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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 10-152

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

**PRELIMINARY ORDER ON TAXPAYER'S
APPLICATION FOR REHEARING**

This appeal involves final assessments of 2001, 2006, and 2007 Alabama income tax entered against the above Taxpayer. The Department audited the Taxpayer's 2005 through 2007 returns. The Department also had no record of the Taxpayer's 2001 Alabama return. He submitted a copy of that return during the audit of the 2005 through 2007 returns. The Department subsequently deleted 2005 from the audit.

The Department made various adjustments to the Taxpayer's 2006 and 2007 returns. The two disputed adjustments involve (1) disallowed mileage expenses relating to the Taxpayer's courier service, and (2) gifts relating to the Taxpayer's bookkeeping/tax preparation business.

A Preliminary Order was entered directing the Taxpayer to submit his 2006 and 2007 mileage log books and any additional receipts for the gift expenses to the Administrative Law Division. The Taxpayer failed to respond, and a Final Order affirming the final assessments was entered on March 18, 2011. The Taxpayer timely applied for a rehearing. A hearing was conducted on June 16, 2011. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer testified at the June 16 hearing that he operated a courier service during 2006 and 2007. He contracted with Cooperative Bank Transit to transport mostly bank-related documents to various cities and towns in North Alabama. He explained that he ran a regular route every workday, and averaged traveling approximately 300 miles a day. He testified that he would relay his daily mileage to his bookkeeper, who also operated his bookkeeping service – Deb’s Bookkeeping & Tax Service. The bookkeeper then recorded the mileage on her computer.

It is unclear what records the Taxpayer initially submitted to the Department field auditor. After the audit was submitted to Montgomery for review, however, the Taxpayer’s bookkeeper submitted a computer printout of the mileage she had recorded for the Taxpayer. The printout was returned to the field auditor, who rejected it because it showed more miles traveled than the amounts claimed on the 2006 and 2007 returns.

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).

It is undisputed in this case that the Taxpayer incurred unreimbursed mileage expenses relating to his courier business. The evidence also shows that the Taxpayer related his daily miles traveled to his bookkeeper, who recorded the miles on her computer. She subsequently provided a computer printout of the daily miles traveled to the Department Hearing Officer.

As indicated, the Department's field auditor reviewed and rejected the printout because it showed more miles traveled than the amounts claimed on the Taxpayer's 2006 and 2007 returns. The Taxpayer's bookkeeper explained that she only deducted some of the mileage on the returns because she thought that if she claimed all of the mileage, the Taxpayer's returns would be red flagged for audit.

The computer printout and other documents submitted at the June 16 hearing, in conjunction with the testimony of the Taxpayer and his bookkeeper, are sufficient to carry the Taxpayer's burden of proving he is entitled to the mileage claimed on his 2006 and 2007 returns.

Concerning the gifts, the Department examiner testified that the Taxpayer's bookkeeper provided receipts from various stores for various personal items, i.e., shirts, pants, towels, etc. The examiner disallowed the gifts because there was no indication who the gifts went to or that there was a business purpose for the gifts.

The Taxpayer's bookkeeper also explained that she sometimes gave repeat customers a \$25 discount to do their tax returns to keep them coming back. She subsequently deducted the discounts on the Taxpayer's returns.

The burden was on the Taxpayer to prove that he, through his bookkeeper, made business-related gifts to his customers that constituted ordinary and necessary business expenses. *White v. State of Alabama*, Docket Inc. 02-201 (Admin. Law Div. 12/4/2002). The Taxpayer has failed to carry that burden. Miscellaneous receipts for various personal items are not sufficient to prove the business nature of the expenditures. Also, a discount on services is not a deductible expenditure or expense. The Department's disallowance of the gifts is affirmed.

The Department is directed to recompute the Taxpayer's 2006 and 2007 liabilities by allowing the mileage expenses claimed on the Taxpayer's return for those years. A Final Order will then be entered.

This 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 July 14, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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