STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 86-139
CHI-MING & ROSA H. HUANG 605 Highland Woods Drive Mobile, AL 36608,	§	
Taxpayer.	§	

ORDER

This matter involves a disputed preliminary assessment of income tax entered by the Revenue Department against Chi-Ming and Rosa H. Huang ("Taxpayers") for the year 1983. A hearing was set in the matter for 2:00 p.m., July 23, 1987. Notification of said hearing was sent to the Taxpayers by certified mail on June 8, 1987, and was returned unclaimed on June 26, 1987. The hearing proceeded as scheduled, with assistant counsel Mark Griffin appearing on behalf of the Department. Based on the evidence submitted in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

During 1983, the Taxpayers were employed as assistant professors at the University of South Alabama (wife) and the University of Wisconsin (husband). On their joint 1983 Alabama return, the Taxpayers claimed numerous expense deductions relating to their employment. The Department reviewed the return and disallowed the following items:

(1) Travel by both Taxpayers to and from work, and other in-

town transportation expenses were disallowed by the Department. The Department contends that such expenses are personal commuting expenses and thus not deductible.

(2) Work related entertainment expenses incurred by both Taxpayers were denied. The Department's position is that such deductions are not allowable because the entertainment was not required by the Taxpayers' employers.

(3) Meals, lodgings, laundry and other miscellaneous living expenses incurred by the husband while employed at the University of Wisconsin were denied. The Department viewed the husband's "tax home" as being in Wisconsin, and thus disallowed the expenses as being personal in nature.

(4) Expenses relating to research collaboration, including the cost of express mail and other delivery charges necessary for the exchange of tissue samples, reference materials, etc., were denied. The Department's position is that such deductions should not be allowed because they were not required by the employer.

(5) The Department disallowed travel expenses relating to the husband's return trips to Mobile from Wisconsin as being personal in nature. Trips by the wife to Wisconsin to investigate possible career opportunities were denied as "job hunting expenses".

(6) The Taxpayers deducted travel and meal expenses relating to their stockbroker. Such deductions were disallowed by the Department as being personal in nature.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(1) and related Regs. 810-3-15-.02 and 810-3-15-.10 provide a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business. An expense is considered "necessary" if it is appropriate in conducting a trade or business, but doesn't have to be essential or absolutely necessary. Welch v. Helvering, 290 U.S. 111; Levitt and Sons, Inc. v. Nunan, 142 F.2d 795. However, the burden of substantiating a deduction is with the taxpayer, and failure to present verifying records will result in rejection of the amount claimed. Welch v. Helvering, supra; Factor v. U.S., 281 F.2d 100; U.S. v. Woodall, 255 F.2d 370; Showell v. C.I.R., 238 F.2d 143.

Concerning category (1), the Department was correct in disallowing all travel expenses by the Taxpayers to and from work. Such commuting expenses are personal in nature and thus not deductible. C.I.R. v. Flowers, 326 U.S. 465; Carragan v. Commissioner, 197 F.2d 246; Steinhort v. C.I.R., 335 F.2d 496.

The Department disallowed various entertainment expenses, not because such expenses were not incurred in furtherance of the Taxpayers' work, but because they were not required by the Taxpayers' employers. However, an expense is deductible if it relates solely to the employee's occupation, McGovern v. Commissioner, 42 T.C. 1148, and it need not be required as long as it constitutes an ordinary and necessary expenditure. Kosmal v.

Commissioner, 39 T.C.M. 651. Consequently, there being no dispute that the Taxpayers' entertainment expenses were ordinary and related to their employment, such expenses should be allowed.

Concerning the husband's personal living expenses while in Wisconsin, such expenses are deductible only if incurred "while away from home", i.e. away from his tax base. That determination turns on whether the husband's employment was temporary, as opposed to indefinite. If business in a location is for a long or indefinite length of time, then the taxpayer is considered to have changed his tax home and any ordinary living expenses relating to the new location are not deductible. C.I.R. v. Mooneyham, 404 F.2d 522; Wright v. Hartsell, 305 F.2d 221; Harvey v. C.I.R., 283 F.2d 491. Temporary employment is the kind that is expected to last for only a short period, Albert v. Commissioner, 13 T.C. 129, and even if it is not known when the job is to end, it is temporary only if it lasts for a short duration. Ford v. Commissioner, 227 F.2d 297; Norwood v. C.I.R., 66 T.C. 467.

In the present case, the husband's employment in Wisconsin lasted the entire year, from January, 1983 through December 1983. Consequently, such employment must be considered as not temporary in nature and thus all personal living expenses relating to the husband's employment in Wisconsin are not deductible.

The Department denied the Taxpayers' research expenses because they were not required by the Taxpayers' employer. However, like

the entertainment expenses discussed above, there is no question that such expenses were incurred in the course of the Taxpayers' occupations, were necessary thereto, and thus should be deductible notwithstanding that they were not required.

All ordinary and necessary expenses incurred by a taxpayer in securing and performing employment, if the employment sought is related to the taxpayer's present trade or occupation, are deductible. Primuth v. Commissioner, 54 T.C. 374; Motto v. Commissioner, 54 T.C. 558; Morris v. Commissioner, 423 F.2d 611. However, if the expenses are incurred in seeking and preparation for employment, such expenses are not deductible. Morris v. Commissioner, supra. Nevertheless, as stated above, it is incumbent upon a taxpayer to establish that the requisites for a deduction are met.

In the present case, the Taxpayers failed to establish that the claimed expenses relating to the wife's trips to visit the husband in Wisconsin were for the primary purpose of seeking employment. Thus, such expenses should be disallowed as personal in nature. The same is also true for the expenses relating to the husband's trips to Mobile.

Finally, the claimed deductions relating to the stockbroker/investment counselor were properly denied. While such expenditures may be deductible, Treas. Reg. §1.212-1(g); Picker v. Commissioner, 371 F.2d 486, again it is necessary that the one

claiming the deduction must present evidence showing that the expenses were incurred in the pursuit of business and were not personal in nature. Accordingly, because the Taxpayers failed to establish that the expenses were primarily business related, they were properly denied.

The above considered, the Department is hereby directed to adjust the assessment in issue as set out herein. The assessment, as adjusted, should then be made final, with applicable interest as required by statute.

Done this 4th day of August, 1987.

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BILL THOMPSON
Chief Administrative Law Judge