

CARL & WILLODINE H. LOVETT
747 Pleasant Hill Road
Decatur, AL 35603,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 00-271

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed 1998 income tax against Carl and Willodine H. Lovett (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 August 29, 2000. The Taxpayers were notified of the hearing by certified mail, but failed to appear. Assistant Counsel LaRonica Lightfoot represented the Department.

The issue in this case is whether the Department correctly disallowed a credit claimed by the Taxpayers for tax paid to the State of Mississippi.

The Taxpayers reside in Decatur, Alabama. They reported \$104,303 on their 1998 Alabama return as gambling income received in Mississippi. They also deducted Mississippi gambling losses of \$104,303 on the return.

The Taxpayers also reported the gambling income on a 1998 Mississippi income tax return. However, Mississippi allows nonresidents to deduct only a portion of their gambling losses in Mississippi. Consequently, the Taxpayers paid some Mississippi tax on the income. They claimed the Mississippi tax paid as a credit on their Alabama return. The Department denied the credit, and entered the final assessment in issue. The Taxpayers appealed.

This issue was previously addressed by the Administrative Law Division in Basil W. & Gloria Wheeler v. State of Alabama, Inc. 96-264 (Admin. Law Div. 9/13/96). Wheeler involved substantially the same facts as does this case. The Wheelers reported Mississippi gambling winnings and claimed a like amount of losses on their 1995 Alabama return. They paid some Mississippi tax on the income because, as indicated, Mississippi allows nonresidents to deduct only a portion of their gambling losses. They claimed a credit on their Alabama return for the Mississippi tax paid. The Administrative Law Division disallowed the credit, as follows:

Section 40-18-21 allows a credit against a taxpayer's Alabama income tax liability for income tax paid to another state on the same income. The legislative purpose for the credit is to avoid double taxation. State v. Robinson Land & Lumber Co. of Alabama, 77 So.2d 641 (1954).

In this case, the Taxpayers fully off-set the gambling income on their Alabama return by deducting an equal amount of gambling losses. Consequently, a credit is not necessary to avoid double taxation because the Taxpayers did not pay Alabama income tax on the Mississippi gambling income.

The Taxpayers recognize that they did not pay Alabama tax on the Mississippi gambling income. But they still argue that they are entitled to a credit under the specific language of ' 40-18-21. I disagree.

Section 40-18-21 specifically allows a credit for tax paid to another state only if Alabama tax is also paid on the same income. The credit is allowed "against the amount of tax found to be due (to Alabama) by such resident, on account of income derived from" outside of Alabama. Because the Taxpayers did not pay Alabama income tax on the gambling income, a credit cannot be allowed under the specific language of the statute.

An argument can be made that the gambling income was not directly off-set by the gambling losses because the losses were claimed as an itemized deduction "below the line" on Schedule A. But gambling losses can only be claimed to off-set any gambling income reported on the return. See, Department Reg. 810-3-17-.01(12). Gambling income and gambling losses are thus directly linked and must be considered together in computing the

amount of credit, if any, allowed under ' 40-18-21.

Wheeler, at 2-3.

Based on the above, the Department correctly disallowed the credit claimed by the Taxpayers. The final assessment is affirmed. Judgment is entered against the Taxpayers for \$1,023.23. Additional interest is also due from the date of entry of the final assessment, March 27, 2000.

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

Entered September 5, 2000.

BILL THOMPSON
Chief Administrative Law Judge