

WILLIAM D. & CAROL TISABY	§	STATE OF ALABAMA
1414 GADSDEN AVENUE		DEPARTMENT OF REVENUE
GADSDEN, AL 35901,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 05-657
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### FINAL ORDER

The Revenue Department assessed William D. & Carol Tisaby (together “Taxpayers”) for 2000 and 2001 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 November 2, 2005 in Birmingham, Alabama. William Tisaby (individually “Taxpayer”) represented the Taxpayers. Assistant Counsel Keith Maddox represented the Department.

The Department audited the Taxpayers’ 2000 and 2001 returns and disallowed various deductions claimed on the returns. It assessed the Taxpayers accordingly.

The Taxpayers dispute the Department’s adjustments concerning (1) mortgage interest paid on a house in Mississippi, (2) charitable contributions, and (3) unreimbursed travel and moving expenses.

The home mortgage interest paid by the Taxpayer was on a home in Mississippi in which his mother and brother lived in the subject years. The Department initially disallowed the home mortgage interest because it had no evidence that the Taxpayer owned the house. The Taxpayer later submitted a deed for the property, which shows the Taxpayer as a co-owner with his mother and brother. The Department still claims, however, that the interest cannot be deducted because the house was not the Taxpayers’ primary residence,

as required by 26 U.S.C. §163.<sup>1</sup> The Department is correct.

26 U.S.C. §163 allows a deduction for home mortgage interest paid on a taxpayer's primary residence and one other residence of the taxpayer. The Taxpayers did not reside in the Mississippi house on which the mortgage interest was paid. Consequently, the interest cannot be deducted.

The Taxpayers claimed both cash and non-cash charitable contributions in the subject years. The Taxpayer testified that he made contributions to his church by check and also in cash. He also donated furniture and other items to the church in 2001. The Department initially disallowed all of the claimed contributions for lack of substantiation. The Taxpayers provided a receipt concerning the donated items. The Department consequently allowed \$2,250 as a charitable deduction in 2001.

Alabama law at §40-18-15(a)(10) allows a deduction for charitable contributions to the same extent allowed for federal purposes at 26 U.S.C. §170. The burden was on the Taxpayers to provide evidence verifying all contributions. Unfortunately, the Taxpayers failed to obtain a statement or other verification from their church concerning their claimed cash contributions. Without such evidence, or copies of the canceled checks written by the Taxpayers to the church, the claimed cash contributions were correctly disallowed.

Finally, the Taxpayer claimed various business-related travel and moving expenses relating to his job with the FBI in the subject years. The Department disallowed the expenses because either the expense was not deductible, or the Taxpayer failed to substantiate the expense. I must agree.

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<sup>1</sup> Code of Ala. 1975, §40-18-15(a)(2) allows a deduction for home mortgage interest to the same extent allowed by federal §163.

The Department's position on this issue is fully explained in its Post-Hearing Addendum, which is enclosed with and made a part of this Final Order. The Department explains that the moving expenses claimed by the Taxpayer cannot be allowed because his "new principal place of work" was Georgia, not Alabama, as required by Code of Ala. 1975, §40-18-15(a)(18). Also, the Taxpayer's travel between Gadsden, Alabama and Atlanta constituted nondeductible commuting expenses. Finally, many of the expenses claimed by the Taxpayer were personal in nature, and thus not deductible.

The final assessments are affirmed. Judgment is entered against the Taxpayers for 2000 tax, penalty, and interest of \$2,507.09, and 2001 tax, penalties, and interest of \$2,441.96. Additional interest is also due from the date the final assessments were entered, May 3, 2005.

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

Entered December 14, 2005.

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BILL THOMPSON  
Chief Administrative Law Judge