

GARY C., JR. & TRACI W. BRYANT §
433 BLANDING ROAD §
HATCHECHUBBEE, AL 36858-6858, §

Taxpayers, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 16-500

FINAL ORDER

This appeal involves disputed final assessments of 2012, 2013, and 2014 Alabama income tax entered against the above Taxpayers. The dispute involves whether certain Schedule F expenses claimed by the Taxpayers in the subject years concerning their horse boarding, training, and sales business were deductible as ordinary and necessary business-related expenses. Specifically, the Taxpayers' two teenage children rode horses owned by the Taxpayers in various rodeos during the years in issue, and the Taxpayers deducted rodeo entry fees, related travel and clothing expenses, and various other rodeo-related miscellaneous expenses incurred in those years. The Department concedes that the Taxpayers' were operating a for profit business. Rather, it disallowed a portion of the expenses as personal in nature, which resulted in the final assessments in issue.

The Taxpayers explained why they incurred the disputed expenses in their appeal letter to the Tribunal, as follows:

In regards to the Schedule F, this is our family business. Our business consists of training horses for rodeos and boarding of other horses, horse training and etc. We have been doing this business for several years now and we have finally figured out how it works making improvements along the way. Our children work with us in the business. We brought in a trainer for my daughter and son so that they could be trained properly on what to do with the horses to make them show worthy. We take these horses to rodeos and enter the rodeos to show outside people how these horses are being trained and how the horses look and perform in hopes of either selling the

horse or getting the potential clientele to grow our business on the training side of our business. We use these events to advertise our business. We have also expanded the business this year with my daughter giving lessons to clients and the care of horses when they are boarded. The entry fees are actual expenses for advertising and training that were disallowed on our 2012, 2013, and 2014 taxes. Entering these shows is how we generate business by advertising the trained horses that compete and to show those that are in training.

I also ask that the penalties and fees be waived because we did file our taxes on time and accurately. There were no hidden expenses, every expense was accounted for every year that we were in business. I was confident that Harris and Company was a professional business with a trained staff that knew how to advise us and knew how to file tax returns however, I feel differently now.

The Tribunal conducted a hearing in the case on August 18, 2016. Attorney Ernest Lee ably represented the Taxpayers at the hearing. The Taxpayers failed, however, to attend and testify at the hearing, and there was otherwise no evidence submitted in support of the representative's factual assertions. The Tribunal consequently set the case for a second hearing on December 15, 2016 to allow the Taxpayers to testify and explain why the disputed expenses were ordinary and necessary business expenses.

Ernest Lee again represented the Taxpayers at the December 15 hearing. Taxpayer Traci Bryant also testified at the hearing. She explained that she and her family lived on a farm and began training, boarding, and selling horses before the years in issue. She testified that their two teenage children rode horses in rodeos during the subject years to show that the horses were safe for children to ride and be around.

Q. But it was necessary for your kids to (ride in rodeos) back during the years in issue?

A. Yes, sir.

Q. Because it was more effective if the children did it and not the adults. Explain that to me.

A. Everybody wants what they call a “kid safe” horse, so my – you know, my husband’s like if our kids can ride it, that shows that – you know, that we have a kid and we trust the horse with the kid. I’m not – we’re not saying it won’t kick or bite or whatever, but we trust the horse with our kids. And that kind of shows everybody else that, you know, a kid could ride the horse.

(T. 7).

Ms. Bryant further explained that while their children enjoy working with and riding horses, they participated in the rodeos to advertise and promote the Taxpayers’ horse training, boarding, and sales business; and that if their children stopped riding at rodeos, they would probably hire an unrelated young person to do so.

By Judge Thompson.

Q: I think the gist of the Department’s position is they’re not sure why your children rode in these rodeos. They’re taking the position that they did because they just enjoy riding horses.

