RICHARD A. JONES 83 Highway 82 East Duncanville, AL 35456,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 00-561
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Richard A. Jones ("Taxpayer") for 1998 income tax. 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 10, 2001. The Taxpayer represented himself. Assistant Counsel Gwen Garner represented the Department.

ISSUE

The issue in this case is whether the Department correctly disallowed one-half of the gambling losses claimed by the Taxpayer on his 1998 Alabama income tax return.

FACTS

The Taxpayer gambled at various dog and horse tracks in Alabama during 1998. He reported gambling income of $46,528 on his 1998 Alabama return. He also claimed corresponding gambling losses of $46,528.

The Department audited the return, and requested records verifying the claimed losses. The Taxpayer provided the Department examiner with a notebook showing the dates on which he gambled, the amount of money he took to the track, the amount he obtained through an ATM at the track, his winnings, the money he left with, and his net winnings or losses on each trip. The

Taxpayer also provided bank statements showing his ATM withdrawals, and hundreds of losing race tickets.

The Taxpayer testified at the January 10 hearing that the Department examiner accepted the above records as sufficient verification. However, according to the Taxpayer, the examiner's supervisor directed the examiner to allow only one-half of the deduction based on the Administrative Law Division's holding in *State of Alabama v. Shirley A. Givens Johnson*, Inc. 90-126 (Admin. Law Div. 1/3/91). The Department failed to dispute the above testimony, or otherwise explain why it rejected the Taxpayer's records as insufficient.

The Taxpayer has been addicted to gambling since 1990. He lost his house at one point because of his gambling habit, and also resigned his job with the U.S. Postal Service so he could use his accrued benefits to gamble.

The Taxpayer did not know what records he needed to keep for tax purposes when he started gambling. His tax preparer informed him that he needed to keep a logbook showing the dates on which he gambled, and his winnings and losses. He was also told to keep his losing tickets. As indicated, the Taxpayer complied with those instructions during the year in issue.

The Taxpayer notified his tax preparer that based on his logbook, he had gross winnings of $71,858 in 1998, and losses of $73,134. The tax preparer informed the Taxpayer that if he had a net loss in the year, he was only required to report winning tickets of over $600.[1] Consequently, the Taxpayer reported only $46,528 as gambling income on his return, which he offset with a corresponding amount of gambling losses.

ANALYSIS

[1]Race tracks withhold federal and state income tax on any winning ticket over $600.

The deductibility of gambling losses was addressed in *Winston Shirley v. State of Alabama*, Inc. 96-153 (Admin. Law Div. 5/9/96). The Final Order in that case stated in part as follows:

> Gambling losses can be deducted, but only up to the amount of gambling winnings. Code of Ala. 1975, §40-18-15(7) and Department Reg. 810-3-.17-.01(1)(a)(12). See also, 26 U.S.C. §165(d).
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> As with all deductions, the burden is on the taxpayer to prove gambling losses. Donovan v. Commissioner, 359 F.2d 64 (1966); Betson v. Commissioner, 802 F.2d 365 (9th Cir. 1986). Whether a taxpayer has adequately established his gambling losses is a question of fact in each case. As stated in Norgaard v. Commissioner, 939 F.2d 874 (9th Cir. 1991):
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> > The question of the amount of losses sustained by a taxpayer is a question of fact to be determined from the facts of each case, established by the taxpayer's evidence, and the credibility of the taxpayer and supporting witnesses. *Green v. Commissioner*, 66 T.C. 538, 545-46 (1976) *acq.* 1980-2 C.B. 1. The credibility of the taxpayer is a crucial factor. *See Mack v. Commissioner*, 429 F.2d 182, 184 (6th Cir. 1970) (that the tax court allowed some deduction based on the taxpayer's net worth method of proof "was a testament to the persuasiveness and seeming integrity of these taxpayers"). In some cases, courts have found losing tickets or other records and corroborating testimony by the taxpayer insufficient to establish that the taxpayer suffered deductible losses. However, in other cases, the tax court has allowed the taxpayer to deduct some or all of their losses on the basis of their losing tickets and credible corroboration by the taxpayer.
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> Norgaard, at page 878.

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> Losing tickets are in some cases sufficient to verify claimed losses, but only if the tickets are supported by the believable, direct testimony of the taxpayer. See generally, Norgaard, supra, footnote 3, at page 878. For example, in Wolkomir v. Commissioner (40 TCM 1078 (1980)), which is cited in the above

> footnote, the claimed losses were allowed based on the "forthright, credible, and candid testimony of the taxpayer."

Shirley, Inc. 96-153 at 3-5.

The Taxpayer's records appear authentic and contemporaneous. The Department offered no evidence or argument to the contrary. Those records, combined with the Taxpayer's forthright, believable testimony at the January 10 hearing, is sufficient to allow the losses claimed on his return.

The Department denied one-half of the claimed losses based on the Administrative Law Division's holding in *Johnson*. In *Johnson*, the taxpayer provided only a smattering of losing tickets in support of her claimed losses. Given the lack of credible testimony, and the absence of a contemporaneously maintained logbook, the Administrative Law Division affirmed the Department's generous allowance of one-half of Johnson's claimed losses.

This case can be distinguished from *Johnson* based on the completeness of the Taxpayer's records, and his credible testimony concerning both his records and his overall gambling problem.

The final assessment is dismissed.

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

Entered January 12, 2001.