

JOHN D. WHITE
Department of Philosophy
Talladega College
Talladega, AL 35160,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 03-421
INC. 03-705

FINAL ORDER

These cases involve appeals by the Taxpayer from reduced income tax refunds for 2001 (Docket Inc. 03-705) and 2002 (Docket Inc. 03-421). The Department reduced the Taxpayer's claimed 2001 refund from \$925 to \$10.72, and his claimed 2002 refund from \$975 to \$55 because it disallowed various deductions claimed by the Taxpayer in those years. A hearing was conducted on December 15, 2003. The Taxpayer attended the hearing. Assistant Counsel J.R. Gaines represented the Department.

These appeals are the fourth and fifth appeals by the Taxpayer since 1994 concerning his Alabama income tax liabilities. A review of the Final Order entered in one of the earlier appeals, Docket Inc. 02-201, which involved the 1998, 1999, and 2000 tax years, will educate the reader concerning the prior appeals:

The Department initially audited the Taxpayer and assessed him for additional tax due for 1990, 1991, 1992, and 1993. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on December 14, 1994. An Opinion and Preliminary Order was subsequently entered on January 3, 1995.

The January 3, 1995 Order affirmed the 1990 and 1991 final assessments because the Taxpayer had filed short form 40A returns in both years, and thus was prohibited by Code of Ala. 1975, §40-18-81 from filing amended returns in those years. Concerning 1992 and 1993, the Administrative Law Division allowed various expenses claimed by the Taxpayer that were previously disallowed by the Department.

The Department applied for a rehearing concerning the 1992 and 1993 liabilities, arguing that the Administrative Law Division improperly allowed the Taxpayer to deduct the expenses in those year. A Final Order Denying the Department's Application for Rehearing was entered on January 26, 1995. The Department consequently allowed the disputed expenses and recomputed the Taxpayer's 1992 and 1993 liabilities as directed by the Administrative Law Division. A Final Order was entered on February 22, 1995 for the adjusted amounts due.

The Taxpayer appealed the February 22, 1995 Final Order to Montgomery County Circuit Court. That Court heard the case on November 8, 1995, and affirmed the Administrative Law Division's Final Order on November 14, 1995. The Taxpayer did not appeal.

The Department next audited the Taxpayer's 1994 return. It disallowed various deductions claimed on the return, and consequently reduced the refund claimed by the Taxpayer from \$898.81 to \$398.81. The Taxpayer appealed to the Administrative Law Division. A hearing was conducted on May 8, 1996. The Department indicated at the hearing that it had again reviewed the Taxpayer's 1994 return, and had increased the refund due to \$718.29. The Taxpayer agreed to that amount. The Department also agreed to accept the Taxpayer's 1995 return as filed, which showed a refund due of \$834.99. A Final Order concerning the 1994 and 1995 tax years was entered on May 9, 1996. The Taxpayer did not appeal.

The Department did not audit the Taxpayer's 1996 and 1997 returns. The Taxpayer received refunds of \$929.42 and \$644.08, respectively, in those years.

As indicated, this third appeal by the Taxpayer concerns his 1998, 1999, and 2000 liabilities. The Department initially accepted the Taxpayer's returns for 1998 and 1999 and issued him refunds of \$870 and \$699, respectively, in those years. It subsequently audited the returns and disallowed various deductions claimed on the returns. Specifically, the Department disallowed cash gifts by the Taxpayer to various students, and also amounts deducted by the Taxpayer for classes he taught for which he was not paid. The Department consequently assessed the Taxpayer for 1998 tax and interest of \$920.23, and 1999 tax and interest of \$681.46. It also reduced the Taxpayer's claimed 2000 refund from \$800 to \$93.28. As indicated, the Taxpayer appealed, and a hearing was conducted on May 21, 2002.

The Taxpayer has taught philosophy and music at Talladega College in Talladega, Alabama since at least 1990. He explained at the May 21 hearing that during the years in issue, he gave cash to poor students at the

College to help them pay expenses and stay in school. He deducted approximately \$8,500 in cash gifts to students in 1998.

The Taxpayer's dedication to his students is admirable. He does not earn much money teaching at Talladega College, and giving away a large part of his income to needy students is commendable. Unfortunately, only contributions to charitable and specific other qualified organizations can be deducted for federal and Alabama income tax purposes. See, Code of Ala. 1975, §40-18-15(a)(10), which adopts by reference the federal deduction for contributions to charities at 26 U.S.C. §170. Gifts to individuals cannot be deducted. See, 2002 CCH U.S. Master Tax Guide at ¶1068 ("Contributions made directly to an individual or to groups of individuals are not deductible . . .").

Concerning the amounts deducted for classes the Taxpayer taught for which he was not paid, the Taxpayer explained that he taught a number of classes for which the College could not afford to pay him. He also taught several classes which had almost double the normal number of students. He claimed a deduction of \$1,500 for each extra or overload class that he taught. He contends that he should be allowed \$3,000 for each overload, and that he did not claim all the overloads that he could have.

Again, the Taxpayer's dedication to Talladega College and its students is commendable. However, the Taxpayer cannot deduct the estimated value of his unreimbursed services. See, 2002 CCH U.S. Master Tax Guide at ¶1061 ("The value of services rendered to a charitable (and also an educational) institution is not deductible as a contribution, . . .").

Because the Taxpayer cannot deduct his gifts to needy students or the estimated value of his unpaid teaching services, the Department correctly disallowed those items. Consequently, the 1998 and 1999 final assessments must be affirmed. Judgment is entered against the Taxpayer for 1998 tax and interest of \$920.23, and 1999 tax and interest of \$681.46. The reduced 2000 refund is also affirmed. That refund was correctly applied to the Taxpayer's 1998 liability.