A. No, sir, they’re trying to help promote our business.

Q. And you’re saying it’s important to have young people ride horses –

A. Yes.

Q. -- which shows potential customers that the horses are safe.

A. Yes, sir.

Q. Okay. And the problem is that since your son’s gone, he’s not riding anymore. You say your daughter still is?

A. Yes, sir.

Q. But if she leaves, are you going to hire somebody young to ride the horses.

A. We probably will. We have a neighbor that’s real interested in it, and she seems to be a good hand.

Q. How old is she.

A. She is – the neighbor? She – I think she's 15.

Q. Okay. So you're going to get that person to ride your horses?

A. We're thinking about it. We haven't – like I said, we haven't made a decision yet.

Q. Would you pay her?

A. Yes, sir, we'd have to pay her because she won't do it for free.

(T. 27 – 29).

Ms. Bryant also indicated that individuals that had seen their children ride in rodeos had subsequently contacted the Taxpayers about training their horses and/or buying a horse from the Taxpayers.

Q. Okay. All right. What else have you done to – is there anything else that has – any evidence that you have to show that sending your children to these rodeos – or taking your children to these rodeos was advertising for your business.

A. Like I said earlier, if you're looking for a horse and you see this 16-year-old on this horse and this horse is doing what she wants, when she wants, how she wants, you're going to come up and say, ma'am, where did you get that horse from. Do you mind me asking? Can I get a name and number? And that's how it starts.

Q. Right. But you've never really sold a horse based on that?

A. Yes, we have.

(T. 21).

As indicated, the Taxpayers' children enjoy riding and being around horses. In determining if an activity is a profit-motivated business, one of the factors to be considered is whether the taxpayer enjoys the activity. But even if a taxpayer personally enjoys the activity, that fact is not conclusive. In *Price v. State of Alabama*, Docket Inc. 13-751 (Admin. Law Div. 12/5/2013), the Revenue Department's Administrative Law Division, now

the Tax Tribunal, addressed the issue, as follows:

Concerning factor (9), the Taxpayer admits that he likes being around goats, and that he got into the business in part to have something to do. But the fact that a taxpayer enjoys an activity does not in itself negate the taxpayer's intent to make a profit. In *Gremmels v. State of Alabama*, Docket Inc. 05-112 (Admin. Law Div. 7/18/2005), the issue was whether a taxpayer's horse breeding activities constituted a trade or business. The Department argued that the activity was a hobby because the taxpayer enjoyed horses. The Division held as follows:

Finally, while the Taxpayer obviously enjoys being around horses, that fact alone does not negate his intent to profit from the activity. As stated in *Engdahl*, "there is no 'benefit' in losing money." *Engdahl*, 72 T.C. at 670. Viewing all of the facts together, the Taxpayers did not engage in their horse breeding activities primarily for pleasure or to create losses to shield other income. (footnote omitted) Rather, they had a genuine hope and expectation that they would be successful and eventually realize a profit. Their related expenses are thus deductible.

Gremmels at 6.

Disputed "hobby loss" cases are difficult to decide because the taxpayer almost always has mixed motives. Understandably, the taxpayer will select an activity that he has enjoyed in the past or expects to enjoy in the future. For example, a person that was raised around horses may as an adult choose to raise and sell horses, but the fact that the taxpayer may enjoy the activity does not necessarily negate a profit motive if the taxpayer is engaged in the activity with the intent and good faith expectation of making a profit. *Engahl*, 72 T.C. at 666. A professional golfer most certainly enjoys golf, but that does not negate the golfer's intent to make a profit.

Price at 7 – 8.

The Department concedes in this case that the Taxpayers' horse-related activities were a profit-motivated business. Rather, the issue is whether the rodeo expenses relating to the Taxpayers' children constituted deductible ordinary and necessary business expenses, see Code of Ala. 1975, §40-18-15(a)(1).

The evidence is undisputed that the Taxpayers' children participated in the rodeos during the years in issue to promote the Taxpayers' business by showing that the horses were "kid safe." In substance, the children were advertising the Taxpayers' horses and the Taxpayers' training abilities. Under the circumstances, the expenses relating to the children's participation in the rodeos were ordinary and necessary business expenses, and thus deductible.

The final assessments in issue are voided. Judgment is entered accordingly.

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

Entered January 12, 2017.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: David E. Avery, III, Esq.
Gary & Traci Bryant