

GRADY E., JR. & PATRICIA A. GUNTARP
Post Office Box 3004
Decatur, Alabama 35602-3004,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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DOCKET NO. INC. 95-243

FINAL ORDER

The Revenue Department assessed income tax against Grady E., Jr. and Patricia A. Guntharp (jointly "Taxpayers") for the year 1992. The Taxpayers appealed to the Administrative Law Division, and a hearing was conducted on September 22, 1995. Grady E. Guntharp, Jr. (individually "Taxpayer") appeared at the hearing. Assistant Counsel Claude Patton represented the Department.

The issue in dispute is whether the Taxpayers should be allowed to deduct certain education-related expenses on their 1992 Alabama return. That issue turns on whether the expenses were incurred by the Taxpayer in a "trade or business".

The facts are undisputed.

The Taxpayer has worked full time as a real estate appraiser since 1978. The Taxpayer has also been licensed to preach the Gospel since 1960. Before 1988, the Taxpayer preached at various churches upon request. In 1988, the Taxpayer and other individuals started a church at which the Taxpayer and the other members preach regularly. The Taxpayer has never been paid for preaching or ministering the Gospel.

The Taxpayer attended Emmaus Road Ministry School in Texas

beginning in 1992. He received a diploma from Emmaus in May 1993.

The Taxpayer paid tuition of \$1,330.00 to the school in 1992 and purchased school-related books totaling \$2,100.00.

The Taxpayers deducted the above expenses on their 1992 Alabama return. The Department audited the Taxpayer and disallowed the claimed expenses because, according to the Department, the Taxpayer was not engaged in a "trade or business".

Educational expenses can be deducted, but only if they are connected with the taxpayer's trade or business. See, Code of Ala. 1975, §40-18-15(1). The issue thus is whether the Taxpayer's ministry activities constituted a "trade or business".

A taxpayer is engaged in a trade or business if the activity is entered into for the primary purpose of making a profit. Portland Golf Club v. C.I.R., 110 S.Ct. 2780 (1990); Thomas v. U.S., 758 F.Supp. 529 (E.D.Mo. 1991); Becker v. IRS, 804 F.Supp. 658 (D.N.J. 1992).

The Taxpayer in this case testified that ministering the Gospel is to him a calling from God. He further conceded that he has never been paid for his work. The Taxpayer's activities relating to his church are clearly personal in nature and are not engaged in primarily for profit. Consequently, the claimed educational expenses were not incurred in a "trade or business", and thus were properly denied by the Department.

The above considered, the final assessment in issue is

affirmed, and judgment is entered against the Taxpayers for 1992 Alabama income tax in the amount of \$820.96, plus applicable interest.

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

Entered October 6, 1995.

BILL THOMPSON
Chief Administrative Law Judge