THOMAS C. & LINDA K. JARVIS § STATE OF ALABAMA
Post Office Box 166 DEPARTMENT OF REVENUE
Guntersville, Alabama 35976, § ADMINISTRATIVE LAW DIVISION

Taxpayers, § DOCKET NO. INC. 95-121

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed income tax against Thomas C. and Linda K. Jarvis ("Taxpayers") for the years 1991 and 1992. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on April 26, 1995. The Taxpayers represented themselves at the hearing. Assistant Counsel Antoinette Jones represented the Department.

The issue in this case is whether a loss claimed by the Taxpayers was properly disallowed by the Department as a non-deductible loss involving a transaction between related taxpayers. See, 26 U.S.C. §267 and Dept. Reg. 810-3-15-.07.

The Department audited the Taxpayers and made various changes to their liability for the subject years. The only audit change contested by the Taxpayers is the disallowance of a loss on the sale of a partnership interest in real estate by the Taxpayer, Thomas Jarvis. The Department disallowed the loss because, according to the Department, the loss resulted from the sale of real estate to a related individual, the Taxpayer's brother, Jeffrey Jarvis.

The Taxpayer and his brother formed a partnership in 1988 for the purpose of purchasing real estate for rental purposes. The Taxpayer decided to sell his interest in the real estate in 1991. He accordingly signed an agreement on June 30, 1991 to sell the property to his brother. However, between the date of that agreement and the date the Taxpayer actually sold the real estate in December 1991, two unrelated individuals joined the partnership. Consequently, the Taxpayer actually conveyed the property to his brother and the two new partners. See, Taxpayer's Exhibit 2.

Federal law prohibits losses resulting from the sale of property between related individuals. See, 26 U.S.C. §267. Alabama has adopted that position in Reg. 810-3-15-.07.

The Department disallowed the loss in issue as a transaction between related individuals based on the June 30, 1991 agreement, and also because the Taxpayer told the Department's examiner that he had sold the property to his brother. However, the June 30, 1991 agreement was just that, an agreement to sell. The actual conveyance did not occur until December 1991, at which time the Taxpayer sold the real estate to his brother and two unrelated individuals. The Taxpayer testified that he failed to mention the two unrelated individuals to the Department examiner because he did not believe it was important.

The evidence clearly establishes that the Taxpayer sold the real estate in question to his brother and two unrelated individuals. Consequently, the transaction is not solely between related individuals, and thus should not be disallowed for that reason. The Department has not otherwise contested the claimed loss. Consequently, the loss should be allowed for the years in question. The remaining uncontested audit adjustments made by the Department are affirmed.

The Department is directed to recompute the Taxpayers' liability as indicated above. A Final Order will then be entered setting out the Taxpayers' adjusted liability. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered May 2, 1995.

BILL THOMPSON
Chief Administrative Law Judge