

DALE R. & LYNN M. ELLINGHAUSEN §
P.O. DRAWER G
BRENT, AL 35034-0906, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 07-584

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Dale R. and Lynn M. Ellinghausen (“Taxpayers”) for 2003, 2004, and 2005 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 5, 2009. The Taxpayers attended the hearing. Assistant Counsel Lionel Williams represented the Department.

The Taxpayers live in Brent, Alabama. Mr. Ellinghausen has sold health insurance for over 40 years. He does so by cold calling on prospective customers in West Central Alabama. Mrs. Ellinghausen has worked as a flight attendant for American Airlines for almost 20 years.

The Taxpayers filed Alabama returns for the subject years on which they claimed business-related travel expenses, expenses relating to Mrs. Ellinghausen’s job as a flight attendant, and various other expenses. The Department audited the returns and disallowed the travel expenses because, according to the Department, Mr. Ellinghausen failed to keep adequate records of his business-related travel. It also disallowed Mrs. Ellinghausen’s job-related expenses, i.e., special hosiery, dry cleaning expenses, on-the-job meals, cosmetics, etc., as nondeductible personal expenses. The disallowed expenses resulted in the final assessments in issue. This appeal followed.

Mr. Ellinghausen testified at the November 5 hearing that he and his wife have always retained all of their business-related records. He explained that he has always maintained receipts showing how much gasoline he purchased while traveling on business, and where he purchased it. From that information, together with information from his employer showing the names and addresses of his customers, he is able to compute his business-related miles traveled in a given year. He also used those records to compile comprehensive travel logbooks for the years in issue.

Mr. Ellinghausen further testified that the Department audited he and his wife's 1993, 1994, and 1995 Alabama returns, and determined that they were due refunds in those years. The Department thus accepted his business-related travel records for those years, which he explained were the same type records that he maintained in the subject years. The Department audited the Taxpayers again for 2001, and again accepted Mr. Ellinghausen's business travel records as sufficient.

Mrs. Ellinghausen testified that as a flight attendant, she is required to wear a certain color hose, have her work uniforms cleaned periodically, wear cosmetics while on the job, and buy her own food when on duty. Her employer pays her a fixed per diem amount while on duty. She explained that she keeps all of her business records, and that she and her husband deduct only her net business-related expenses after deducting the per diem reimbursements.

The Internal Revenue Code, at 26 U.S.C. §274, requires taxpayers to keep adequate records verifying the amount of business-related travel expenses, entertainment, and other similar expenses. A contemporaneous log of business travel is one method for verifying the expense, but is not required. "A contemporaneous log (of business travel) is

not required, (but such a log) . . . has a high degree of credibility.” CCH 2009 U.S. Master Tax Guide at §953. A taxpayer’s records must in any case show the amount, time and place, and business purpose for all business-related travel.

In this case, Mr. Ellinghausen kept records showing the amounts spent on travel and the general area in which the travel occurred. He also maintained records compiled by his employer identifying his customers and their addresses. From the above records, Mr. Ellinghausen compiled logbooks showing where he traveled, the miles traveled, and the business purpose for the trips.¹

Importantly, the Department previously audited the Taxpayers for 1993, 1994, 1995, and 2001, and found that Mr. Ellinghausen’s business-related travel records were sufficient to verify the amounts claimed. Mr. Ellinghausen thus reasonably believed that his recordkeeping method was adequate. Under the circumstances, the Taxpayers’ claimed business-related travel should be allowed.²

Mrs. Ellinghausen also adequately explained the business purpose for the various expenses relating to her work as a flight attendant. Those expenses should also be allowed.

¹ As indicated, Mr. Ellinghausen sells health insurance and calls on prospective customers door-to-door. The business purpose for his trips are thus self-evident.

² Mr. Ellinghausen explained at the November 5 hearing that after the Department deemed his travel records to be insufficient, he has, on the advice of counsel, maintained a contemporaneous log of his business travel. He should continue doing so. The log should show the beginning and ending odometer readings, the customer’s name and address if known, and the purpose for the travel. If he does not know the name and/or address of a person he calls on, he should so state and indicate the general area in which the trip was made.

The Department should recompute the final assessments in issue after allowing the above discussed expenses. A Final Order will then be entered for the adjusted amounts due.

This Opinion and Preliminary Order 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 January 26, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Warren W. Young, Esq.
Dale & Lynn Ellinghausen
Tony Griggs