

THOMAS P. & MARIE REDMOND
1757 LeGrande Drive
Mobile, AL 36618,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 03-183

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Thomas P. and Marie Redmond (together “Taxpayers”) for 1999 Alabama income tax. 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 June 9, 2003 in Mobile, Alabama. The Taxpayers attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The issues in this case are whether the Department (1) correctly assessed the Taxpayers on unreported gambling income in 1999, and (2) also correctly disallowed claimed gambling losses in that year.

Thomas Redmond (individually “Taxpayer”) testified at the June 9 hearing that he gambled regularly at various casinos in South Mississippi in 1999, 2000, and 2001. He usually played slots and blackjack. He also occasionally wagered at the dog track in Mobile, Alabama during those years.

The Taxpayers reported gambling income of \$7,313 on their 1999 Alabama return. They also claimed an equal amount of gambling losses. The return claimed a refund of \$278.

The Department subsequently received IRS information indicating that the Taxpayer had won \$6,707 at the dog track in Mobile in 1999, and also \$12,708 at the Isle of Capri

casino in Biloxi, Mississippi in that year. The Department consequently taxed the Taxpayers on the unreported gambling winnings of \$12,102. It also disallowed the gambling losses of \$7,313 claimed on the 1999 return due to lack of substantiation.

The Taxpayer testified at the June 9 hearing that before he started gambling at the casinos in Mississippi, his house in Alabama was paid for and he and his wife were largely debt free. He now owes \$40,000 on the house, and has had to use credit cards and borrow money to live on, all due to gambling.

After being notified of the Department's adjustments, the Taxpayer contacted the Casino Magic and the Isle of Capri casinos in Biloxi for documentation of his gambling losses in 1999. Casino Magic sent him a document showing a loss of \$9,637.50 in 1999. The Isle of Capri also sent the Taxpayer a document showing that he lost \$7,705 in the year. The Taxpayer testified that he did not contact other casinos in Mississippi in which he lost money in 1999. He conceded that he did not have records verifying his losses at the Mobile dog track.

Gambling losses can be deducted, but only up to the amount of gambling winnings. Code of Ala. 1975, §40-18-15(7) and Dept. Reg. 810-3-17-.01(1)(a)(12). See also, 26 U.S.C. §165(d).

The burden is on a taxpayer to prove gambling losses. *Betson v. Commissioner*, 802 F.2d 365 (9th Cir. 1986). In *Scarborough v. State of Alabama, Inc.* 01-178 (Admin. Law Div. 8/26/02), the Administrative Law Division held as follows:

As with all deductions, the burden is on the taxpayer to prove gambling losses. *Donovan v. Commissioner*, 359 F.2d 64 (1966); *Betson v. Commissioner*, 802 F.2d 365 (9th Cir. 1986). Whether a taxpayer has adequately established his gambling losses is a question of fact in each case.

As stated in *Norgaard v. Commissioner*, 939 F.2d 874 (9th Cir. 1991):

The question of the amount of losses sustained by a taxpayer is a question of fact to be determined from the facts of each case, established by the taxpayer's evidence, and the credibility of the taxpayer and supporting witnesses. *Green v. Commissioner*, 66 T.C. 538, 545-46 (1976) *acq.* 1980-2 C.B. 1. The credibility of the taxpayer is a crucial factor. See *Mack v. Commissioner*, 429 F.2d 182, 184 (6th Cir. 1970) (that the tax court allowed some deduction based on the taxpayer's net worth method of proof "was a testament to the persuasiveness and seeming integrity of these taxpayers"). In some cases, courts have found losing tickets or other records and corroborating testimony by the taxpayer insufficient to establish that the taxpayer suffered deductible losses. However, in other cases, the tax court has allowed the taxpayer to deduct some or all of their losses on the basis of their losing tickets and credible corroboration by the taxpayer.

Norgaard, at page 878.

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Losing tickets are in some cases sufficient to verify claimed losses, but only if the tickets are supported by the believable, direct testimony of the taxpayer. See generally, *Norgaard*, *supra*, footnote 3, at page 878. For example, in *Wolkomir v. Commissioner* (40 TCM 1078 (1980)), which is cited in the above footnote, the claimed losses were allowed based on the "forthright, credible, and candid testimony of the taxpayer."

Scarborough, Inc. 96-153 at 3.

The IRS information included gambling income of \$12,708 received by the Taxpayer from only one Mississippi casino, the Isle of Capri in Biloxi, in 1999. The Taxpayer provided documentation that he lost \$7,705 at the Isle of Capri in 1999. That documentation, supported by the Taxpayer's credible testimony at the June 9 hearing, is sufficient to allow that amount as a deduction against the gambling income received in the subject year. However, because the Taxpayer failed to report, and the IRS information did not include, income from Casino Magic in 1999, his claimed losses at that facility in 1999 cannot be allowed. The dog track income was also properly assessed by the Department

because the Taxpayer admittedly did not have records showing dog track losses.

The Department is directed to recompute the Taxpayers' 1999 liability by allowing a gambling loss of \$7,705 in that year. A Final Order will then be entered for the adjusted amount due.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered June 26, 2003.