

WALTER V. & CHERYL O. BAGBY §
P.O. BOX 752 §
POINT CLEAR, AL 36564, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 12-379

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Walter and Cheryl Bagby (jointly “Taxpayers”) for 2010 Alabama 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 November 20, 2012. The Taxpayers attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The Taxpayers claimed various deductions on their joint 2010 Alabama income tax return. The Department audited the return and requested records substantiating the claimed deductions. The Taxpayers provided some records. The Department allowed the substantiated deductions and disallowed the unsubstantiated deductions. The Taxpayers provided additional records. The Department consequently allowed more deductions, but still disallowed some as unsubstantiated. The Department subsequently assessed the Taxpayers for the additional tax due based on the disallowed deductions. The Taxpayers appealed.

The Taxpayers dispute the disallowed business-related transportation and meal expenses, work clothes, and tools.

Walter Bagby (individually “Taxpayer”) was active in the Merchant Marines until approximately 2005. He started working for L & M Botruc Rental, Inc. at that time. L&M

services and supplies off-shore oil rigs and platforms in the Gulf of Mexico.

The Taxpayers live in Baldwin County, Alabama near Point Clear. The Taxpayer testified that his work schedule with L&M during the year in issue required him to work 28 days and then be off for 14 days. He drove from his home in Point Clear to L&M's headquarters in Galliano, Louisiana to begin his 28 day work period. L&M then transported the Taxpayer (and others) to a port in Texas where the Taxpayer boarded the ship on which he worked. The trip from Louisiana to Texas took approximately eight hours.

The Taxpayer lived on the ship for the entire 28 day work period. L&M fed the Taxpayer and the other crew members free-of-charge. The ship docked once a week during the 28 day period to take on additional supplies. It returned to port at the end of the 28 day period, and L&M transported the crew back to Galliano, Louisiana. The Taxpayer then drove back to his home in Point Clear.

The Taxpayers deducted work-related clothes and tools on their 2010 Alabama return. The Taxpayer explained that he works in coveralls and uses his own tools when working on the ship. He testified, however, that he failed to keep any receipts showing that he purchased any clothes or tools for work-related purposes.

The Taxpayers also claimed \$12,250 in travel and meal expense, but again, they have no records verifying those expenses. They contend, however, that they should be allowed a travel and meal deduction without records based on IRS Publication 463. They stated their argument in an August 27, 2012 letter to the Administrative Law Division, which reads in part:

(The Department attorney) did not address the information regarding to IRS Rule publication/p463, individuals who are subject to Department of

Transportation (DOT) hours of service limitations can deduct a percentage of their meal expense when they are away from home. The limit for transportation workers is 80%-a per diem. Certain employees' subject to the hours of service limitations includes the following industries: Airline, Interstate trucking, Bus driving, Railroad and Merchant Marine.

Walter Bagby occupation as an offshore Merchant Marine falls under the DOT hours of service limitations. His credential was provided that attested that he is under the Coast Guard guideline. As to Revenue Procedure 96-64, IRS revenue procedure permit certain expense allowances, including per diems, to be treated as meeting the standards of IRC section 274(d) substantiation requirement for traveling expenses. This elective method does to require employees to submit receipts for their actual expense.

To begin, the Taxpayer was employed by a private employer in 2010, and was otherwise not on active duty in the Merchant Marines. In any case, I have reviewed IRS Publication 463, and it contains no special deductions or rules for individuals employed by or subject to Department of Transportation guidelines, which may or may not include someone on active duty with the Merchant Marines. Rev. Proc. 96-64 does provide that records substantiating all ordinary and necessary business-related travel expenses may not be required, but only under limited circumstances where the employer provides the employee a fixed per diem allowance for such expenses. The Taxpayer in this case did not receive a per diem allowance for travel and meals from his employer during the year in issue. The above special circumstances thus did not apply in this case.

The Administrative Law Division addressed the business travel expense deduction in *Amaya v. State of Alabama*, Docket Inc. 99-281 (Admin. Law Div. 9/1/1999), as follows:

To be allowed business-related travel expenses, an employee must maintain a travel log or other sufficient evidence verifying the amount, time, place, and business purpose for the travel. 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 v. C.I.R., 980 F.2d at 1199.

The Taxpayer in this case did not keep a travel log. In any case, his travel from his Alabama home to his employer’s office in Louisiana constituted a nondeductible commuting expense. No deduction can be allowed for his trips from Louisiana to Texas because the transportation was provided by his employer. The Taxpayer also failed to provide receipts for any meals he may have purchased en route to Texas, assuming that any such meals would have constituted a deductible ordinary and necessary business expense.

The final assessment is affirmed. Judgment is entered against the Taxpayers for 2010 tax, penalty, and interest of \$742.56. Additional interest is also due from the date the final assessment was entered, January 18, 2012.

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

Entered December 17, 2012.

BILL THOMPSON

Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Walter & Cheryl Bagby
Kim Peterson