SABATA S. & CHANGELA VICKERS 135 DERWENT LANE HUNTSVILLE, AL 35810,	§ §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 13-487
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department denied a 2009 income tax refund requested by Sabata S. and Changela Vickers (together "Taxpayers"). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on December 4, 2014. Sabata Vickers (individually "Taxpayer") and his CPA, C. E. Fallin, attended the hearing. Assistant Counsel Craig Banks represented the Department.

The Taxpayer worked full-time as a high school teacher during the year in issue. In early 2009, the Taxpayer's uncle, John Vickers, asked the Taxpayer if he wanted to join him in a business deal with Clyde Johnson. The uncle worked for Alabama A & M University and was involved in procuring federal government grants and contracts for the University. Johnson was known to have had prior successful business dealings with the federal government.

The Taxpayer's uncle told him that Johnson had an agreement to lease vehicles to the federal government, but that Johnson needed investors to purchase and lease him the vehicles because he could not afford to purchase them himself. The Taxpayer subsequently purchased seven vehicles from Woody Anderson Ford in April 2009. He paid $25,000 down, and the dealership arranged for financing for the balance due. The

dealership delivered the vehicles directly to Johnson. The Taxpayer, as lessor, and Johnson, as lessee, executed a lease agreement concerning the vehicles on June 10, 2009.

The Taxpayer's wife also purchased four more vehicles that were also delivered by the seller, University Kia, directly to Johnson. The wife executed a lease agreement with Johnson concerning those vehicles on October 11, 2009. Woody Anderson also leased or otherwise provided Johnson with twenty-six vehicles as part of the transaction.

Unfortunately, Johnson never made any lease payments to the Taxpayer or his wife, or to the Taxpayer's uncle, or to Woody Anderson Ford. It also is not known if Johnson ever re-leased the vehicles to the government, or if he ever intended to.

Woody Anderson brought criminal charges against Johnson, who was subsequently convicted of theft by deception in federal court. He was sent to federal prison in late 2010 or 2011.

The Taxpayer testified that he lost the $25,000 he paid down on the vehicles, and that he also paid approximately $4,000 - $4,500 a month to the financial institutions that had financed the vehicles. He made those payments until Woody Anderson repossessed the vehicles in 2010.

The Taxpayers purchased the vehicles in issue for over $213,000 in 2009. They claimed bonus and regular depreciation on the vehicles of $133,000 on their 2009 Alabama return, which resulted in a refund due for the year. The Department disallowed the depreciation because it determined that the Taxpayers had never actually started their business of leasing the vehicles to Johnson. It consequently denied the refund. This

appeal followed.

To be deductible, business-related expenses must be incurred in an ongoing business. Start-up expenses incurred before a business opens cannot be currently deducted. In *Miles v. State of Alabama*, Docket Inc. 12-1129 (Admin. Law Div. O.P.O. 1/28/2014), the issue was whether expenses relating to a proposed donut business could be deducted. The Administrative Law Division disallowed the expenses as follows:

> Code of Ala. 1975, §40-18-15(a)(1) adopts by reference 26 U.S.C. §162, which allows deductions for all ordinary and necessary business expenses. To be deductible, however, the expenses must be incurred in an on-going business. The Taxpayer had not opened his wholesale doughnut business in 2010, and subsequently abandoned the endeavor without ever engaging in business. As correctly argued by the Department, start-up expenses incurred in a year before a business begins operating cannot be deducted in that year.
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> > Start-up expenses must either be capitalized or, by election of the Taxpayer, deducted in accordance with the provisions of 26 U.S.C. 195. Ala. Code 1975 § 40-18-15(a)(22). Under this election, a taxpayer is allowed a deduction for start-up expenses in an amount not in excess of $10,000.00 "*for the taxable year in which the active trade or business begins…."* Section 195 (emphasis added). As this Court has held, "for expenses to be deducted under [section] 195, a taxpayer must actually begin a business." *W. E. and Nell Bailey v. State of Alabama Dep't of Revenue*, Dkt. No. Inc. 99-265 (Ala. Dep't of Rev. Admin. Law Div. Nov. 19, 1999).

Miles v. State of Alabama at 5.

The evidence in this case establishes that the Taxpayers entered into the business of leasing the vehicles in issue to Johnson in 2009. They purchased and took legal title to the vehicles in 2009, they were legally obligated to pay for the vehicles, and importantly, the vehicles were delivered to the lessee, Johnson, pursuant to written lease agreements between the Taxpayers and Johnson. The Taxpayers were thus actively in the business of

leasing the vehicles to Johnson. The fact that Johnson never made the monthly lease payments to the Taxpayers, or anyone else, is irrelevant.

The Department argues in its Post-Hearing Brief at 2 that "the Taxpayers' purported business never 'functioned as a going concern' and never 'performed those activities for which it was organized.' *Jackson v. CIR*, 864 F.2d 1521 (10th Cir. 1989). Instead, it was a one-time business deal that, in the end, fell through." I disagree. As explained above, the Taxpayers were in the business of leasing vehicles to Johnson, and they actively engaged in that activity when they purchased and leased vehicles to Johnson pursuant to valid lease agreements. The deal did "fall through," but only in the sense that Johnson failed to pay the Taxpayers, or anyone else. A retailer or leasing business that sells or leases goods to a customer in good faith has entered into a business transaction with the customer, regardless of whether the customer eventually pays the retailer or lessor.

The Department does not dispute the amount of depreciation claimed by the Taxpayers on their 2009 Alabama return. The Department should accordingly issue the refund claimed on the return in due course, plus applicable interest. Judgment is entered accordingly.

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

Entered March 5, 2014.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Craig A. Banks, Esq.
C. E. Fallin, CPA
Kim Peterson