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| THOMAS D. JONES<br>316 LAIRD AVENUE<br>HUEYTOWN, AL 35023, | § | STATE OF ALABAMA<br>DEPARTMENT OF REVENUE<br>ADMINISTRATIVE LAW DIVISION |
| Taxpayer, | § | DOCKET NO. INC. 08-328 |
| v. | § | |
| STATE OF ALABAMA<br>DEPARTMENT OF REVENUE. | § | |

**FINAL ORDER ON TAXPAYER'S**
**SECOND APPLICATION FOR REHEARING**

This appeal involves final assessments of 1999, 2000, 2001, 2002, and 2003 Alabama income tax entered against the above Taxpayer. A Final Order was entered on November 3, 2008 affirming the 2003 final assessment and reducing/adjusting the final assessments for the remaining years. The Taxpayer timely applied for a rehearing. He claimed that he had additional records.

A Preliminary Order was entered directing the Taxpayer to submit the additional records to the Administrative Law Division by January 2, 2009. The Order further stated that if the records were not received by the above date, the November 3, 2008 Final Order would be affirmed. The Taxpayer failed to submit the records. Consequently, the November 3, 2008 Final Order was affirmed.

The Taxpayer timely applied for a second rehearing. He claimed that he had "more documents that are of substantial value." The Taxpayer was directed to submit any additional records to the Administrative Law Division by May 14, 2010. The Taxpayer responded by requesting a hearing.

A hearing was conducted on June 1, 2010. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayer explained at the June 1 hearing that he was unemployed and recently divorced in 1998. He subsequently got a job as a manager at the City of Trussville Utilities Department. Specifically, he was responsible for arranging and renting dump trucks, backhoes, and other equipment that City workers used to perform excavation and other construction work. The Taxpayer testified that the equipment rental companies (Nations and Reliable) invoiced him for the equipment. He would then mark-up the invoice 15 to 20 percent and submit the bill to the City for payment. The mark-up constituted his pay or reimbursement for the work.

The Taxpayer lost his job with the City in 2003. He had reconciled with his ex-wife by then, and the couple and their children moved in with the Taxpayer's parents because of their poor financial circumstances.

The Taxpayer failed to timely file Alabama or federal returns for the subject years because he did not have the money to either hire an accountant to prepare the returns or pay the tax due. The IRS subsequently notified the Taxpayer that he should file returns for the years in issue. It also notified the Department that the Taxpayer had income sufficient to also require him to file Alabama returns for those years. The Taxpayer subsequently file returns with both the IRS and State.

According to the Taxpayer, the IRS accepted his returns and did not assess him for any additional tax due. The Department, however, requested records verifying the deductions claimed on the returns. The Taxpayer provided some records. The Department allowed the substantiated deductions, disallowed the unsubstantiated deductions, and entered the final assessments in issue for the tax due, plus penalties and interest.

The Taxpayer claims that he initially had complete records of the expenses he

incurred while working for the City of Trussville. He contends, however, that many were lost because he has moved several time since 1999, and also because his home was partially destroyed by a fire.

All taxpayers are required to keep adequate records from which their correct tax liability can be computed by the Department. Code of Ala. 1975, §40-2A-7(a)(1). The burden is also on a taxpayer to provide records verifying all claimed deductions. Without such records, all deductions must be disallowed. *McDonald v. C.I.R.*, 114 F.3d 1194 (1997); *Jones v. C.I.R.*, 903 F.2d 1301 (1990); *Doyal v. C.I.R.*, 616 F.2d 1191 (1980).

> All taxpayers are required to keep records to enable the Commissioner to determine their correct tax liability. Sec. 6001; *Meneguzzo v. Commissioner*, 43 T.C. 824, 831-832, 1965 WL 1240 (1965). Deductions are a matter of legislative grace, and the taxpayer bears the burden of proof to establish entitlement to any claimed deduction. Rule 142(a); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934). This includes substantiation of the deductions claimed. *Hradesky v. Commissioner*, 65 T.C. 87, 90, 1975 WL 3047 (1975), affd. per curiam 540 F.2d 821 (5th Cir. 1976).

*Hentges v. C.I.R.*, T.C. Memo. 1998-244 (U.S. Tax Ct., 1998).

The Taxpayer's testimony at the June 1 hearing was sincere and believable. Unfortunately for the Taxpayer, without some records from which the claimed deductions could at least be reasonably estimated, no additional deductions can be allowed. If the Taxpayer had timely filed the returns when due, he would have had the records needed to verify his expenses/deductions. The Taxpayer thus has only himself to blame. The penalties are, however, waived for cause under the circumstances.

The final assessments, less the penalties, are affirmed. Judgment is entered against the Taxpayer for 1999, 2000, 2001, 2002, and 2003 tax and interest of $1,966.95, $379.15, $5,150.15, $739.72, and $413.04, respectively. Additional interest is also due

from the date the final assessments were entered, February 28, 2008. The November 3, 2008 Final Order is voided.

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

Entered August 24, 2010.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Gwendolyn B. Garner, Esq.
Thomas D. Jones
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