

BILLY M. & SANDRA L. NEWMAN
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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 06-115

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Billy M. and Sandra L. Newman (“Taxpayers”) for 2002, 2003, and 2004 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 April 18, 2006. Bobbie Pike represented the Taxpayers. Assistant Counsel Gwendolyn Garner represented the Department.

The issue in this case is whether the Department correctly disallowed business-related mileage expenses claimed by the Taxpayers in the subject years.

Sandra Newman (individually “Taxpayer”) has worked as an independent insurance agent in East Central Alabama for over 20 years. Her job requires her to regularly call on her customers to make sales and collect premiums. She does so by using her personal motor vehicle.

The Taxpayer maintained a calendar during the years in issue in which she recorded her beginning and ending odometer readings every day she traveled for work. She also noted the number of personal miles traveled each day. The Taxpayer thereafter claimed a mileage deduction based on the annual miles traveled on business per the calendar.

The Department audited the Taxpayers, rejected the calendar, and consequently

disallowed the mileage deduction because “the Department has not been provided with information to ascertain the amount.” December 5, 2005 Hearing Officer’s Report. The Taxpayers appealed.

Because deductions for business-related travel, entertainment, or similar type expenses are particularly susceptible to abuse, those deductions must be strictly documented with exact records verifying the (1) amount, (2) time, (3) place, and (4) business purpose for the travel, entertainment, etc. See generally, 26 U.S.C. §274. Alabama has specifically adopted the strict recordkeeping requirements for IRS §274, see Code of Ala. 1975, §40-18-15(a)(20).

The mileage expense issue was also in dispute in *Goins v. State of Alabama, Inc.* 03-352 (Admin. Law Div. 9/18/03). The taxpayer in *Goins* was a traveling salesman. He submitted a calendar showing his business miles traveled in the subject year, 1999. The Administrative Law Division held that the calendar was not sufficient to satisfy the strict recordkeeping requirements of §274.

Finally, the Taxpayer claims that he traveled as a salesman in 1999, and should be allowed travel expenses of \$13,267. The Department disallowed the mileage because it was not substantiated. The Taxpayer subsequently submitted a calendar for 1999, which he claims verifies the amount of miles traveled on business in that year.

The criteria for claiming travel expenses was explained in *Langer v. C.I.R.*, 980 F.2d 1198 (1992):

A taxpayer cannot deduct travel expenses under 26 U.S.C. § 162 unless the taxpayer meets the substantiation requirements of § 274(d). The taxpayer must substantiate the amount, time, place, and business purpose of each travel expenditure “by adequate records or by sufficient evidence corroborating [the taxpayer’s] own statement.” Treas. Reg. § 1.274-5(c) (1983). To substantiate expenditures with “adequate records,” a

taxpayer must keep an account book or similar record along with supporting documentary evidence that together establish each element of the expenditure. *Id.* § 1.274-5(c)(2)(i). To show substantiation by other “sufficient evidence,” the taxpayer must establish each element by the taxpayer’s own detailed statement and by corroborating evidence. *Id.* § 1.274-5(c)(3).

Langer, 980 F.2d at 1199.

The calendar submitted by the Taxpayer identifies where the Taxpayer traveled, and the estimated miles traveled. For example, the March 9, 1999 entry has “Cherokee 40 Corinth, Ms 125.” The entry for March 11 has “Russelville Ind. Pk 90.” The calendar is not sufficient because it does not fully substantiate the amount, time, place, and business purpose for each trip.

The Taxpayer claims in his notice of appeal that “I did not have perfect records, but you know I used my auto constantly and should be allowed a reasonable amount.” The courts have allowed taxpayers to estimate deductible expenses in the absence of adequate records under certain circumstances. *Cohan v. Commissioner*, 39 F.2d 540 (1930). Unfortunately for the Taxpayers in this case, the *Cohan* rule does not apply to employee business-travel expenses. IRC Reg. §1.274-5T(a)(1). Rather, the law requires that detailed, exact records must be kept. The Taxpayer failed to do so. The claimed employee travel expenses were thus properly disallowed.

Goins at 2 – 3.

The Taxpayer in this case traveled extensively on her job as an insurance agent. Unfortunately, her calendar showing only her beginning and ending odometer readings each day is not sufficient. I sympathize with the Taxpayers, but to be allowed business-related travel, §274 requires that the Taxpayer must keep a detailed log and/or calendar showing not only the miles traveled, but also where she traveled, who she called on, and the business purpose for the trip.

The final assessments are affirmed. Judgment is entered against the Taxpayers for

2002 tax and interest of \$1,198.88; 2003 tax and interest of \$1,570.60; and 2004 tax and interest of \$37.67. Additional interest is also due from the date the final assessments were entered, December 14, 2005.

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

Entered April 27, 2006.

BILL THOMPSON
Chief Administrative Law Judge