

WILLIAM & JOYCE COCKE
RR 2, Box 2865
Centreville, AL 35042,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 98-521

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1994 income tax against William & Joyce Cocke (together ATaxpayers@). 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 July 28, 1999. William Cocke (individually ATaxpayer@) represented the Taxpayers. Assistant Counsel Gwen Garner represented the Department.

The issues are:

- (1) Should the Taxpayer be required to report slot machine winnings in Mississippi on his 1994 Alabama income tax return;
- (2) If the winnings must be included as Alabama income, should the Taxpayer be allowed to offset the income by deducting his slot machine losses; and,
- (3) Did the Department timely assess the tax as required by Code of Ala. 1975, ' 40-2A-7(b)(2).

The Taxpayer and his wife live in Centreville, Alabama. The Taxpayer regularly played the slot machines at a Mississippi casino during 1994. For tax

purposes, if a gambler wins \$1200 or more on any transaction at a casino, federal and applicable state income taxes are withheld from the winnings. The amount won is also reported on a Form W-2G.

During 1994, the Taxpayer won \$25,400 playing the Mississippi slot machines as reflected on his W-2G forms. He reported that amount on his 1994 federal return, but also deducted his slot machine losses on Schedule A. The Taxpayer did not report any slot winnings other than those reflected on his W-2G forms. He also failed to report the slot winnings on his 1994 Alabama return.

The IRS adjusted the Taxpayers' 1994 federal return by disallowing a \$4,000 IRA deduction. The Taxpayers did not contest that adjustment, or several other minor adjustments made by the IRS.

The IRS provided the Revenue Department with a copy of the federal adjustments pursuant to an exchange of information agreement. The Department made the same adjustments to the Taxpayers' 1994 Alabama return. The Taxpayers do not contest those adjustments. However, in reviewing the Taxpayers' 1994 federal return, the Department discovered that the Taxpayers failed to report the slot machine winnings to Alabama. The Department added that income to the Taxpayers' 1994 Alabama income, and assessed additional tax accordingly. The Department refused to allow the Taxpayer to deduct his slot losses because he could not verify the losses. The Department did, however, allow the Taxpayer a credit for Mississippi income tax paid on the winnings.

ISSUE (1) - SHOULD THE TAXPAYER HAVE REPORTED HIS MISSISSIPPI GAMBLING WINNINGS IN ALABAMA?

The Taxpayer was domiciled in Alabama in 1994. Consequently, he was

required to report his income earned everywhere in 1994 on his Alabama return, including the Mississippi gambling income. Code of Ala. 1975, '40-18-2. The Taxpayer was not taxed

twice on the income because Alabama allowed him a credit for the Mississippi tax paid on the winnings.

ISSUE (II) - SHOULD THE TAXPAYER BE ALLOWED TO OFFSET HIS GAMBLING INCOME BY DEDUCTING HIS GAMBLING LOSSES?

Alabama allows taxpayers to deduct gambling losses up to the amount of reported gambling winnings. See, Dept. Reg. 810-3-.17.01(1)(a)(12). However, as with other deductions, the burden is on a taxpayer to provide adequate records proving he is entitled to the losses. Betson v. Commissioner, 802 F.2d 365 (1986); Winston Shirley v. State of Alabama, Docket INC. 96-153 (Admin. Law Div. 05/09/96).

The Taxpayer in this case claims he has never won overall on a trip to the Mississippi casino. He concedes, however, that he has no records verifying his losses.

Playing slot machines over a long period will necessarily result in numerous wins and losses. Keeping track of those wins and losses is burdensome, but such record-keeping is required for the player to be allowed to deduct his losses. I do not doubt that the Taxpayer never won overall on a trip to Mississippi. My understanding is that slots are a casino's biggest money-maker, and that the odds of winning over an extended playing period are small. However, without adequate substantiation, no losses can be allowed.

The Taxpayer claims the IRS allowed him to offset his winnings with his losses. Apparently, the IRS did not question the Taxpayer's losses, and did not require him to verify the losses. That does not, however, prevent the Department from requiring

the Taxpayer to produce records verifying the losses.

The Taxpayer also claims he is being treated unfairly because other slot players he has talked to reported their W-2G winnings, and were allowed to offset the winnings with their losses. The Taxpayer may be correct, but if so, it was only because those other taxpayers were not audited by the Department. I know of no instance in which the Department has allowed a taxpayer to deduct gambling or other losses without proper records. To the contrary, the Administrative Law Division has affirmed the Department in numerous cases in which the Department denied gambling losses because the losses were not verified. See, Thomas Duncan v. State of Alabama, Docket INC. 99-112 (Admin. Law Div. 06/16/99); Winston Shirley v. State of Alabama, Docket INC. 96-153 (Admin. Law Div. 05/09/96).

I also note that if the Taxpayer played the slots consistently over a period of hours, he certainly had numerous wins under \$1200 that were not reported on a W-2G form. That income also should have been reported by the Taxpayer on his Alabama return. Again, he could have offset that income with losses, but only if he could substantiate the losses.

ISSUE (III) - WAS THE FINAL ASSESSMENT TIMELY ENTERED?

The Taxpayers filed their 1994 Alabama return in February 1995. The Department generally has three years from when a return was filed to enter a preliminary assessment for additional tax due. Code of Ala. 1975, ' 40-2A-7(b)(2). The Department entered a preliminary assessment for the tax in issue in August 1998. The Department thus failed to assess the tax within the general three year

statute.

The Department did, however, timely assess the tax pursuant to Code of Ala. 1975, ' 40-2A-7(b)(2)b. That section allows the Department six years to assess additional tax if a taxpayer omits more than 25 percent of his income from a return. The Taxpayers= 1994 return reported gross income of \$45,407. The omitted gambling income totaled \$25,400, clearly more than 25 percent of the amount reported.

I sympathize with the Taxpayer because in all probability he had some losses. But Alabama law is clear that without records, no losses can be allowed.

The final assessment is affirmed. Judgment is entered against the Taxpayers for \$1,583.89, plus applicable additional interest.

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

Entered August 18, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Gwen Garner, Esq.
William & Joyce Cocke

Kim Herman (309-52-3114)