

AUBREY GENE HICKS, JR.  
347 SHURBUTT CIRCLE  
ALEXANDRIA, AL 36250,

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§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 09-817

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **FINAL ORDER**

The Revenue Department assessed Aubrey Gene Hicks, Jr. ("Taxpayer") for 2006 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 19, 2010. The Taxpayer was notified of the hearing by certified mail, but failed to attend. Assistant Counsel John Breckenridge represented the Department.

The Taxpayer claimed itemized deductions on his 2006 Alabama income tax return. The Department reviewed the return and denied the Taxpayer's business travel expenses and various other itemized deductions. The Taxpayer appealed. A Preliminary Order was entered directing the Taxpayer to submit records verifying the disallowed deductions. The Taxpayer submitted some records. The Department determined that the Taxpayer's records concerning his business-related travel were insufficient because they were not contemporaneously maintained, did not show a business purpose for the trip, and did not include a beginning or ending mileage or the trip destination. It consequently disallowed the deduction.

Because deductions for business-related travel, entertainment, or similar type expenses are particularly susceptible to abuse, those deductions must be strictly documented with exact records verifying the (1) amount, (2) time, (3) place, and (4)

business purpose for the travel, entertainment, etc. See generally, 26 U.S.C. §274. Alabama has specifically adopted the strict recordkeeping requirements in IRS §274, see Code of Ala. 1975, §40-18-15(a)(20).

The mileage expense issue was also in dispute in *Goins v. State of Alabama, Inc.* 03-352 (Admin. Law Div. 9/18/03). The taxpayer in *Goins* was a traveling salesman. He submitted a calendar showing his business miles traveled in the subject year, 1999. The Administrative Law Division held that the calendar was not sufficient to satisfy the strict recordkeeping requirements of §274.

Finally, the Taxpayer claims that he traveled as a salesman in 1999, and should be allowed travel expenses of \$13,267. The Department disallowed the mileage because it was not substantiated. The Taxpayer subsequently submitted a calendar for 1999, which he claims verifies the amount of miles traveled on business in that year.

The criteria for claiming travel expenses was explained in *Langer v. C.I.R.*, 980 F.2d 1198 (1992):

A taxpayer cannot deduct travel expenses under 26 U.S.C. § 162 unless the taxpayer meets the substantiation requirements of § 274(d). The taxpayer must substantiate the amount, time, place, and business purpose of each travel expenditure "by adequate records or by sufficient evidence corroborating [the taxpayer's] own statement." Treas. Reg. § 1.274-5(c) (1983). To substantiate expenditures with "adequate records," a taxpayer must keep an account book or similar record along with supporting documentary evidence that together establish each element of the expenditure. *Id.* § 1.274-5(c)(2)(i). To show substantiation by other "sufficient evidence," the taxpayer must establish each element by the taxpayer's own detailed statement and by corroborating evidence. *Id.* § 1.274-5(c)(3).

*Langer*, 980 F.2d at 1199.

The calendar submitted by the Taxpayer identifies where the Taxpayer traveled, and the estimated miles traveled. For example, the March 9,

1999 entry has "Cherokee 40 Corinth, Ms 125." The entry for March 11 has "Russelville Ind. Pk 90." The calendar is not sufficient because it does not fully substantiate the amount, time, place, and business purpose for each trip.

The Taxpayer claims in his notice of appeal that "I did not have perfect records, but you know I used my auto constantly and should be allowed a reasonable amount." The courts have allowed taxpayers to estimate deductible expenses in the absence of adequate records under certain circumstances. *Cohan v. Commissioner*, 39 F.2d 540 (1930). Unfortunately for the Taxpayers in this case, the *Cohan* rule does not apply to employee business-travel expenses. IRC Reg. §1.274-5T(a)(1). Rather, the law requires that detailed, exact records must be kept. The Taxpayer failed to do so. The claimed employee travel expenses were thus properly disallowed.

*Goins* at 2 – 3.

Unfortunately for the Taxpayer, his calendar was created after the fact and shows only his total miles traveled each week. I sympathize with the Taxpayer, but to be allowed business-related travel, §274 requires that the Taxpayer must keep a detailed log or calendar showing not only the miles traveled, but also where he traveled, who he called on, and the business purpose for the trip.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2006 tax, penalty, and interest of \$1,492.01. Additional interest is also due from the date the final assessment was entered, July 20, 2009.

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

Entered January 21, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: John J. Breckenridge, Esq.  
Aubrey Gene Hicks, Jr.  
Tony Griggs