

CLIFFORD G. DRAPER
1101 26th Avenue North
Hueytown, AL 35023-3673,
DIVISION

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

Taxpayer,

§

DOCKET NO. INC. 00-544

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed 1996 income tax against Clifford G. Draper ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 16, 2001 at the Department's Birmingham Taxpayer Service Center. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Department contacted the Taxpayer in September 1997 and requested records from which his 1996 Alabama income tax return could be verified. The Taxpayer provided the Department examiner with his bank records and a 1996 planning calendar on September 24, 1997. The Taxpayer claims he maintained his business miles traveled and other business-related expenses on the calendar. The Taxpayer testified that he later left the examiner a telephone message that he had other records concerning the subject year, but that the examiner never returned his call. The examiner denies ever receiving a message from the Taxpayer. The Taxpayer claims the additional records were destroyed in a storm in 1998.

The Department completed its audit of the Taxpayer's records in October 1999. The examiner allowed the Taxpayer approximately \$23,000 in mileage

and other related

business expenses based on the information in his planning calendar. She disallowed all medical expenses, home mortgage interest, and other claimed expenses that were not verified.

The Department submitted its audit changes to the Taxpayer on a Form IFTA-1 in October 1999. The Taxpayer claims that he had no way of contesting the changes because the Department never returned his records. The Taxpayer signed the IFTA-1 on November 1, 1999, thereby consenting to entry of a final assessment for the amount claimed by the Department. The Department entered the final assessment in issue on April 8, 2000. The Taxpayer appealed.

In response to the Taxpayer's claim that his records were never returned, the Department examiner testified that after she completed the audit in October 1999, she returned the records to the Taxpayer by regular mail. She also explained that the audit took over two years to complete because she was ordered to suspend her regular audits and work on a special project.

The burden was on the Taxpayer to provide records verifying all claimed deductions. Without adequate records, all unverified deductions must be disallowed. *McDonald v. CIR*, 114 F.3d 1194 (1997).

The Taxpayer claims that the final assessment should be dismissed because the Department failed to return his records. Unless otherwise agreed, the Department should in all cases return a taxpayer's records in person so there can be no dispute they were returned. Unfortunately, the examiner in this case thought the Taxpayer agreed with the audit, and thus returned the records by regular U.S. mail. The Taxpayer claims he never received them.

Even if the Taxpayer's records are lost, however, the final assessment should not be dismissed. Although not verified by other records, the examiner still allowed the Taxpayer all business miles recorded in his calendar. Even if the Taxpayer's calendar showed additional miles traveled, the Department would not be required to accept that information. The Taxpayer also admittedly failed

to provide records concerning his medical expenses, home mortgage interest, and the other deductions claimed on his return. Under the circumstances, the Department's audit adjustments were reasonable, and are affirmed, with one exception. The Taxpayer presented a statement from American General Finance after the January 16 hearing indicating that he paid home mortgage interest of \$5,573.66 in 1996. That amount should be allowed, and the Taxpayer's liability reduced accordingly.

Considerable interest has accrued since the audit began in September 1997. As indicated, the audit took over two years to complete because the examiner was assigned to a special project. Code of Ala. 1975, §40-2A-4(b)(1)c. authorizes the Department's Taxpayer Advocate to abate interest that has accrued due to undue delay by the Department. The Taxpayer certainly should not be required to pay additional interest because the examiner was ordered to work on another job. Consequently, the matter has been submitted to the Taxpayer Advocate for an abatement of interest as he deems appropriate under the circumstances. The Taxpayer Advocate should notify the Administrative Law Division of his findings. The Department will be directed to adjust the Taxpayer's liability accordingly. A Final Order for the adjusted amount due will then be entered.

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 March 29, 2001.