

MICHAEL E. & TAMMY T. CLARY
9913 FIELDSTONE LANE
TUSCALOOSA, AL 35405,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-395

FINAL ORDER

The Revenue Department assessed Michael E. and Tammy T. Clary (jointly “Taxpayers”) for 2003 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 September 8, 2006. The Taxpayers’ representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The Department audited the Taxpayers’ 2003 Alabama income tax return and disallowed unreimbursed employee expenses and business miles claimed on the return. It accordingly assessed the Taxpayers for the tax due, plus interest.

The Taxpayers live in Tuscaloosa, Alabama. Michael Clary (individually “Taxpayer”) is a manager for a mobile home dealer that has an office in Jefferson County. The Taxpayer travels to that office from his home in Tuscaloosa, and also to various job sites in the area. He claimed a business mileage deduction for the miles he traveled from his home to the office in Jefferson County and also to the job sites. The Department disallowed 65 percent of the claimed mileage because it determined that the Taxpayer’s travel between Tuscaloosa and the office was a nondeductible commuting expense. The Department allowed 35 percent of the mileage for travel from the office to the various job sites.

Unreimbursed employee travel expenses may be deducted as ordinary and

necessary business expenses pursuant to Code of Ala. 1975, §40-18-15(a)(1). That section adopts by reference the federal statute on point, 26 U.S.C. §162. In such cases, federal authority and case law should be followed. *State, Department of Revenue v. Dawson*, 504 So.2d 312 (Ala. Civ. App. 1987). Commuting expenses to and from a fixed business location cannot be deducted. The Taxpayer's fixed business location was the Jefferson County office. Consequently, the Taxpayer cannot be allowed a mileage deduction for the travel from his home to the office. The mileage from the office to the various temporary job sites was deductible, and thus correctly allowed by the Department.

The Taxpayer claimed depreciation for furniture used in an office in his home. The Department disallowed the depreciation deduction, however, because the Taxpayers' failed to submit records substantiating the deduction.

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. Nipper*, 2003-1 U.S. Tax Case. (CCH) P50,408 (2003); *Peterson v. C.I.R.*, T.C. Memo 1995-212 (1995); *U.S. v. McMullin*, 948 F.2d 1188 (1991).

As indicated, the Taxpayers failed to attend the September 8 hearing. They have otherwise failed to prove that the depreciation deduction should be allowed. Consequently,

the deduction was correctly disallowed.¹

The final assessment is affirmed. Judgment is entered against the Taxpayers for 2003 tax and interest of \$586.06. Additional interest is also due from the date the final assessment was entered, March 20, 2006.

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

Entered September 13, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Jamey Richardson, CPA
Tony Griggs

¹ A home office deduction can only be claimed if the home office is the principle place of business of a taxpayer. In this case, the Taxpayer's principle office was in Jefferson County, not in his home. Also, the home office use must be for the convenience of the employer. There is no evidence that the Taxpayer's employer benefited from or required the Taxpayer to work at home. See generally, 26 U.S.C. §280A. Consequently, even if the Taxpayer had presented evidence establishing the depreciable amount, the deduction still could not be allowed.