

TRENNA TRICE  
543 Honolulu Drive  
Columbus, GA 31906,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-162

### FINAL ORDER

The Revenue Department denied a 1995 income tax refund requested by Trenna Trice (ATaxpayer@). The Department also assessed the Taxpayer for 1996 income tax. The Taxpayer appealed to the Administrative Law Division. A hearing was conducted on May 12, 1999. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Keith Maddox represented the Department.

Concerning the 1995 refund, the issue is whether the Taxpayer timely claimed the refund. Concerning the 1996 final assessment, the issue is whether the Taxpayer should be allowed certain education expense deductions claimed on her 1996 Alabama return.

### THE 1995 REFUND

The Taxpayer paid Alabama income tax by withholding in 1995. She filed her 1995 Alabama return and claimed a refund on May 4, 1998. The Department denied the refund because, according to the Department, it was not timely claimed.

The statute of limitations for claiming refunds is set out at Code of Ala. 1975, '40-2A-7(c)(2). That section provides generally that a refund must be claimed within three years from the date the return was filed, or two years from when the tax was paid, whichever is later. However, if no return was timely filed, as in this case, the taxpayer must claim a refund within two years from when the tax was paid. For purposes of the

refund statute, tax paid through withholding is deemed paid on the original due date of the return.

As indicated, the Taxpayer paid her 1995 income tax through withholding. Because she filed her 1995 return late, she had two years from the April 15, 1996 due date of the return, or until April 15, 1998, to claim a refund. She failed to do so. Consequently, the refund was properly denied by the Department.

#### THE 1996 FINAL ASSESSMENT

The Taxpayer lived in Georgia, but worked for the Phenix City, Alabama Board of Education during the years in issue. She claimed various unreimbursed employee education expenses on her 1996 Alabama non-resident return. The Department audited the return and disallowed the expenses because they were not properly verified.

The Taxpayer claims she incurred educational-related expenses when she attended Troy State University and Auburn University in 1996. The list of items

deducted by the Taxpayer includes tuition, typing, books, professional dues, and supplies such as newspapers, magazines, computer and software. She also submitted 19 money orders. The Department rejected the money orders as insufficient. I must agree.

Unreimbursed employee education expenses may be deducted under certain circumstances pursuant to Code of Ala. 1975, '40-18-15(a), which incorporates by reference Internal Revenue Code '162. The education expense deduction was explained

in Love Box Company, Inc. v. C.I.R., 842 F.2d 1213 (1988), as follows:

Education expenses satisfy the ordinary and necessary requirement of section 162 provided they meet the enumerated tests of Treasury Regulation 1.162-5. Rev. Rul. 76-71, 1976-1 C.B. 308, 310. Treasury regulation 1.162-5 sets forth a series of non-qualifying and qualifying tests. The first examination is to see if the educational expense is disqualified from deduction because it was incurred to (1) meet the minimum additional requirements of the trade or business or (2) qualify the taxpayer for a new trade or business. Treas. Reg. 1.162-5(b)(2) and (3). Provided the educational expenses are not disqualified from deduction, they must also satisfy the qualifying requirement of either (1) maintaining or improving job skills or (2) meeting the express requirements of the employer or the law for retention of employment. Treas. Reg. 1.162-5(a), (c)(1) and (c)(2). In satisfying the requirement of maintaining or improving skills required in his employment, it is insufficient that the educational expenses merely improve general skills. To be deductible the expenses must improve skills that bear a proximate and direct relationship to the taxpayer's trade or business. @

Love Box Company, Inc., 842 F.2d, at 1216.

The burden was on the Taxpayer to prove that she is entitled to the claimed deductions. Norgaard v. C.I.R., 939 F.2d 874 (1991). Unfortunately, the Taxpayer failed to explain why she incurred the claimed education expenses, or to otherwise prove that the expenses qualified for the education deduction. Specifically, she failed to establish that the education was necessary to maintain or improve her job skills, or that the education was required to retain her job. Without further records or explanation, the money orders submitted by the Taxpayer are also insufficient

to prove that the Taxpayer incurred deductible education expenses. The expenses were thus correctly disallowed.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 1996 tax, penalty, and interest of \$1,246.80, plus applicable interest from the date of entry of the final assessment, January 13, 1999.

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

Entered July 14, 1999.

---

BILL THOMPSON  
Chief Administrative Law Judge

BT: ks

cc: Keith Maddox, Esq.  
Trenna Trice  
Kim Herman (256-33-9081)