

DONALD L. & JOYCE M. RABURN §  
126 Brook Green Lane  
Pelham, AL 35124,

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
§ ADMINISTRATIVE LAW DIVISION

Taxpayers, § DOCKET NO. INC. 98-396

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### OPINION AND PRELIMINARY ORDER

The Revenue Department assessed 1994 income tax against Donald L. & Joyce M. Raburn ("Taxpayers"). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 9, 1998. Donald Raburn appeared at the hearing with his brother, CPA Herbert Raburn. Assistant Counsel Keith Maddox represented the Department.

The Taxpayers incurred a casualty loss in 1994. The issue in this case concerns the amount of the casualty loss that can be deducted by the Taxpayers.

The Taxpayers purchased five acres in an exclusive residential area in Shelby County, Alabama in 1988. They subsequently built a 6500 square foot house on the property.

A tornado hit the Taxpayers' house and surrounding property on Palm Sunday 1994. The tornado damaged the house and caused severe, extensive damage to the property. More than 100 large trees were snapped, twisted, and destroyed. Some of the trees were over 100 years old. The Taxpayer submitted numerous photographs evidencing the devastating carnage caused by the tornado.

The Taxpayer spent over \$38,000 to repair, clean-up, and replace some of the trees destroyed by the tornado. The Taxpayers obtained an appraisal in March 1995 concerning 104 of the largest trees destroyed by the tornado. The total appraised value was \$273,136.39. The Taxpayers claimed that amount

as a casualty loss on their 1994 Alabama return.

The Department reduced the casualty loss to the amount spent by the Taxpayers for clean-up and replanting - \$38,458.80. The reduced loss resulted in the final assessment in issue.

The Taxpayers subsequently contacted a qualified real estate appraiser concerning the loss in value to their property. The appraiser certified that the value of the Taxpayer's property decreased by \$150,000 because of the tornado.

Alabama law allows a casualty loss deduction to the same extent allowed by federal law at 26 U.S.C. §165. Code of Ala. 1975, §40-18-15(6). A casualty loss is measured by the difference between the fair market value of the property immediately preceding the casualty, and the fair market value of the property immediately after the casualty. IRC Reg. §1.165-7; Buttram v. Jones, 87 F.Supp. 322 (1943).

The Taxpayers concede they erroneously claimed the fair market value of the destroyed trees as a loss on their 1994 return. They argue, rather, that they should be allowed to deduct \$150,000 because their property decreased in value by that amount as a result of the tornado. I agree. As indicated, the Taxpayers submitted a valid appraisal showing that the tornado caused a \$150,000 decrease in the value of their property.

The Department is directed to recompute the Taxpayers' 1994 liability by allowing a \$150,000 casualty loss. A Final Order will then be entered for the adjusted amount due.

This Opinion And Preliminary Order is not an appealable Order. 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 January 4, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

cc: Keith Maddox, Esq.  
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