

JEFFERY FORE & JULIE M. YOUNG §  
93 CRABAPPLE LANE §  
ODENVILLE, AL 35120, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 11-748

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### **FINAL ORDER**

The Revenue Department assessed Jeffery Fore and Julie M. Young (together “Taxpayers”) for 2007 income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 20, 2012. Jeffery Fore (individually “Taxpayer”) and his representative, Paul Williams, attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayers reported a loss of \$267,710.48 on their 2007 Alabama return. The Department reviewed the return and determined that the loss occurred in 2010, not 2007, and thus should have been claimed in 2010. It adjusted the Taxpayers’ 2007 liability accordingly and entered the final assessment in issue.

The Taxpayer was the victim of a fraudulent Ponzi-type scheme engaged in by an individual he met at church. The individual bragged about how much money he made in various unspecified deals, and in May 2006, the individual convinced the Taxpayer to give him \$12,000 to get in on one of the deals. The Taxpayer “invested” growing amounts of money with the individual over the next year or more, and initially received some profits on the deals. The Taxpayer was aware that the individual had on-going business dealings with other individuals, but did not know the nature of those deals.

In October 2007, the Taxpayer and a fellow church member that had also had business dealings with the individual met for supper. They began discussing the dealings they had with the individual, and certain discrepancies were discovered. They discussed the matter at length and determined that the individual was a fraud and a liar.

Over the next month or two, the Taxpayer became further convinced that the individual was a fraud and had swindled him. He accordingly filed a theft complaint against the individual with the City of Trussville Police Department on December 12, 2007.

The individual was arrested and indicted in 2010 for his various criminal activities involving the Taxpayer and others. He plead guilty, but surprisingly, was given probation. The Taxpayer (and the other victims) have not received any of their money back from the individual.

Losses incurred in a trade or business and also losses not connected with a trade or business are deductible in Alabama to the same extent allowed for federal purposes at 26 U.S.C. §165(c)(1) and (c)(2), respectively. See, Code of Ala. 1975, §§40-18-15(a)(4) and (a)(5), respectively. Theft losses are also allowed in accordance with 26 U.S.C. §165. See, Code of Ala. 1975, §40-18-15(a)(6). Where Alabama tax law adopts or is modeled after federal tax law, federal guidance should be followed in interpreting Alabama law. *State, Dept. of Revenue v. Robertson*, 733 So.2d 397 (Ala. Civ. App. 1998).

Section 165(e) provides generally that “any loss arising from theft is treated as sustained during the taxable year in which the taxpayer discovers the loss.” See, Rev. Rul. 2009-9, Issue 3. However, Rev. Proc. 2009-20 provides an optional safe harbor for losses from investments that are discovered to be criminally fraudulent. Under that optional procedure, the loss must be claimed in the year of the indictment, information, or complaint

as described in section 4.02 of the procedure is filed. Rev. Proc. 2009-20 does not apply in this case because (1) the Taxpayer did not opt to apply it, and (2) the effective date of the procedure was January 1, 2008, after the year in issue. Consequently, the general rule applies that a theft loss should be claimed in the year it is discovered.

The Taxpayer testified at the March 20 hearing that he discovered that he had been defrauded in October 2007, and that he had little if any reasonable expectation of getting any of his money back at that time. That testimony, the theft complaint filed in 2007, and various other facts show that the Taxpayer "discovered" his loss in 2007. The loss was thus correctly claimed in that year.

The 2007 final assessment in issue 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 March 30, 2011.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.  
Paul Williams, EA  
Tony Griggs