ALABAMA TAX TRIBUNAL

DANIEL J. KETTELSON,	§	
Taxpayer,	§	DOCKET NO. INC. 16-986-CE
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Daniel J. Kettelson for 2013 and 2014 Alabama income tax. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on August 28, 2017. The Taxpayer and his attorney, Meegan Colclough, attended the hearing. Assistant Attorney General Ralph Clements represented the Department.

The Department disallowed Section 1231 losses claimed by the Taxpayer on his 2013 return relating to the disposition of a condominium in Baldwin County, Alabama, known as Moorings Unit 113, and the disposition of two motor vehicles; namely, a 2006 Mercedes E-Class sedan and a 2004 Lamborghini Gallardo. The disallowed losses in 2013 resulted in the disallowance of related net operating losses carried forward and claimed on the Taxpayer's 2014 return.

The Department asserted in its Answer, and argued throughout the appeal, that the losses were properly denied because the property was personal use property, and not property used in a trade or business.

The Taxpayer argued that the subject property was property used exclusively in his consulting and real estate business. Consequently, he is entitled to claim the losses resulting from the disposition of the property.

After the August 28 hearing, the Department agreed that the Taxpayer was entitled to claim the losses related to the Taxpayer's disposition of Moorings Unit 113, but maintained its position regarding the losses related to the disposition of the subject vehicles.

FACTS

The Taxpayer is the sole shareholder of Kettelson, Inc., a corporation which has elected tax treatment as an S-Corporation. Since 2005, the corporation's business activities have included business consulting services, and real property sales and rental services. During the years relevant to this appeal, in addition to real estate services, the Taxpayer provided consulting services to car dealers, boat dealers, and marina owners and operators. The Taxpayer testified that it was not unusual for his clients to be multi-millionaires operating businesses in the Gulf Coast areas of Alabama, Florida, and Mississippi.

The 2006 Mercedes was purchased in 2010 for $21,936 to be the vehicle primarily used in the business. The Taxpayer testified that the Mercedes was fuel efficient, and that he used it to drive to and from his customers' locations and to and from real properties that he managed or showed to clients.

The 2004 Lamborghini Gallardo was purchased in 2011 for $62,000 and was used as a tool to recruit wealthy clients. The Taxpayer explained that he used the vehicle on rare occasions when he would take a wealthy client to see a high-end property or when he was meeting a wealthy potential client of his consulting business. He explained that because his potential clients were people in the marine industry and automobile industry that liked fast cars and boats, he could use the Lamborghini as a tool to help make a connection that would hopefully lead to the forming of a business relationship. The Taxpayer testified, as follows:

> But in my business, a lot of it, you know, it's very hard – it would be very hard for me to pull up to a guy that's worth millions of dollars in a Hyundai Sonata, built in Alabama, and say let me tell you how you can make a whole lot more money. You know, they just don't – I can't – I can't establish credibility without them having to call thirty of my clients. If I show up in a Lamborghini, it exudes this guy has some success, he's driving a car I wouldn't mind having, I need to listen to what he has to say, maybe he has something of value to say here.
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> And generally, at least, it doesn't guarantee me a sale, but it opens the door for a man to listen to me, and if I can get a door opened, that's – that's an opportunity. . . . But, you know, when you have that super high-end client, you know, especially if you find out a lot of high-end clients are car guys, they have cars, they have cool cars, and you can just instantly establish some rapport with somebody.

(T. 20 – 21.)

Relevant to his real estate business and the use of the Lamborghini, the Taxpayer further testified:

> I mean, it's one thing to own a million dollar house, it's another thing to own a million dollar vacation property. You know, there a lot – it's a much more affluent person that owns a million dollar vacation property than a guy that owns a million dollar house. Because the guy that has that million dollar vacation property has a five million dollar house and generally flies to his vacation property on his private jet. You know, that's that different kind of guy, and that's the client I'm trying to attract.

(T. 22.)

ANALYSIS

Section 1231 gains and losses are the taxable gains and losses from Section 1231 transactions. Transactions resulting in gains or losses subject to Section 1231 treatment include sales or exchanges of depreciable personal property used in a trade or business that were held longer than one year. As pointed out in the Department's post-hearing response, for the Taxpayer to carry his burden of proving he is entitled to claim the 1231 losses at issue, he must demonstrate that he had a profit-seeking motive in acquiring the subject vehicles. *See Johnson v. Comm'r*, 59 T.C. 791, 814 (1973). The Taxpayer must show that the predominant purpose and use of the subject vehicles was to derive income, and not for recreation, hobby or some other nonprofit motive. *Id.*

The Department argues that the Taxpayer is a collector of luxury and rare, exotic cars, and that the subject vehicles were a part of his personal collection. As such, it argues, the subject vehicles were not trade or business property. While it is true that the Taxpayer liked luxury and rare, exotic vehicles, and that he maintained a personal fleet of them, this fact alone does not outweigh the overwhelming evidence that the Taxpayer used the subject vehicles in his business to derive income. The facts in the record and the testimony presented at the hearing indicate that the subject vehicles were used exclusively for business purposes – for transportation to and from meetings with clients and to impress and attract new, wealthy clients. There was no evidence presented in this appeal to suggest otherwise.

The Taxpayer is entitled to claim the Section 1231 losses resulting from the sale of Moorings Unit 113, and the sale of the 2006 Mercedes E-class sedan and the 2004 Lamborghini Gallardo.

The 2013 and 2014 final assessments are hereby voided. Judgment is entered accordingly.

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

Entered April 11, 2018.

/s/ *C. O. Edwards*
CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Meegan B. Colelough, Esq.
Ralph M. Clements, III, Esq.