The Taxpayer has consistently claimed that the Revenue Department has purposely treated him unfairly. I disagree. The Department's function is to audit tax returns to insure compliance with Alabama's tax laws. The Department has audited several of the Taxpayer's returns since 1990, but it has also reviewed thousands of other individual Alabama taxpayers during those years.

The Department initially disallowed several business-related

deductions claimed by the Taxpayer on his 1992 and 1993 returns. As discussed, those valid deductions were subsequently allowed by the Administrative Law Division on appeal. Otherwise, to my knowledge, the Department has allowed all valid deductible expenses claimed by the Taxpayer for which he has provided substantiating records.

The Taxpayer also continues to request the figures and explanations that the Department submitted to Judge Price concerning his initial appeal involving 1990 through 1993. Other than submitting the administrative record on appeal, the Administrative Law Division was not involved in the Circuit Court appeal. However, Judge Price's Order simply affirmed the Administrative Law Division's Final Order. As indicated, that Final Order affirmed the 1990 and 1991 final assessments because the Taxpayer had elected to file short form returns in those years, which was at the time an irrevocable election. Consequently, the various deductions claimed by the Taxpayer on his amended 1990 and 1991 returns were disallowed because the Taxpayer was statutorily barred from filing amended returns. As discussed, the Administrative Law Division allowed various previously disallowed deductions in 1992 and 1993. Judge Price also affirmed that holding, over the Department's objection.

Finally, the Taxpayer contends that he could have claimed numerous other deductions on his returns. That may be correct, but a deduction cannot be allowed unless it is claimed on a return and documented with accurate records. I would encourage the Taxpayer in the future to claim all allowable ordinary and necessary business-related expenses that he incurs in his position with Talladega College. All such expenses, if properly documented, will be allowed. I would further suggest that the Taxpayer confer with a CPA, accountant, or other qualified tax preparer concerning exactly what he can claim, i.e. business-related travel, home office and related expenses, etc., and the documentation needed to support any such deductions. The Revenue Department also routinely helps taxpayers with such information, upon request.

Concerning the years in issue, the Taxpayer again deducted what he estimated to be the value of each class he taught without compensation, and also the money he contributed to needy students as good grade grants. However, as discussed above in Docket Inc. 02-201, Alabama law does not allow a deduction for unreimbursed services, nor can the Taxpayer deduct the money he contributed to needy students. Those deductions were again properly disallowed.

The Department also disallowed travel and other expenses that the Taxpayer claims were business-related. The Taxpayer submitted documents after the December 15 hearing which he claims substantiate the deductions. The Department reviewed the documents and refused to change its position in the case. A copy of the Department's response is attached to this Final Order.

All taxpayers are required to maintain adequate records from which their correct tax liability can be verified by the Department. Code of Ala. 1975, §40-2A-7(a). The burden is also on the taxpayer to provide records in support of a claimed deduction, and in the absence of verifying records the deduction must be denied. *U.S. v. Wodtke*, 627 F.Supp. 1034 (1985); *Doyal v. C.I.R.*, 616 F.2d 1191 (1980).

Concerning travel expenses, a taxpayer must substantiate the expenses as to (1) amount, (2) time and place, and (3) business purpose. See generally, 26 U.S.C. §274.¹ A taxpayer must also establish that any non-travel related business expenses constituted ordinary and necessary expenses incurred in the taxpayer's business.

In this case, the Taxpayer provided a two page list of what he claims were tax deductible expenses. He also submitted copies of numerous checks relating to the expenses. I agree with the Department that the expenses cannot be allowed because

¹ The Alabama statute that allows a deduction for travel and other ordinary business expenses, Code of Ala. 1975, §40-18-15(a)(3), is modeled after its federal counterpart, 26 U.S.C. §162, which is specifically referenced in the Alabama statute. Consequently, §274, which establishes the recordkeeping requirements under §162, is also applicable in Alabama.

there is no indication that the expenses were business-related. Rather, the list includes expenses for “travel, textbooks, glasses, auto repair, phone, auto licensing, cleaning,” to name only a few. Unfortunately, there is nothing establishing that the expenses were business-related. The checks submitted by the Taxpayer show that many were payable to oil companies or utilities. Others were payable to individuals, or otherwise appear to be non-deductible, i.e. check 421 to Mary White for \$500, check 432 to David Davis for \$50, and checks 427, 433, 448, and 468 to the Franklin Mint. No business purpose for those expenses was established. Because the Taxpayer failed to properly substantiate his expenses as required by Alabama law, the Department correctly disallowed the claimed expenses and reduced the Taxpayer’s refunds in the subject years.

The Administrative Law Division has affirmed the Department’s disallowance of claimed business expenses for lack of substantiation in dozens of prior cases. See, *Laughlin v. State of Alabama, Inc.* 03-337 (Admin. Law Div. 6/27/03); *Wedgeworth v. State of Alabama, Inc.* 03-115 (Admin. Law Div. 6/11/03); *Davis v. State of Alabama, Inc.* 02-173 (Admin. Law Div. 5/24/02); *Daniels v. State of Alabama, Inc.* 01-641 (Admin. Law Div. 6/25/02); *Amaya v. State of Alabama, Inc.* 99-281 (Admin. Law Div. 9/1/99), to cite only a few such cases. I do not doubt that the Taxpayer had some business-related travel and other expenses in the years in issue, but like all other taxpayers, the Taxpayer was required to verify that the claimed expenses constituted ordinary and necessary business expenses. Checks to utilities, gas companies, individuals, etc., without more, are not sufficient.

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

Entered March 30, 2004.

