STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 85-130
ROBERT M. & RUBY DAWSON Route 2 Leighton, AL 35646,	§	
Taxpayers.	§	

ORDER

This matter involves a disputed preliminary assessment of income tax entered by the Revenue Department against Robert M. and Ruby Dawson (Taxpayers or Taxpayer) for the year 1982, and also the denial of a refund for the year 1983. A hearing was conducted by the Administrative Law Division on September 26, 1985. Representing the parties at the hearing were public accountant Larry Swindle, for the Taxpayer, and assistant counsel Mark Griffin, for the Department. Based on the evidence submitted at said hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Revenue Department audited the Taxpayers' joint Alabama income tax returns for the years 1982 and 1983 and disallowed certain Schedule C business expenses relating to the Taxpayer's drag racing activities in those years. The Department also partially disallowed a casualty loss (theft) deduction claimed by the Taxpayers for 1983. Based on said adjustments, the Department entered the 1982 preliminary assessment in issue, and also

disallowed a refund claimed by the Taxpayers on their return for the year 1983.

The facts relative to the Taxpayer's drag racing activities are as follows:

In 1973, the Taxpayer, a full time employee at Reynolds Metals Company, began operating a car body shop adjacent to his residence. The Taxpayer mostly worked on his own automobiles at said shop, but did some small amount of work for the public. Very little income was received by the Taxpayer from his body shop work.

In 1980, the Taxpayer was laid off from Reynolds Metals and thereafter began drag racing. From 1980 through 1984, the Taxpayer's only source of earned income was from his drag racing activities. During those years, the Taxpayer's gross income and total operating expenses relative to drag racing were as follows:

Year	Gross Income	Total Expenses	Losses Claimed
1980	$ 475.00	$ 4,958.00	($ 4,483.00)
1981	$2,630.00	$12,182.00	($ 9,552.00)
1982	$1,150.00	$24,649.00	($23,499.00)
1983	$2,800.00	$24,171.00	($21,371.00)
1984	$5,909.00	$ 5,429.00	$480.00

During the above years, the Taxpayer owned several drag racing cars and participated in races on a consistent weekly basis throughout the period. however, the Taxpayer kept no contemporary record of race dates, winnings, etc. There is no dispute as to the amount of the expenses claimed by the Taxpayer, or that said expenses were related to drag racing. The only issue is whether the drag racing activities were entered into for profit so as to be

allowable as a deduction under Code of Alabama 1975, §40-18-15(a)(1).

Concerning the casualty loss deduction, the evidence is sufficient to establish that during 1983 a number of items were stolen from both the Taxpayers' residence (guns, knives, etc.) and body shop (auto parts and supplies). Statements from several individuals were presented indicating that the Taxpayer had purchased various guns and other items. However, no formal purchase receipts or other records were presented that would establish a cost basis for the stolen items.

The Taxpayers claimed a casualty loss of $7,900.00 relative to the stolen items. The Revenue Department allowed only a $5,000.00 deduction. The Department does not question that a number of items were in fact stolen. The dispute concerns the cost basis of the missing property. The Department disallowed the full amount claimed because the Taxpayers did not present evidence to establish a cost basis in the property equal to or greater than the claimed deduction. From the records presented, a cost basis of less than $5,000.00 was established.

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-18-15(a)(1) provides a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business. That section is similar in substance to the business

expense deduction allowed at 26 U.S.C. §162. In such cases where an Alabama statute and a federal statute are parallel, federal case authority should be followed. Avery Freight Lines, Inc. v. Alabama Public Service Commission, 104 So.2d 705; State v. Gulf Oil Corporation, 256 So.2d 172; Best v. State, Department of Revenue, 417 So.2d 197; see also, Department Regulation 810-3-15-.09(b)(4).

A deduction is allowable under the above sections only if the activity was entered into with the dominant hope and intent of making a profit, Bessenyey v. C.I.R., 379 F.2d 252; Brannen v. C.I.R., 722 F.2d 695; Cleveland Athletic Club v. U.S., 588 F.Supp. 1305, and the taxpayer is not engaged in a "trade or business" within the scope of the deduction section if the predominant purpose of the activity is recreation or a hobby, Snyder v. U.S., 674 F.2d 1359.

There are no inflexible guidelines for determining the deductibility of a business expense. Each case must be decided on its own facts and circumstances. Evans v. C.I.R., 557 F.2d 1095. Factors to be considered are the nature of the activity, and the business-like manner in which the taxpayer approaches the matter. Also important is the profit and/or loss history of the venture.

In the present case, the Taxpayer began operating a body shop in 1973. Because the Taxpayer was a full-time employee of Reynolds Metals from 1973 until 1980, it is clear that the body shop and related activities were in the nature of a hobby during those

years, especially in light of the fact that the Taxpayer derived very little income from the body shop. The Taxpayer began drag racing full time in 1980. From 1980 through 1983, the Taxpayer averaged approximately $1,700.00 in earnings per year. However, the operating expenses averaged approximately $16,500.00 per year. Such a consistent history of losses is strong evidence that the activity was not entered into with the intent of making a profit. In addition, the Taxpayer failed to keep ordinary and normal business records as to his winnings and expenses for each race, as well as the time, location, and results of each race.

Based on the above facts, it is reasonable to conclude that the Taxpayer's drag racing activities were not entered into primarily for profit. While the Taxpayer no doubt competed with the intention of winning each race, and collecting the accompanying prize money, the large operating expenses incurred in each year, as opposed to the comparatively small winnings, clearly indicate that the racing was in the nature of a hobby, with no realistic hope of consistently realizing a profit. The Taxpayer's failure to keep business records further illustrates the unbusiness-like manner in which the Taxpayer operated.

Based on the above findings and conclusions, it is hereby determined that the adjustments made by the Department concerning the years 1982 and 1983 are correct. Accordingly, the Revenue Department is hereby directed to make final the preliminary assessment in issue for the year 1982. The refund claimed for the

year 1983 is hereby denied.

Done this 19th day of November, 1985.

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BILL THOMPSON
Chief Administrative Law Judge