

JACKIE L. & EVANGELYN RASBURY §
P.O. BOX 1170
WINFIELD, AL 35594-1170, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 08-1047

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Jackie L. and Evangelyn Rasbury (together “Taxpayers”) for 2004 and 2005 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 21, 2011. Jackie Rasbury (individually “Taxpayer”) attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Department audited the Taxpayers’ 2004, 2005, and 2006 Alabama income tax returns, disallowed various deductions claimed on the returns, and entered preliminary assessments against the Taxpayers for all three years. The Taxpayers petitioned for a review of the preliminary assessments and provided additional records. The Department subsequently reduced the amounts due for 2004 and 2005, and determined that the Taxpayers had overpaid in 2006. The Taxpayers appealed the resulting 2004 and 2005 final assessments to the Administrative Law Division.

The Taxpayers dispute two disallowed deductions – business-related mileage and interest expense.

The Mileage Expense – The Taxpayer is a practicing CPA. Her husband was employed during the years in issue at an unrelated business several miles from the Taxpayer’s office. The Taxpayer had a client that was located between the Taxpayer’s

office and her husband's job location. The husband occasionally stopped by the client's business, picked up some accounting or other records for the Taxpayer, and then dropped the records off at the Taxpayer's office on his way home after work. He sometimes also later picked up the records at the Taxpayer's office and returned them to the client on his way to work.

The Taxpayers claimed a business-related mileage deduction for the husband's travel from the Taxpayer's office to the client's office and back. The Department disallowed the mileage as nondeductible commuting expenses.

Business-related travel can be deducted as an ordinary and necessary business expense. Code of Ala. 1975, §40-18-15(a)(1). Business miles must, however, be documented with a contemporaneous travel log showing the miles traveled, the business purpose for the trip, the locations visited, etc. See, 26 U.S.C. §274; *Ellinghausen v. State of Alabama*, Docket No. Inc. 07-584 (Admin. Law Div. 1/26/2010). Travel expenses from a taxpayer's place of abode to his or her primary business location, i.e., commuting expenses, are not deductible. *Isbell v. State of Alabama*, Docket No. Inc. 03-1143 (Admin. Law Div. 5/25/2004).

The husband traveled the mileage in issue on behalf of the Taxpayer. His pickups and deliveries for the Taxpayer were not related to his own trade or business, and thus were not ordinary and necessary business expenses incurred by the husband. There is also no evidence that the Taxpayer's husband kept a contemporaneous travel log or other evidence showing the miles traveled, the purpose for the trip, etc., as required by Alabama and federal law.

In any case, the travel in issue was part of the husband's commute to his own work. The fact that he stopped at his wife's client's business and his wife's office on his way to and from work does not change the basic nature of his travel as a daily commute. The mileage was thus correctly disallowed.

The Interest Expense – The Taxpayer maintained an American Express business capital line of credit in the subject years. She presented evidence at the April 21 hearing that she paid finance charges on the credit line of \$5,662.29, \$6,353.31, and \$6,801.85 in 2004, 2005, and 2006, respectively. She also presented letters from State Bank & Trust in Brilliant, Alabama stating that she paid various commercial and rental property loans from money taken from the above account in the subject years.

Business-related interest is deductible, but there must be records distinguishing business interest from personal interest. The Taxpayer concedes that she also used her American Express for personal purposes. She presented worksheets at the April 21 hearing that estimated the percentage of expenses that were business-related versus personal. Unfortunately, there is no documentation verifying the accuracy of the worksheets. Under the circumstances, the interest deductions were properly disallowed.

The final assessments are affirmed. Judgment is entered against the Taxpayers for 2004 tax and interest of \$1,277.02, and 2005 tax, penalties, and interest of \$958.38. Additional interest is also due from the date the final assessments were entered, November 25, 2008.

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

Entered May 11, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.
Evangelyn Rasbury
Tony Griggs