

THOMAS F. & LINDA T. DORRIS§
62 PARKS LANE
FAYETTEVILLE, TN 37334-6642,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 11-582

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Thomas F. and Linda T. Dorris (together “Taxpayers”) for 2007 income tax, and also reduced a 2008 income tax refund claimed by the Taxpayers. The Taxpayers appealed to the Administrative Law Division, and a hearing was conducted on October 6, 2011. Thomas Dorris and his representatives, Gerald Hartley and Davis Hartley, attended the hearing. Assistant Counsel Lionel Williams represented the Department.

ISSUES

The case involves three primary issues.

(1) Did the Department correctly disallow the car and truck travel expenses claimed by the Taxpayers relating to Tom Dorris’ (individually “Taxpayer”) activities as a real estate agent in Alabama during the subject years;

(2) Did the Department correctly disallow expenses relating to the Taxpayer’s work as a CPA during the subject years; and

(3) Did the Department correctly disallow job hunting expenses claimed by the Taxpayers in the subject years.

FACTS

The Taxpayers resided in Fayetteville, Tennessee during the years in issue. The

Taxpayer has been a CPA since the late 1980's. He worked as an accountant for various companies in Tennessee through July 2007. He was hired by Rheem Manufacturing Company in Montgomery, Alabama in August 2007. As explained below, he continued living in Tennessee and commuted to work in Montgomery from August 2007 through the years in issue.

The Taxpayer obtained a real estate license in 2005, and worked as an independent real estate agent in Alabama from 2005 until 2009. He was associated with Rise Real Estate, a large residential real estate firm in Huntsville, Alabama, during the years in issue. The Taxpayers reported real estate-related income of \$7,187 and related expenses of \$29,993 on their 2007 Alabama return. They reported real estate-related income of \$1,500 and related expenses of \$25,097 on their 2008 Alabama return.¹

The Taxpayer also conducted a CPA consulting business during the subject years. He worked for three or four customers during those years, only one of which lived in Alabama. He earned \$850 from his CPA work in 2007 and \$625 in 2008. The Taxpayers deducted \$721 on their 2007 Alabama nonresident return relating to the Taxpayer's CPA practice in that year, and \$1,574 in 2008. The Taxpayer's CPA letterhead showed his residence in Tennessee as his CPA business address, as did his business cards. His billings to his customers also showed his Tennessee residence as his business address. He did, however, conduct some of his CPA-related research in the Huntsville public library.

¹ The Taxpayers filed their first Alabama nonresident return in 2006, before the Taxpayer began working for Rheem in Montgomery. They reported real estate-related income of \$35,000 - \$40,000 on that return.

The Taxpayer also actively searched for a new job during the years in issue. He employed a job hunting firm, and attended job interviews in Michigan, Georgia, Tennessee, and Alabama during the subject years. The Taxpayers deducted \$2,619 in job hunting expenses in 2007, and \$2,960 in 2008. The Taxpayer's search was unproductive, and he is still employed by Rheem in Montgomery.

Concerning the Taxpayer's real-estate related car and truck expenses, the Taxpayer testified that during the years in issue, he drove a Camry from his home in Tennessee to his job with Rheem in Montgomery either on Sunday night or early Monday morning. He stayed and worked in Montgomery until Friday of each week. He returned on Fridays from Montgomery to the Rise Real Estate office in Huntsville. He swapped his old Camry for a newer vehicle after arriving in Huntsville because he wanted to have a more suitable vehicle when calling on potential real estate clients. He then traveled to various locations in the Huntsville area in search of real estate business. He returned to his home in Tennessee on Friday night.

The Taxpayer also conducted real estate business on Saturdays and Sundays by "farming" for potential clients at various locations in Tennessee and Alabama. The Taxpayer first traveled to the Rise Real Estate office in Huntsville on weekends, and from there traveled to the various locations in search of business.

The Taxpayer maintained a handwritten log book on which he recorded where he traveled on real estate-related business, the miles traveled, and the purpose for the trip, i.e., "farming" for real estate business. He recorded the log book information on his computer within a day or two.

The Taxpayers initially deducted the miles the Taxpayer traveled on Fridays, Saturdays, and Sundays from his Huntsville office to the various locations in search of real estate business. He did not deduct the miles he traveled to the Huntsville office from his home and back. He later revised his mileage to include the miles he traveled on Fridays from his Rheem office in Montgomery to his real estate office in Huntsville.

The Taxpayer also claims that he paid numerous teenagers and/or students \$20 each in cash to hand out real estate-related brochures for him on weekends. He testified that he kept a list of their names and the amounts paid, but that the list, and most of his other tax-related receipts and records, were destroyed in July 2009 when a pipe burst in the room at his home where he kept the records. The Taxpayers deducted the amounts paid to the students/teenagers as real estate advertising expenses on their 2007 and 2008 Alabama returns.

