

WAYNE A. & LANA C. AMAYA  
243 Chaseway Drive  
Pike Road, AL 36064,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-281

### FINAL ORDER

The Revenue Department assessed 1995 and 1996 income tax against Wayne A. & Lana C. Amaya (together "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 August 25, 1999. Wayne A. Amaya (individually "Taxpayer") appeared at the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayers claimed business-related travel expenses on their 1995 and 1996 income tax returns. The expenses related to the Taxpayer's use of his personal vehicle for business purposes. The Department disallowed the travel expenses because they were not properly verified. The Department also made various other adjustments that are not disputed by the Taxpayers. The issue in this case is whether the travel expenses should be allowed.

Unreimbursed employee travel expenses may be deducted as ordinary and necessary business expenses pursuant to Code of Ala. 1975, §40-18-15(a)(1). That section adopts by reference the federal statute on point, 26 U.S.C. §162. In such cases, federal authority and case law should be followed. State, Department of Revenue v. Dawson, 504 So.2d 312 (Ala.Civ.App.1987).

To be allowed business-related travel expenses, an employee must maintain a travel log or other sufficient evidence verifying the amount, time, place, and business purpose for the travel. The criteria for claiming travel expenses was explained in Langer v. C.I.R., 980 F.2d 1198 (1992):

“A taxpayer cannot deduct travel expenses under 26 U.S.C. § 162 unless the taxpayer meets the substantiation requirements of § 274(d). The taxpayer must substantiate the amount, time, place, and business purpose of each travel expenditure ‘by adequate records or by sufficient evidence corroborating [the taxpayer’s] own statement.’ Treas. Reg. § 1.274-5(c) (1983). To substantiate expenditures with ‘adequate records,’ a taxpayer must keep an account book or similar record along with supporting documentary evidence that together establish each element of the expenditure. *Id.* § 1.274-5(c)(2)(i). To show substantiation by other ‘sufficient evidence,’ the taxpayer must establish each element by the taxpayer’s own detailed statement and by corroborating evidence. *Id.* § 1.274-5(c)(3).”

Langer v. C.I.R., 980 F.2d at 1199.

In this case, the Taxpayer maintained a travel log for the years in issue, although he produced only the 1995 log at the August 25 hearing. The 1995 log shows that the Taxpayer traveled on business approximately 15 days each month. The log contains only the date the travel occurred, and the miles traveled on each date. The miles traveled varied from approximately 50 to 80 miles per day. The Taxpayer testified that he recorded the daily entries in the log at the end of each week. He also conceded that the log includes the miles he drove the vehicle on personal business.

The Taxpayer's log is not sufficient to verify the claimed expenses. First, the Taxpayer commingled business and personal mileage. Importantly, he also failed to record where he traveled and the business purpose for the travel. As indicated, that information is required for the mileage to be allowed.

Under certain circumstances, the courts have allowed taxpayers to estimate deductible expenses in the absence of adequate records. Cohan v. Commissioner, 39 F.2d 540 (1930). However, the Cohan rule does not apply to employee business travel expenses. IRC Reg. §1.274-5T(a)(1).

The final assessments are affirmed. Judgment is entered against the Taxpayer for 1995 tax, penalty, and interest of \$348.98, and 1996 tax, penalty, and interest of \$290.04. Additional applicable interest is also due from the date of entry of the final assessments, May 13, 1999.

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

Entered September 1, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT: ks

cc: Margaret Johnson McNeill, Esq.  
Wayne & Lana Amaya  
Kim Herman