MICHAEL N. & KIRA D. McGINNIS 6128 TIMBERLY ROAD NORTH MOBILE, AL 36609-6609,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 12-325
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER ON TAXPAYERS' APPLICATION FOR REHEARING

This appeal involves final assessments of 2008 and 2009 income tax entered against the above Taxpayers, jointly, and a 2010 final assessment of income tax entered against Kira McGinnis, individually.

The Taxpayers claimed Schedule A deductions on their 2008, 2009, and 2010 Alabama income tax returns. The Department requested records verifying the deductions. The Taxpayers failed to submit any records. The Department consequently disallowed the unsubstantiated deductions and entered the final assessments in issue.

The Taxpayers subsequently provided records to the Income Tax Individual Hearing Section in Montgomery. The Section reviewed the records and allowed contributions of $1,284 and $610 in 2008 and 2010, respectively. No adjustments were made for 2009 because the 2009 standard deduction was greater than the verified contributions in that year.

The Taxpayers provided invoices for uniforms purchased from East Beach Specialties. The Department disallowed the invoices because they were billed to one of the Taxpayers' employers, Shed BBQ Mobile, and the Taxpayers failed to provide records showing that they had paid for the uniforms.

The Taxpayers also provided a 2010 mileage log which showed 66 trips from Destin, Florida to Mobile, Alabama, or vice versa, in the year. Each trip was 187 miles. The Department rejected the log because it failed to show the specific destination or the business purpose for the travel.

Based on the records provided to the Individual Hearing Section, the Department reduced the amounts due for 2008 and 2010 to $1,385.73 and $810.75, respectively. The 2009 final assessment was not changed. The Administrative Law Division entered a Final Order on September 24, 2012 for the reduced amounts due. The Taxpayers timely applied for a rehearing. The Taxpayers' application reads as follows:

> I am writing in regards to Docket No. Inc. 12-325, Michael N. and Kira D. McGinnis. We were denied credit for mileage expenses on our 2010 tax return due to location not stated or purpose. On the log it was written either from Mobile, Alabama to Destin, Florida to Mobile, Alabama. Do you require an address? If, so travel was from 5753 Old Shell Road Mobile, Alabama 36608 to 100 Harbor Blvd. Destin, Florida 32541 or vice versa. The addresses are both locations of a Shed BBQ and Blues Joint. . .not a personal address. The travel was done for work purposes. The Shed BBQ and Blues Joint does not have a mileage reimbursement policy nor did we receive any type of reimbursement including lodging, for travel expenses from The Shed BBQ and Blues Joint. Please advise if you required any other type of documentation.

All taxpayers are required to provide records showing that they are entitled to a claimed deduction. *Norgaard v. C.I.R.*, 939 F.2d 874 (1991). The Department thus correctly disallowed the uniforms claimed by the Taxpayers because they failed to provide records showing that they had actually paid for the uniforms.

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 deduction 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.
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> The criteria for claiming travel expenses was explained in *Langer v. C.I.R.*, 980 F.2d 1198 (1992):
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> > 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).
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> *Langer*, 980 F.2d at 1199.
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> 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.
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> 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.

As indicated, the Taxpayers in this case presented a mileage log. Unfortunately, the records do not reflect the exact location or locations traveled to each day, or the business purpose for each trip. The Taxpayers' records are thus not sufficient to satisfy the strict recordkeeping requirements of §274, as adopted by §40-18-15(a)(20).

The trips also were to the same unspecified locations in Destin and Mobile. It thus appears that even if the Taxpayers satisfied the recordkeeping requirements of §274, the trips to Destin and back would constitute nondeductible commuting expenses.

The September 24, 2012 Final Order is affirmed.

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

Entered December 3, 2012.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Duncan R. Crow, Esq.

Kira McGinnis
Brenda Lausane