The Department audited the Taxpayers' 2007 and 2008 Alabama returns and made numerous adjustments. Specifically, it reduced or disallowed various deductions because the Taxpayers failed to fully document the deductions. The largest disallowed deduction was the Taxpayer's real estate-related car and truck expenses of \$17,509 and \$20,571 claimed by the Taxpayers in 2007 and 2008, respectively. It also disallowed the real estate-related advertising deductions because they were not substantiated.

The Department also disallowed the expenses relating to the Taxpayer's CPA business because, according to the Department, the expenses were not incurred in an Alabama-based business. The Department did, however, treat the income derived from the business as taxable in Alabama. The Department also disallowed the job hunting expenses in full in both years.

ANALYSIS

Alabama has adopted the federal recordkeeping requirements in 26 U.S.C. §274 concerning business-related travel and related expenses. See, Code of Ala. 1975, §40-18-15(a)(20). Section 274 requires that for business-related mileage to be allowed, a taxpayer must document the number of miles traveled, the date, the destination, and the business purpose for the trip.

The Department claims in this case that the Taxpayer's business travel expenses were not properly verified. It asserts that the Taxpayer's computer-generated mileage records are suspicious because he claimed mileage for two separate cars on the same days, and that he repeatedly traveled to the same locations, but claimed different mileage amounts. It also argues that the Taxpayer's trips from Montgomery to Huntsville on Fridays constituted nondeductible commuting expenses.

As indicated, the Taxpayer initially recorded his real estate-related travel information in a paper notebook. He then transferred the information to his computer no more than a day or two after each trip or trips on a particular day. While the Taxpayer should have also kept his notebooks, in addition to his computer printouts, the information entered into the computer constituted a contemporaneously maintained record of his miles traveled, the date the travel occurred, etc.

The Department examiner testified, and I agree, that ideally a taxpayer should identify the specific destinations that the taxpayer traveled to on business. In this case, the Taxpayer only recorded the town, resort, or general area to which he traveled. He regularly traveled to different locations within those general areas during the years in issue, which explains why his mileage amounts were different for trips to the same general locations.

The fact that he claimed miles using different cars on the same dates is also explained by the fact that he traveled from Montgomery to Huntsville on Fridays in his Camry, and then used another vehicle to conduct his real estate business in the Huntsville area on those same days.

Under the specific circumstances in this case, the Taxpayers' claimed real estate mileage should be allowed, with one exception discussed below.

As indicated, the Taxpayers initially claimed only the miles the Taxpayer traveled from his Huntsville office to the various locations in North Alabama and Tennessee. He later amended his claims to include his trips from his job in Montgomery back to Huntsville on Fridays.

I agree that as a rule, miles traveled by a taxpayer from one job location to another are deductible. But substance over form must govern in tax matters. *Brundidge Milling Co. v. State*, 228 So.2d 475 (1969). In substance, the Taxpayer's trips back to Huntsville on Fridays constituted non-deductible commuting expenses. The Taxpayer was in practical effect required to travel up Interstate 65, and pass near Huntsville, on his way from Montgomery to his home in Tennessee. He consequently would have made the trip even if he had not stopped in Huntsville. Those commuting miles should be disallowed.²

Concerning the real estate-related advertising expenses, the Taxpayer testified that he maintained records showing the dates and amounts he paid the individuals to hand out

² If the Department still has the Taxpayer's mileage records or a copy of those records, it should determine the Montgomery to Huntsville miles that should be deleted, and recompute the allowable miles accordingly. If the Department no longer has the records, MapQuest indicates that it is 197 miles from the Rheem plant in Montgomery to the Rise Real Estate office in Huntsville. That amount times the number of Fridays in September 2007 through 2008 should then be deleted in computing the adjusted miles allowed.

fliers concerning his real estate activities. He explained, however, that the records were destroyed when a pipe burst in his house.

The Taxpayers are correct that if a taxpayer's records are destroyed or lost through no fault of the taxpayer, the taxpayer may be allowed to reasonable reconstruct the records. In this case, however, the Taxpayer has not reasonably reconstructed the expenses with reasonable or credible evidence showing that the amounts were actually expended. Given the nature of the alleged expenditures, i.e., cash payments to unknown individuals, some documentary proof of payment such as canceled checks should be required. Under the circumstances, the advertising expenses were properly disallowed.

Concerning the Taxpayer's CPA business, the Department is correct that the expenses relating to the business should be disallowed because the business was Tennessee-based. The income earned by the non-resident Taxpayer from his CPA business also was not taxable in Alabama, and should be deleted from the audit.

Concerning the job hunting expenses, the Department now concedes that they should be allowed, but only in 2007 because only the expenses claimed in that year were properly documented. It claims that it will also allow the 2008 expenses, but only if they are also documented. The Taxpayers should provide any records they have documenting the 2008 job hunting expenses to the Administrative Law Division by June 1, 2012. They will be forwarded to the Department for review and response. The Department will then be directed to recompute the Taxpayers' liabilities in accordance with this Order.

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 May 9, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.
Gerald W. Hartley, Esq.
Tony Griggs