbusiness" loss incurred by a taxpayer is allowed for NOL purposes only up to the amount the taxpayer's "nonbusiness" income.

See, Code of Ala. 1975, §40-18-15(16)f.3. Consequently, if the 1989 loss incurred by the Taxpayers was "nonbusiness", it cannot be carried over to 1990 or 1991, in which case the assessments in issue must be upheld.

The Taxpayers reported the loss in issue on their 1989 return as a stock loss. The Taxpayers now claim that the loss was not a stock loss, but rather resulted from personal loans made by Mrs. Gammons to a wholly owned corporation, Combustion, Inc. However, in either case the loss was "non-business", and thus cannot be carried over as a NOL to the years in issue.

A "nonbusiness" loss is a loss not incurred in a taxpayer's regular trade or business. See generally, Purvis v. C.I.R., 530 F.2d 1332; Whipple v. Commissioner, 83 S. Ct. 1168.

A stock loss constitutes a "business" loss only if the taxpayer is in the regular trade or business of trading or investing in stocks. The Taxpayers in this case were not in the trade or business of trading in stocks. Consequently, if the loss was a stock loss, as initially reported, it constituted a "nonbusiness" loss for NOL purposes.

In addition, even if the loss resulted from personal loans by Mrs. Gammons to Combustion, Inc., the loss resulting from the bad loans would also constitute a "nonbusiness" loss. Mrs. Gammons was not in the regular trade or business of making loans.

The Department was directed at the administrative hearing to contact the Taxpayers' accountant for additional information concerning the losses. The Department contacted the accountant in North Carolina. Unfortunately, no additional information was provided.

The above considered, the final assessments in issue are affirmed. Judgment is accordingly entered against the Taxpayers for 1990 income tax in the amount of \$122.52, and 1991 income tax in the amount of \$1,156.11. Additional interest is also due from the date of entry of the final assessments, May 31, 1994.

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

Entered on December 7, 1994.

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BILL THOMPSON  
Chief Administrative Law Judge