

FRED J. WEDDEKE  
3044 OLIVER STREET  
ALEX CITY, AL 35010-6732,

§  
§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 06-342

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

**OPINION AND PRELIMINARY ORDER ON TAXPAYER'S  
SECOND APPLICATION FOR REHEARING**

This appeal involves final assessments of 2002 and 2003 Alabama income tax entered against the above Taxpayer, and a reduced refund of 2004 income tax requested by the Taxpayer.

The Taxpayer worked as a long-haul truck driver during the years in issue. This case turns on whether the Taxpayer adequately substantiated the truck-related mileage expenses claimed on his returns for the subject years.

A Preliminary Order was entered directing the Taxpayer to submit records substantiating the truck expenses to the Administrative Law Division. The Taxpayer failed to do so. A Final Order was consequently entered on August 9, 2006 affirming the final assessments and the reduced refund. The Taxpayer timely applied for a rehearing and submitted some records.

The Department notified the Administrative Law Division that the records were inadequate, and that the Taxpayer's liabilities should not be changed. A Final Order on Rehearing was consequently entered affirming the August 9, 2006 Final Order. The Taxpayer timely applied for a second rehearing.

A hearing was conducted on April 26, 2007. CPA Tom Roberson represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer lives in Alexander City, Alabama. He drove company-owned trucks for companies based in Portland, Tennessee and Little Rock, Arkansas during the years in issue. His employers dispatched him by telephone to make hauls from place to place during a typical week. He returned to his home in Alex City on weekends, but only if his final delivery destination during the week was near Alex City. Otherwise, he stayed on the road. He returned to his base in Tennessee or Arkansas only sporadically for repairs or to have his truck serviced.

The Taxpayer testified that he maintained a log of his daily travel during the subject years. He explained that his employers required him to turn in his log every six months so that the federal government could verify that he did not drive more than the federally allowed miles. He did not keep a copy of the logs because he assumed that his company kept them, and that he could retrieve them if he ever needed them for tax purposes. Unfortunately, the Taxpayer's employers discarded the log books after a short period.

The Taxpayer's wife did his taxes during the years in issue. She used the Taxpayer's weekly pay sheets from his employers to determine the days he drove the truck in each year. He claimed 280 days in 2002, 256 days in 2003, and 252 days in 2004. He then multiplied the travel days by a standard daily allowance (\$43 per day, according to his representative) to arrive at his truck-related deductions in each year.

The Department disallowed the truck-related expenses because the Taxpayer failed to provide the Department examiner with a logbook verifying (1) when he left and returned on a trip, (2) his beginning location and ending destination, and (3) the miles traveled.

Importantly, according to the examiner, the Taxpayer could not prove when he returned to his home base and when he left the base. The disallowed expenses totaled \$15,503 in 2002, \$10,074 in 2003, and \$18,295 in 2004. The Department also made other adjustments that are not disputed.

Alabama law allows a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business to the same extent allowed by federal law at 26 U.S.C. §162. See, Code of Ala. 1975, §40-18-15(a). Business-related travel expenses incurred while away from home are thus deductible. As a general rule, the actual expenses must be documented as to amount, time and place, and business purpose. See, 26 U.S.C. §274. However, federal regulations also allow a taxpayer to claim a per diem allowance in lieu of keeping records as to the actual amount spent. A taxpayer claiming a per diem amount for away-from-home meals, miscellaneous, and other travel expenses, must still establish the time, place, and business purpose for the travel. See, Rev. Proc. 2004-60; Rev. Proc. 2003-80.

The Taxpayer in this case claimed per diem deductions based on the number of days he hauled goods for his employers in each year. He maintained logbooks, but did not keep a copy of the logbooks because his employers told him that all the relevant tax information, i.e., days traveled, departure and destination locations, and miles traveled, would be shown on the weekly payroll information provided to the Taxpayer. As indicated, the Taxpayer (and his wife) used that information to determine his per diem travel deductions in the subject years.

The Taxpayer provided the payroll information to the Department. The Department rejected the information as insufficient because it did not show when the Taxpayer returned

to and departed from his home base. The Taxpayer explained, however, that he returned to his home base in either Arkansas or Tennessee only once every three months or so to have his vehicle serviced or repaired. He otherwise never returned to his home base between loads.

The Department examiner did her usual exemplary job in this case. I find no support, however, for the Department's position that a long-haul truck driver must return to his or her home base to be allowed to deduct travel-related business expenses.

The Taxpayer obviously incurred substantial business-related travel expenses while driving his employers' trucks during the subject years. The weekly pay information provided to the Taxpayer by his employers, and subsequently provided by the Taxpayer to the Department, shows the number of days the Taxpayer hauled goods during those years. The Taxpayer multiplied the travel days as reflected on the pay information by the IRS-allowed per diem to arrive at his business-related travel deductions in each year. Those verified amounts should be allowed.

The Department should recompute the Taxpayer's liabilities by allowing the travel-related expenses claimed on the subject year returns. It should notify the Administrative Law Division of the adjusted amounts due. A Final Order will then be entered.

This Opinion and Preliminary Order on Taxpayer's Second Application for Rehearing 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 September 27, 2007.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.  
Thomas L. Roberson  
Kim Peterson